Fighting for transparency and fairness in licensing negotiations

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Viewpoint from John Mulgrew, Vice President, Deputy General Counsel & Chief Intellectual Property Officer, Lenovo

Innovation is at the core of every technology company's value, products, and success. This innovation, or intellectual property (IP), includes what we create at Lenovo from the billions we invest every year in R&D. In addition to using this IP in our own products we also support the wider tech industry by licensing it to other companies. Allowing other technology companies to use Lenovo's IP alongside their own innovation helps companies bring new products to market quicker and align to specific industry standards. This blend of the best of the industry's technology ingredients has helped fuel Lenovo's rise to, amongst other accolades, the number one PC company in the world.

We've been innovating across our Lenovo history for more than 40 years and, with our Motorola portfolio, nearer to 100 years. As both a licensee and licensor of intellectual property, we are in a unique position to understand the incredible complexity of bringing a product to market and respect all the work that goes into creating innovative products, services, and solutions.

Our position is one of experience when related to licensing – we have a portfolio of over

26,000 issued patents and over 15,000 pending applications, and we play an active industry-wide role in the setting of standards, in particular for cellular standards. Motorola was at the forefront of developing many technologies that are now commonplace in the telecommunications industry, including cellular and Bluetooth functionality. Similarly, Lenovo was a critical innovator, alongside others, who contributed to the development of 5G cellular technology.

It's this market leadership and commitment to accessible and affordable innovation that drives our fight for transparency in licensing negotiations. We seek to ensure that license rates for the technology included in our products and across the industry and beyond are set on what is called Fair, Reasonable, and Non-discriminatory (FRAND) terms.

With respect to the fair and reasonable aspects of FRAND for standardized technologies that we take for granted in our everyday lives, such as Wi-Fi, cellular, and video codecs, it is critical to strike the right balance between rewarding innovators for their patented contributions while also ensuring that the standardized technology is widely available in the marketplace and enables interoperability between products. If a license royalty is too low, there is a risk of slower innovation and less technological advancement. If a license royalty is too high, there are risks of widespread rejection of the standardized technology as well as risking the introduction of incompatible alternative standards in different regions of the world. In effect, royalties that are too high are equally threatening to innovation and technological advancement.

Concerning the non-discrimination aspects of FRAND, it is essential to strike the right balance between allowing for some reasonable variation in license terms to account for differences between licensees while also ensuring that certain licensees are not targeted to take on much higher royalty burden than competitors to the point of creating an unfair disparity between competing licensees. The playing field must be reasonably level between peer companies to ensure a vibrant and competitive market.

Over the past few years, we've seen various patent owners stray from their FRAND obligations. Some seek excessive global license rates for their SEP portfolios, thereby risking widespread rejection of new technologies in the market or the exit from local markets by some competitors. Others seek to charge multiple times more royalty rates for some licensees than what peer companies pay, thereby greatly destabilizing what should be a level playing field between competitors. When these licensors don't get licensees to agree to inflated and/or discriminatory license rates, they turn to courts that grant injunctions with little inquiry about whether the licensing rates are FRAND compliant and avoid courts that are demonstrating a willingness to conduct a FRAND analysis.

When the law is at its best, it provides clarity and transparency that drives parties to reach a compromise through negotiation. Unfortunately, patent litigation seeking only the exclusion of products has become a business model of choice for some patent owners who undertake coordinated campaigns for exclusion in multiple jurisdictions instead of seeking courts that analyze the merits of their offers to confirm they are FRAND compliant. These actions have direct consequences for customers – #1, the price of technology products goes up because

the component technology has a higher price; #2, the choice of technology and the companies offering such technology reduces because many companies will have no other choice than to pull out of a market as the cost of doing business becomes too high; #3, some license terms might become so exorbitant that suppliers and manufacturers will be increasingly more reluctant to include newer, more advanced future technologies in their products. With respect to #2, in recent years, we've seen some prospective licensees withdraw product offerings in Germany when faced with injunctions so that other attempts to examine offers for FRAND compliance can be completed. We also see slower adoption of newer technologies in products when those technologies result in frequent litigation. For companies like Lenovo that strive to remain in markets and steadily introduce new technologies in our products, we can't help but notice that the needless legal costs incurred by both sides are diverting millions of dollars away from investment in additional research and innovation for the betterment of end customers.

Recently, a Munich court applied a provisional ruling in a case with InterDigital (IDC) that means for the time being, Lenovo cannot sell any cellular-enabled products in Germany – spanning our Motorola smartphone portfolio and certain laptops and smart devices. As a result consumers and business customers are missing out.

This is not the outcome we wanted for our customers or our business, and we are appealing the ruling – it's frustrating on many levels, not least because Lenovo is and always has been a willing licensor and willing to negotiate on FRAND terms. On a more positive note, we've been encouraged to see that in a related case with IDC, the English court recently ruled that a global FRAND determination for the full IDC patent portfolio should be allowed going forward. Just as Lenovo broke ground in obtaining a precedential UK Court decision determining a FRAND rate for InterDigital's cellular portfolio through 2023 at $0.175 per unit – a rate that was much closer to Lenovo's licensing offers than InterDigital's – Lenovo is hopeful this second suit will again provide the necessary transparency and fairness to InterDigital's licensing practices – something Lenovo hopes will benefit not only Lenovo but the broader technology industry. This case will also help our appeal in the German Court as it reiterates our continued willingness as a licensor and highlights IDC's unwillingness to license based on FRAND terms.

This is what we have to say about the Munich court's ruling:

"As a global technology leader Lenovo respects the effort and investment that drive innovation, and we are both a licensor and a willing licensee of intellectual property. Regarding the Interdigital (IDC) case, we respect the Munich Court's decision but do not agree with it given our belief that IDC has violated its own legal obligations to license its technology on Fair, Reasonable and Non-Discriminatory (FRAND) terms to either Lenovo or our third-party suppliers. Access to standardized technology on FRAND terms is critical to the future of the global tech industry; we will continue to fight for transparency in licensing negotiations and against companies seeking excessive rates for their patent portfolios. Innovation must be both accessible and affordable, and IDC's unreasonable global patent licensing behaviors and fees disadvantage German customers, especially consumers, by reducing access to the latest technologies and driving up prices for tech products. We look

forward to the next stage of the proceedings and our appeal."

As we look ahead, we are resolute in our position – we will continue to fight for fairness and transparency in licensing negotiations. We owe it to our customers, and we owe it to our peers and competitors in the wider industry, which will also be impacted when license rates are set unreasonably and unjustly high. While the industry would benefit from greater regulation in this space, this is about a willingness for all parties to have the interests of customers as their number one priority. We're pleased to see the European Union taking a leadership role in this area to ensure a fair and predictable framework for licensing SEPs, but this alone isn't enough. You can read more about my point of view on this topic here.

Lenovo's vision is to offer smarter technology for all – and 'for all' means that everyone has access to the latest affordable technology and, more importantly, has a choice. Anything else is unfair and anti-competitive and will be a backward step for the whole technology industry.