

Frequently Asked Questions

Frequently Asked Questions (FAQs) about the W-CDMA Patent Licensing Programme.

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General overview

Q 1 What is the W-CDMA Patent Licensing Programme?

The W-CDMA Patent Licensing Programme is offered as a convenience to the marketplace in providing fair, reasonable and non-discriminatory (FRAND) access to certified essential patents owned by several patent holders (that is, the FRAND terms required by the standards-making bodies).

Companies that use the W-CDMA standards including HSDPA, HSUPA, HSPA and the planned evolutionary releases of 3GPP based on the W-CDMA FDD technology need the essential patent rights the W-CDMA Patent Licensing Programme provides; it is the easiest, most cost effective way to obtain them. The licenses for the different product categories apply to W-CDMA FDD products effective from 1 January 2004.

The companies associated with the W-CDMA Patent Licensing Programme are France Telecom (includes Orange), Fujitsu, KPN, NEC, NTT DoCoMo, NTT, Mitsubishi Electric, Panasonic, Sharp, Siemens, SK Telecom, and Toshiba. We anticipate other companies will join in the future. The objective is to provide worldwide access to as much W-CDMA FDD, HSDPA, HSUPA and HSPA essential intellectual property as possible.

The W-CDMA Patent Licensing Programme proposes, for 3G terminal products, a Standard License Agreement (SLA) or Joint License Agreement (JLA) grouping together all relevant W-CDMA FDD certified essential patents from those companies joining this programme. The Programme is being offered following an identified marketplace demand. W-CDMA FDD certified essential patents will be added progressively to the Programme as new patent owners join and, as more patents are certified as essential by an independent Evaluation Service Provider. The licensing terms, however, remain the same throughout the term of the SLA and JLA in order to provide licensing and business certainty.

A Joint License Agreement is available for terminals. For infrastructure and test equipment a SLA is currently available. The future intent is to publish a joint license for infrastructure and a joint license for test equipment.

The W-CDMA Patent Licensing Programme is based on the 3G Patent Platform approach approved by the major antitrust bodies in Japan, U.S. and Europe. The W-CDMA Patent Licensing Programme is pro-competitive.

Product Categories and Royalty Rates

Q 2 What royalties do Licensees pay for each licensed W-CDMA terminal product?

A Joint License Agreement for terminals (JLA) is available grouping certified essential patents from all patent holders. Licensees do not pay royalties under the JLA on patents covered by an existing bilateral license agreement with a patent holder (a royalty exemption feature discounts the actual royalty paid to avoid a double payment).

The royalty for 2004 and 2005 per licensed W-CDMA terminal product is U.S. \$2.0.

The royalty for 2006 per licensed W-CDMA terminal product is U.S. \$3.0.

The royalty for 2007 and 2008 per licensed W-CDMA terminal product is the lower of (1) 1.5% of the Net Selling Price per unit with a minimum of U.S. \$1.5 or (2) U.S. \$3.0 per unit.

For sales invoices between 1 January 2009 and 31 December 2013, the royalty is 1% of Net Selling Price with a maximum royalty of \$2.00 and a minimum of \$1.00 per Licensed Product. For Licensees licensed for more than one year but less than two years a royalty of 1% of Net Selling Price with a maximum of \$1.60 and a minimum of \$1.00 per Licensed Product. For Licensees licensed for more than two years a flat royalty of \$1.00 per Licensed Product

The first term of the JLA offered currently (Version 4.0) is 10 years effective from 1 January 2004 and ending on the 31 December 2013. The license is automatically renewal by terms of 2 years each.

Alternatively, a Standard License Agreement (SLA) or an Interim License Agreement (ILA) from each licensor may be requested. The initial Standard Royalty Rate (SRRo) per certified essential is 0.1% of the base multiplier "Reference Market Value (RMV)" of a dollar amount (currently set at U.S. \$175) and with a Maximum Cumulative Royalty (MCR) of 5.0%.

Q 3 What royalties do Licensees pay for Base Station (Node B), Radio Network Controller, Core Network (parts thereof), and Test Equipment?

