

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

for
UT LAW
by
Klaus Haft
HOYNG ROKH MONEGIER

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
25th Annual Advanced Patent Law Institute session

"Worldwide Patent Litigation Trends"