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Comments of InterDigital, Inc. to the Bureau of Industry and Security Regarding Future Extensions of Temporary General License under Export Administration Regulations

Docket Number: BIS 2020-0001
RIN: 0694-ZA02
March 25, 2020

InterDigital, Inc. (hereinafter "InterDigital") hereby respectfully submits its comments in response to the Bureau of Industry and Security (BIS) request for public comments (85 FR 14428 (March 12, 2020)), on future extensions of a temporary general license (TGL) to Huawei Technologies and its non-U.S. affiliates under the Export Administration Regulations.

Specifically, InterDigital is submitting comments in response to topic 3 in BIS's Request for Comments:

> "3. If the TGL is extended, what potential revisions should BIS consider to enhance effectiveness for both covered transactions and transactions outside of the scope of the temporary general license?"

Facts about InterDigital

Founded in the 1970s, InterDigital has been a pioneer in wireless technology for close to five decades. InterDigital is a pure research, innovation and licensing company, headquartered in Wilmington, Delaware. With more than 200 engineers around the world, it focuses on mobile technologies that underpin smartphones, networks and services via global standards, and video technologies that are the foundation for today's most popular products and services.

Over the course of the last two decades InterDigital has invested more than $1 billion in fundamental research and development in wireless technologies, working as a key contributor and leader in the standards process. During that time, InterDigital has been the source of more than 30,000 contributions to key global standards, including 2G, 3G, 4G and 5G. Today, it is a leader in 5G research and beyond, and a thought leader in the mobile industry.

InterDigital's worldwide portfolio of 3G, 4G and 5G SEPs, spanning more than 40 countries, is one of the strongest in the industry. Reports by independent third-party analysts have determined that InterDigital owns between 7-10% of all 3G and 4G standard essential patents (SEPs). And although 5G standards are in their infancy and still developing, ETSI's Special Report indicates that InterDigital's ETSI-disclosed patents and applications accounted for approximately 6% of all ETSI-disclosed patents and applications categorized by ETSI as 5G.

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InterDigital is also a world leader in video research, with a video R&D heritage spanning decades that has pioneered new capabilities and yielded one of the leading innovation portfolios in the video industry. InterDigital's efforts in key video standards were dramatically expanded in 2019 with the addition of the Research and Innovation operation of global market leader Technicolor. Through that transaction, Interdigital acquired a world-class video and Artificial Intelligence research team and an established portfolio of video expertise to help expand its existing work in wireless and video technologies and consumer electronics.
As a pure research, innovation and licensing company, InterDigital does not manufacture downstream products but rather seeks to monetize its cutting-edge innovations through licensing the vendors of smartphones and other products implementing mobile telecommunications standards. InterDigital has been very successful in licensing its portfolio of SEPs. Interdigital has entered into scores of patent license agreements (PLAs) with the preeminent mobile device vendors in the world, including Apple, Samsung, LG, Asus, Sharp, Sony, Fujitsu, Kyocera and many more. In fact, InterDigital currently has licensed its portfolio of wireless telecommunications SEPs to smartphone vendors that in 2019 together accounted for more than 41% of global shipments. The glaring exception is Huawei and other Chinese smartphone vendors, which have refused to enter into licenses to InterDigital's portfolio of wireless telecommunications SEPs while continuing to misappropriate InterDigital's patented technologies.

InterDigital's Efforts to License Huawei and Other Chinese Mobile Device Vendors

After years of litigation over Huawei's continued unlicensed infringement of InterDigital's portfolio of 3G and 4G SEPs, followed by mutually agreed binding neutral arbitration, Huawei entered into a PLA with InterDigital in 2016. However, that PLA expired at the end of 2018 and Huawei has refused to enter into a new PLA on Fair, Reasonable and Non-Discriminatory (FRAND) terms despite InterDigital's good faith efforts. [redacted] As a consequence, Huawei has been selling hundreds of millions of infringing products since the end of 2018 without paying royalties. In fact, instead of negotiating in good faith, Huawei filed a lawsuit in the Shenzhen Intermediate Court on January 2, 2019, just two days after the expiration of the 2016 PLA, [redacted] a determination by the Chinese court of the FRAND royalty rate for InterDigital's Chinese portfolio of 3G, 4G and 5G SEPs.

Huawei's infringing conduct reflects InterDigital's experience with the other Chinese implementers of mobile telecommunications standards. Virtually all other major Chinese mobile device vendors, including [redacted] have not only refused to take a license to InterDigital's portfolio of SEPs, they have failed to even enter into good faith negotiations with InterDigital. In fact, of the top 10 Chinese smartphone vendors – who together account for close to 50% of worldwide smartphone shipments – ZTE is the only Chinese mobile device vendor that is currently licensed by InterDigital. [redacted]

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Chinese mobile device vendors are [redacted] engaged in widespread and long-standing hold-out and misappropriation of InterDigital's patented technologies, using InterDigital's SEPs while refusing to take a license on FRAND terms and conditions or to engage in binding neutral arbitration to determine such terms. [redacted] Additionally, the ongoing hold-out and misappropriation of InterDigital's patented technologies by Huawei and other Chinese mobile device vendors threatens American technological leadership in wireless telecommunications technologies to the detriment of U.S. national security.

Furthermore, these hold-out and misappropriation practices by Huawei and other Chinese mobile device vendors pose a significant threat to the competitive environment in downstream markets, to the climate for continued investment in R&D (particularly by American technology companies such as InterDigital), and ultimately to the innovation ecosystem that has provided huge benefits to consumers and the global economy. Companies like InterDigital that engage in significant research efforts aimed at developing technologies for the next generation of wireless and video standards incur tremendous sunk costs as well as significant risks that their research efforts will not lead to fair and adequate returns on their successful innovations. Investment in research begins many years before a standard is adopted, and even after adoption it is usually several more years before the first products implementing that standard are brought to market and technology owners begin to receive royalty payments for the use of their patents. InterDigital is losing as much as [redacted] in lost royalties because of the systemic holdout and misappropriation of InterDigital's patented technologies by Huawei and other Chinese mobile device vendors, not including [redacted] royalties for years of past infringements. These practices appear to be part of a [redacted] effort [redacted] to gain a competitive advantage over non-Chinese smartphone manufacturers and to dominate 5G technologies and the standard development process.

Recommendation

In order to enhance the effectiveness of BIS's sanctions on Huawei and to ensure the continued strength and leadership of the United States in the research and development of key technologies for future wireless telecommunications standards and infrastructure, **InterDigital recommends that BIS condition any further extension of the TGL on Huawei's demonstration that it has stopped misappropriating wireless telecommunications technologies of American companies such as InterDigital** [redacted]**.** This revision will also send a clear message to other Chinese mobile device vendors that the United States Government is

committed to taking action against Chinese companies that threaten the national security of the United States by engaging in the systemic misappropriation of American technologies in the wireless telecommunications sphere.

If you have any questions, or would like to discuss these matters further, please contact Robert Stien, Executive Vice President and Chief Public Policy Officer, InterDigital, Inc., at (202) 349-1711 or at Rob.Stien@InterDigital.com.