A Standard License Agreement (SLA) or an Interim License Agreement (ILA) can be requested immediately. Licensees and licensors are given some flexibility in taking a license for these product categories; the option to negotiate a bi-lateral agreement is available if both parties agree.

The initial Standard Royalty Rate (SRRo) per certified essential patent is 0.1 % of the base multiplier "ex-works sales value (net sales value)" and with a Maximum Cumulative Royalty (MCR) of 5.0 %.

The actual SRR payable during a specified quarter is determined in accordance with a pre-define process but, however, as a general rule, as more certified essential patents become available within the programme the applicable SRR reduces in value. No licensee pays more than the MCR.

A Joint License Agreement is available for terminals.

General matters relating to the overall W-CDMA Patent Licensing Programme

Q 4 What does the W-CDMA Patent Licensing Programme cover (that is, the scope)?

Subject to some exceptions, the W-CDMA Patent Licensing Programme provides coverage for the W-CDMA FDD standards defined and published by 3GPP as the W-CDMA FDD system (a major element of UMTS) including High Speed Downlink Packet Access (HSDPA), the High Speed Uplink Packet Access (HSUPA), and future releases of the W-CDMA FDD standards.

There are, however, certain technological features incorporated in the W-CDMA FDD standards defined by the 3GPP that are excluded in the W-CDMA Patent Licensing Programme. There are two distinct types of case: (1) technology features and/or applications that are referenced in the W-CDMA FDD standards but not defined by the 3GPP such as the MPEG-4 technology and, (2) technology features that relate exclusively to the TDD mode (low-chip rate).

Q 5 Why are the Licensors licensing certified essential patents under the W-CDMA Patent Licensing Programme?

The licensing arrangements are available for the benefit of the parties who want to request licenses. Unless a license is granted under this programme, the parties would need to contact and negotiate with each company separately, and enter into separate agreements with each of them. By using this programme, licensees have available a simple and efficient process for seeking licenses to these patents. Moreover, the licensing terms and conditions available are transparent and thus making an investment in W-CDMA FDD technology less risky. It is the intent that the W-CDMA Patent Licensing Programme makes the W-CDMA FDD technology option more attractive.

Q 6 Who decides which patents are certified "essential"?

There is a two-stage process for certifying a patent as essential. Initially, a patent is evaluated by an Evaluation Panel (comprising a Lead Evaluator and two Assistant Evaluators; all three are patent attorneys) established by an independent International Patent Evaluation Consortium (IPEC), currently grouping together twenty patent law firms in Asia (China, India, Japan, Korea and Singapore), Australia, Europe (France, Germany, Italy and UK), Russia and the United States. IPEC declares that the patent is essential based on an agreed Evaluation Methodology. Other patent law firms will join as more patent jurisdictions are included in the Programme.

The second stage is to subject the IPEC declared essential patent to an "objection process" by the licensors; this provides the opportunity for the other licensors to question the essentiality result. Following a successful outcome of the "objection process" the patent is certified as a W-CDMA Essential Patent. The certified W-CDMA Essential Patents are then integrated into the W-CDMA Patent Licensing Programme.

IPEC is under exclusive contract to 3G Licensing.

Q 7 What products are covered by the W-CDMA Patent Licensing Programme?

There are currently five product categories (licensed products) under the W-CDMA Patent Licensing Programme.

1. W-CDMA Terminal including removable data cards and embedded data cards for portable computers and notebooks
2. W-CDMA Base Station (or Node B)
3. W-CDMA Radio Network Controller
4. W-CDMA Core Network (certain elements thereof)
5. W-CDMA Test Equipment

Q 8 Who needs licenses to the essential patents offered by the W-CDMA Patent Licensing Programme?

Any party that makes, uses, imports or sells end-products ("finished" products) that are covered by the licensed patents, including all products that claim to conform to the W-CDMA FDD standards.

Mobile Station and Base Station and Air Interface test equipment vendors require a license.

Q 9 How many patents are in the W-CDMA Patent Licensing Programme?

An essentiality evaluation programme is underway and the list of current certified W-CDMA Essential Patents is published systematically on this web site at the following URL:
www.3glicensing.com/patents.asp.

