

Czech Republic

Inputs for the preparation of a dedicated web page on Standard Essential Patents

In the Czech Republic, there is no specific legal regulation governing standard essential patents (SEPs)—patents that protect technology essential to a standard developed by standard development organizations (SDOs)—within the framework of the Patent Act. Consequently, these patent applications are processed according to the procedural rules outlined in the applicable legal regulations, including:

- **Patent Act** (Act No. 527/1990 Coll., as amended)
- **Decree to the Patent Act** (Decree No. 550/1990 Coll., as amended)
- **Instructions of the IPO-CZ President**, which also establish the formal requirements for patent applications
- **Administrative Code** (Act No. 500/2004 Coll., as amended)

Licensing rules for these patents are similarly governed by the relevant provisions of the Civil Code (Act No. 89/2012 Coll., as amended, Sections 2358–2370).

In this domain, patent law intersects with competition law, as these technologies often serve as critical prerequisites for market entry. To prevent the abuse of a dominant position and to maintain fair competition, standardization organizations typically require SEP holders to grant licenses on fair, reasonable, and non-discriminatory (FRAND) terms and conditions.

Under EU competition law, the issue of FRAND licensing was addressed by the Court of Justice of the European Union (CJEU) in case C-170/13, *Huawei v. ZTE*¹, in the context of interpreting Article 102 of the Treaty on the Functioning of the European Union (TFEU). The CJEU ruled that *the proprietor of a patent essential to a standard established by a standardisation body, which has given an irrevocable undertaking to that body to grant a licence to third parties on fair, reasonable and non-discriminatory ('FRAND') terms, does not abuse its dominant position, within the meaning of that article, by bringing an action for infringement seeking an injunction prohibiting the infringement of its patent or seeking the recall of products for the manufacture of which that patent has been used, as long as: a) prior to bringing that action, the proprietor has, first, alerted the alleged infringer of the infringement complained about by designating that patent and specifying the way in which it has been infringed, and, secondly, after the alleged infringer has expressed its willingness to conclude a licensing agreement on FRAND terms, presented to that infringer a specific, written offer for a licence on such terms, specifying, in particular, the royalty and the way in which it is to be calculated, and b) where the alleged infringer continues to use the patent in question, the alleged infringer has not diligently responded to that offer, in accordance with recognised commercial practices in the field and in good faith, this being a matter which must be established on the basis of objective factors and which implies, in particular, that there are no delaying tactics*. The CJEU also held that *the patent holder may bring an action for infringement against the alleged infringer of its patent and seek the rendering of accounts in relation to past acts of use of that patent or an award of damages in respect of those acts of use*.

¹ See <https://eur-lex.europa.eu/legal-content/cs/TXT/?uri=CELEX:62013CJ0170>