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**Developments on SEP/FRAND Issues in the U.S. and
abroad**

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Division, 2018). The ETSI IPR policy expressly provides that such contract is governed by French law. *ETSI Rules of Procedure*, Annex 6, Clause 12.

Plaintiffs HTC Corporation and HTC America, Inc. (collectively “HTC”) design, manufacture, and sell smartphones that implement Ericsson’s SEPs and are thus third-party beneficiaries to the contract between Ericsson and ETSI. (Dkt. No. 135 ¶¶ 48–50.) According to Ericsson, “HTC claims that the FRAND assurance required Ericsson to [] offer licenses based on estimated profit on the smallest salable patent-practicing unit (SSPPU) in the phones.” (Dkt. No. 210 at 1.) Pursuant to Federal Rule of Civil Procedure 44.1, Ericsson moves for a ruling that as a matter of French law, the FRAND commitment does not require an owner of SEPs to offer a license using a royalty based on the SSPPU (the “Motion”). (*Id.* at 15.) Having considered the briefing, the parties’ expert declarations, and other relevant sources, the Court hereby **GRANTS** Ericsson’s Motion to the extent and for the reasons set forth herein.

II. LEGAL STANDARDS

a. Federal Rule of Civil Procedure 44.1

Federal Rule of Civil Procedure 44.1 allows a party to move for a determination of foreign law. In making this determination, “the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence.” FED. R. CIV. P. 44.1. The court, therefore, “may engage in its own research and consider any relevant material thus found,” regardless of its admissibility. FED. R. CIV. P. 44.1 advisory committee’s note to 1996 amendment. The court’s determination “must be treated as a ruling on a question of law,” and not fact. FED. R. CIV. P. 44.1; FED. R. CIV. P. 44.1 advisory committee’s note to 1996 amendment (noting that this provision was included “so that appellate review will not be narrowly confined by the ‘clearly erroneous’ standard of Rule 52(a)); *see also*

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