The patent essentiality evaluations and certifications takes place continuously throughout the existence of the programme; this is a long-term process given that patents are still being granted, the standards are still being enhanced and new licensors are joining the licensing programme.

Therefore, the size of the certified W-CDMA Essential Patent portfolio will increase systematically with time. Nonetheless, irrespective of the number of certified W-CDMA Essential Patents ultimately forming part of the W-CDMA Patent Licensing Programme there are strict guarantees on the royalties rates payable by each licensee thus ensuring total certainty from a business case perspective.

Q 10 Do you have claim charts?

Yes. 3G Licensing holds claim charts for each certified W-CDMA Essential Patent, that is, for each essential claim in a certified W-CDMA Essential Patent. The policy under the licensing programme is not to make available the claim charts to prospective licensees, licensees or other licensors. No other joint licensing programme makes available claim charts. However, 3G Licensing makes available systematically on its public web site an essentiality cross-reference chart identifying the essential claims in each certified W-CDMA Essential Patent in relationship to the 3GPP standards.

<http://www.3glicensing.com/patents.asp>

Q 11 What are the royalties payable under the W-CDMA Patent Licensing Programme?

Please see the section above on Product Categories and Royalties.

Q 12 Do other companies own essential intellectual property for the W-CDMA FDD systems based on the W-CDMA FDD technology and will these patent owners become associated with the W-CDMA Patent Licensing Programme in the future?

Yes, other companies own essential intellectual property for the W-CDMA FDD systems based on the W-CDMA FDD technology. The programme seeks to have as many holders of essential patents as possible to join the licensing programme. Other companies claiming to own essential patents for the W-CDMA FDD technology have made good-faith declarations to the standards making bodies (ITU, ARIB, ETSI, etc) (that is, a form of self-declaration of essentiality as distinct to an independent assessment by a neutral third party). Given the W-CDMA FDD standards are evolving continuously with time, the number of essential patents should increase also with time.

It is the objective of the Licensors to encourage as many essential patent holders as possible to become associated with the W-CDMA Patent Licensing Programme. It is anticipated that the number of licensors associated with the programme should increase going forward. During the past four years the number of licensors has increased steadily.

Q 13 Does 3G Licensing own the patents? Have the patents been licensed to 3G Licensing?

No. 3G Licensing does not own the patents which can be licensed under the Programme. The patents are owned by individual patent owners, and 3G Licensing proposes the license for the convenience of the market by affording users of 3G technology the opportunity to obtain a license of essential patents owned by many different parties in a single transaction as an alternative to negotiating separate licenses with each individual patent owner.

Q 14 Are the Turbo code patents from France Telecom available under the W-CDMA Patent Licensing Programme?

No, the following Turbo code patents, jointly owned by France Telecom and TDF are not licensed under the W-CDMA Patent Licensing Programme: FR 2675 971, EP 0 511 141, DE 0 511 141, GB 0 511 141, US 5,446,747 and HK 1007841.

All licensors under the W-CDMA Patent Licensing Programme have the obligation to make available all W-CDMA FDD related patents owned or controlled or otherwise sub-licensable by the licensors that the licensors believe in good faith may be essential to practice the W-CDMA standard.

However, the Turbo code patents are not exclusively owned by France Telecom and France Telecom does not have the rights to sublicense these patents.

Why join as a licensor and/or as a licensee?

Q 15 **As a manufacturer, what are the distinct advantages of seeking a license under the W-CDMA Patent Licensing Programme? Are there comparable alternatives?**

There are no comparable organised licensing arrangements offering a wide range of relevant patents under a single programme as a cost-efficient and effective way to access W-CDMA FDD technology. The availability of the programme is unique in the marketplace and given the time and complexity associated with seeking authority to operate such a collective arrangement between licensors, from several major antitrust bodies, it seems likely that the W-CDMA Patent Licensing Programme should remain unique as a collective organised licensing arrangement.

Since the features covered by the certified W-CDMA essential patent portfolio of the W-CDMA Patent Licensing Programme cannot be implemented without a license from the patent holders, the only alternative for the prospective licensee is to embark on individual negotiations with all patent holders of certified essential patents.

