

# Jurisdictional Competition in the Market for Technological Standards

## Abstract

It is widely accepted that Fair Reasonable and Non-Discriminatory (FRAND) licensing terms are crucial to the diffusion and implementation of technology and the maintenance of global production and distribution chains. But who establishes which technology or patent is standard-essential (SEP) and who sets a rate that is FRAND? Standard setting involves tech-industry-driven standard setting organisations (SSOs), and national competition authorities. FRAND rates are determined by market realities, domestic, regional, and international. The SEP technology is subject to territorial patent rights, meaning that the SEP holder will rely on domestic patent law to enforce its rights when an implementer is not (yet) licensed.

The question whether the implementer licensee is 'willing', or whether the SEP holder has indeed made a FRAND offer is an issue that requires an analysis by domestic courts of contractual obligations, competition law, and patent enforcement, not just for their own jurisdiction, but also for global markets. This presentation will focus on the jurisdictional issues, where the US, China, the EU, and UK courts and regulators are increasingly issuing (anti-)anti-suit, or (anti-)anti interim license injunctions in a battle to dominate the market for remuneration of SEP holders. Are there alternative fora for FRAND disputes, or does jurisdictional competition lead to (in)efficiencies?

## Biography

Anselm Kamperman Sanders (1968) is Professor of Intellectual Property Law, Head of the Department of International Law, and Director of the Advanced Masters Intellectual Property Law and Knowledge Management (IPKM LL.M/MSc), and member of the management team of the Institute for Globalization and International Regulation (IGIR) at Maastricht University, the Netherlands. He acts as Academic Co-director of the Annual Intellectual Property Law School and IP Seminar of the Institute for European Studies of Macau (IEEM), Macau SAR, China and is Adjunct Professor at Jinan University Law School, Guangzhou, China. Anselm is deputy judge of the Court of Appeal, The Hague, which has exclusive jurisdiction in the Netherlands over patent, EUTM and RCD disputes. In collaboration with the Academy of European Law (ERA) in Trier, he coordinates the accredited European Patent Litigation Certificate course. For the UN he was member of the expert group for the World Economic and Social Survey 2018 on Frontier Technologies for Sustainable Development. He served the European Commission in the expert group on development and implications of patent law in the field of biotechnology and genetic engineering. For the Dutch government he served in the Commission Compulsory Licensing, and as expert reporter for the parliamentary debate on proportionality in patent law. Anselm has also published extensively on intellectual property in the context of international economic and comparative law.



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