

# **FRAND defenses and Anti-Anti-Suit-Injunctions in Germany**

for  
UT LAW  
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6 November 2020  
Düsseldorf/Munich

# I. FRAND Defenses in Germany

## Underlying concept:

IF

“market dominance”

AND

“FRAND declaration”

AND

“obligation to grant/accept a license” as a result of behavior test

THEN

action claiming injunctive relief, recall and destruction is abusive.

# I. FRAND Defenses in Germany

## “Behaviour test”:

### (1) Orange book offer:

- Unconditional offer by implementer to take a license on FRAND terms

### (2) Huawei ./ ZTE dance:

- a) Notice of patent infringement
- b) Indication of willingness
- c) Offer by patentee
- d) Counteroffer

Also available as part of the eCourse

[2020 Advanced Patent Law \(Austin\) eConference](#)

First appeared as part of the conference materials for the  
25<sup>th</sup> Annual Advanced Patent Law Institute session

"Worldwide Patent Litigation Trends"