Q 16 **Do licensees of the patents have to obtain a license through the W-CDMA Patent Licensing Programme?**

The W-CDMA Patent Licensing Programme is for the benefit of licensees, but interested parties can, at their option, also negotiate independently with each member of the W-CDMA Patent Licensing Programme for a license to its respective patent.

Q 17 **How do you ensure that licensing remains fair, reasonable and non-discriminatory?**

The W-CDMA Patent Licensing Programme has the same terms and conditions for all licensees. Further, the programme also ensures a fair process of obtaining new W-CDMA FDD certified essential patents and for a licensee to license its own W-CDMA FDD certified essential patents to the programme on the same terms and conditions as all licensors.

Q 18 **How much can I save as a manufacturer by purchasing a license or licenses under the W-CDMA Patent Licensing Programme?**

An important element of time and cost saving lies in not having to approach applicable patent holders independently. Moreover, and more importantly, the royalties offered are considered to be concessionary.

The JLA for terminals offers a royalty exemption feature for licensees thus avoiding double payments which are a characteristic of most classical joint license agreements i.e. existing on-going bilateral agreements between a licensor and licensee are respected.

Q 19 How many licensees do you expect?

That depends on the product category (licensed products). Given the marketplace acceptance of the W-CDMA FDD technology, we anticipate many licensees for terminal products and, of course, a more limited number of licensees, for the 3G infrastructure products (there are a more limited number of manufacturers offering this type of licensed product).

The focus will be on seeking licensees for terminal products under the Joint License Agreement and/or the Standard License Agreement since, the ready availability of affordable W-CDMA FDD terminals, should stimulate the growth of the 3G services based on the W-CDMA FDD technology.

Marketplace considerations

Q 20 Why was WCDMA Patent Licensing Programme the first licensing programme formed under the 3G Patent Platform initiative and what makes the W-CDMA FDD technology so important in the 3G marketplace?

There is an alternative standardized 3G radio interface technology available to accommodate a planned 2G to 3G migration path for mobile operators throughout the world but, the W-CDMA FDD system (a major element of UMTS) based on the W-CDMA FDD technology, is anticipated to be the most widespread world-wide.

The Partners of the 3G3P (that is, sixteen major international telecommunication manufacturers and mobile operators) gave priority to the creation of a W-CDMA Patent Licensing Programme for W-CDMA FDD technology since it provides the most natural and cost-effective evolutionary path to 3G for more than 80% of the world's wireless market.

The W-CDMA Patent Licensing Programme should assist in giving the W-CDMA FDD solution a competitive edge in the marketplace over competing standards with less visibility with regard to IPR related costs.

Antitrust approval: pro-competitive approach

Q 21 Does the 3G Patent Platform ("Platform") have the approval of the antitrust authorities and why was this approval sought?

Yes. Given the large number of companies that have been involved (more than fifty companies in the definition and implementation phases which lasted several years) and will be involved, industry felt it was prudent to have the Japanese Fair Trade Commission (JFTC), the U.S. Department of Justice, Antitrust Division (DOJ), and the European Commission Competition's Directorate (EC) review the business conduct planned. The JFTC, DOJ and EC have given their approval of the Platform and they do not foresee any anti-competitive problems with it. As such, we feel that we have achieved our goal for fair, reasonable and non-discriminatory (FRAND) access to the W-CDMA FDD technology.

Q 22 What do you see as the pro-competitive effects of the W-CDMA Patent Licensing Programme?

When done properly as we have with W-CDMA FDD, it can reduce the uncertainty of the availability of patent licenses, reduce the royalties that will be paid if each patent holder licensed its own patents, reduces the substantial cost of determining on its own the identity of essential patent holders and which patent claims are actually essential, reduce the transaction costs of negotiating multiple licenses, reduce the costs of essential patent holders of providing licenses thereby allowing licenses to be offered at a lower price as well as creating a fair, reasonable and non-discriminatory approach to all interested licensees on the same terms and conditions.

New licensors: Contribution towards the Start-up Expense

Q 23 Is there a membership/integration fee for licensors wanting to be associated with the W-CDMA Patent Licensing Programme?

