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FRAND obligations: Consequences for National Patent Courts

The existence of monopolistic patent rights over standardised technologies has long been recognised as an inherent problem of technical standardisation. Most standard setting bodies, and indeed competition or antitrust authorities, have sought to address that problem by imposing an obligation to grant licences to anyone wanting to practice the technology on Fair, Reasonable and Non-Discriminatory (FRAND) terms. Such obligations, however, are only effective in addressing the tension between the rights of those who want to practice a technology, and the rights of those who have invested (directly or indirectly) in developing it, if they can be sensibly dealt with by national courts and judges. The paper aims to discuss the practical and procedural consequences of dealing with FRAND disputes, highlighting a number of inherent difficulties faced by courts, and asking the question whether FRAND has actually addressed the inherent tension between rights holders and licences, or simply added a further insoluble layer of legal complexity to the dispute.