Yes. The Partners of 3G3P invested a substantial sum of money in the preparatory work associated with the commercial launch of the Platform over a four-year period ("Start-up Expense"). Consequently, there is a Membership Fee of U.S. \$ 35,000 payable by non-Partners of the 3G3P wanting to join the W-CDMA Patent Licensing Programme representing a contribution towards the original Start-up Expense. In addition, those licensors (excluding the Partners of the 3G3P) wanting to license their certified essential patents under the Joint License Agreement for terminals pay an additional integration fee of U.S. \$ 25,000.

There are no membership fees or integration fees for licensees.

Background History

Q 24 What is the 3G Patent Platform?

The 3G Patent Platform ("Platform") is a generic arrangement for handling the patent evaluation, certification, identification and licensing of essential patents for 3G systems irrespective of the radio interface technology. The Platform was defined through the efforts of more than fifty major international companies within the UMTS IPR Working Group, the UMTS IP Association and the 3G Patent Platform Partnership (3G3P).

Q 25 What is the UMTS IPR Working Group, UMTS IP Association and the 3G Patent Platform Partnership (3G3P) and what were their respective roles? Who funded the commercial realisation of the Platform?

The initial definition of the Platform was the responsibility of the UMTS IPR Working Group (UMTS IPR WG) set up in February 1998, comprising 41 major international companies which functioned within a legal entity called the UMTS Intellectual Property Association (UIPA). These entities were established following identified difficulties associated with the handling of IPR for 3G systems; in particular, following the ETSI UTRA agreement of January 1998, the industry collectively decided to launch this initiative.

The actual commercial implementation of the Platform was assigned to the 3G Patent Platform Partnership (3G3P) set up in September 1999, a contractual joint venture under English law, comprising nineteen major operators and manufacturers (Partners), four other manufacturers as official Promoters and two industry associations (Associates).

It was the Partners of the 3G3P that provided the money necessary for the commercialisation of the Platform. The initiative was lead by Brian Kearsey (formerly a Corporate Executive of Alcatel).

Q 26 Who is PlatformWCDMA Limited ("PlatformWCDMA")?

PlatformWCDMA Limited is a company registered and incorporated in England established specifically to govern the the W-CDMA Patent Licensing Programme. Membership of PlatformWCDMA is open to all W-CDMA FDD essential patent holders and its prime role is to establish the licensing terms and conditions of the W-CDMA Patent Licensing Programme. The day to day operations of the W-CDMA Patent Licensing Programme are assigned to the Licensing Administrator (LA), 3G Licensing (see questions and answers concerning the LA).

PlatformWCDMA was established arising from the work of the UMTS Intellectual Property Rights Working Group (UMTS IPR WG), the UMTS IPR Association (UIPA) and the 3G Patent Platform Partnership (3G3P) involving numerous major telecommunication operators and manufacturers.

Each Licensor nominates a Director on the Board which is responsible for the governance of the W-CDMA Patent Licensing Programme.

Administration of the W-CDMA Patent Licensing Programme and further information

Q 27 Who is responsible for the administration of the W-CDMA Patent Licensing Programme?

The administration of the W-CDMA Patent Licensing Programme has been assigned by PlatformWCDMA Limited to 3G Licensing Limited, as the Licensing Administrator (LA). 3G Licensing is an English incorporated company located in Stamford, UK.

Q 28 What is the exact role of the Licensing Administrator (3G Licensing)?

The 3G Licensing is responsible for the commercialisation worldwide of the W-CDMA Patent Licensing Programme. The 3G Licensing is not involved in the setting of the licensing terms and conditions; this is the exclusive role of the Licensors.

Q 29 Is there more detailed information available concerning the 3G Patent Platform and the benefits available to both licensors and licensees?

Yes, there is a book available which covers the topic in some detail. Technology Patent Licensing: An International Reference on 21st Century Patent Licensing, Patent Pools and Patent Platforms. Larry M. Goldstein & Brian N. Kearsy (Order from the link: <http://www.aspatore.com/bookstore5.asp#99>). Brian Kearsy is active in the commercialisation of the W-CDMA Patent Licensing Programme.