

No. 19-2215

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**United States Court of Appeals  
for the Federal Circuit**

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GODO KAISHA IP BRIDGE 1,

Plaintiff-Appellee,

v.

TCL COMMUNICATION TECHNOLOGY HOLDINGS LIMITED, TCT  
MOBILE LIMITED, TCT MOBILE (US) INC., TCT MOBILE INC.,

Defendants-Appellants.

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Appeal from the United States District Court for the District of Delaware,  
Case No. 1:15-cv-00634-JFB-SRF, Senior Judge Joseph F. Batallion

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**RESPONSE OF PLAINTIFF-APPELLEE GODO KAISHA IP BRIDGE 1  
TO DEFENDANTS-APPELLANTS' PETITION FOR  
RECONSIDERATION EN BANC**

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**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

**CERTIFICATE OF INTEREST**

**Case Number** 19-2215, 19-2274  
**Short Case Caption** Godo Kaisha IP Bridge 1 v. TCL Communication Technology  
**Filing Party/Entity** Godo Kaisha IP Bridge 1

**Instructions:** Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box.** Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 10/29/2020

Signature: /s/ Douglas Hallward-Driemeier

Name: Douglas Hallward-Driemeier

<p><b>1. Represented Entities.</b> Fed. Cir. R. 47.4(a)(1).</p>	<p><b>2. Real Party in Interest.</b> Fed. Cir. R. 47.4(a)(2).</p>	<p><b>3. Parent Corporations and Stockholders.</b> Fed. Cir. R. 47.4(a)(3).</p>
<p>Provide the full names of all entities represented by undersigned counsel in this case.</p>	<p>Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p>	<p>Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.</p> <p><input type="checkbox"/> None/Not Applicable</p>
<p>Godo Kaisha IP Bridge 1</p>		<p>IP Bridge, Inc.</p>

Additional pages attached

**4. Legal Representatives.** List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None/Not Applicable  Additional pages attached (asterisk indicates former Ropes & Gray attorneys)

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**5. Related Cases.** Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

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**6. Organizational Victims and Bankruptcy Cases.** Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None/Not Applicable  Additional pages attached


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**TABLE OF ABBREVIATIONS****Parties**

Godo Kaisha IP Bridge 1	IP Bridge
TCL Communication Technology Holdings Limited, TCT Mobile Limited, TCT Mobile (US) Inc., TCT Mobile, Inc.	TCL

**Terms**

Fair, Reasonable, and Non-Discriminatory	FRAND
Judgment as a Matter of Law	JMOL
Long Term Evolution	LTE
Technical Specification	TS



### **STATEMENT OF RELATED CASES**

Pursuant to Federal Circuit Rule 47.5, Plaintiff-Appellee states that no other appeal in or from the same civil action or proceeding in the trial court has been before this or any other appellate court. Counsel is aware of no other case pending in this or any other court that will directly affect or be directly affected by this Court's decision in the pending appeal.

## INTRODUCTION

The *en banc* petition from Defendants-Appellants TCL Communication Technology Holdings Limited, TCT Mobile Ltd., TCT Mobile (US) Inc., and TCT Mobile, Inc. (collectively, “TCL”) mischaracterizes what the panel actually held as well as what actually happened at trial. For two reasons, TCL is wrong when it argues (Pet. 3) that “the district court failed to construe the claims on the issue of standard essentiality and instead left that decision to the jury.” First, the district court *did* construe the claims, after considering briefing and argument from the parties in a standard *Markman* process. As the panel’s decision makes clear, Plaintiff-Appellant Godo Kaisha IP Bridge 1 (“IP Bridge”) never argued, and the district court and the panel did not hold, that the jury, rather than the court, should construe patent claims. Second, TCL never suggested below, as it does now, that the court should have also determined the essentiality of the claims during that claim construction process. Its contrary position now is not only misguided, but waived.

As the unanimous panel explained in the very first paragraph of its decision, the dispute in this case concerned whether the patentee “was permitted to prove that [TCL’s] products infringed the claims of the asserted patent by showing that: (1) the patent claims are *essential to mandatory aspects* of the Long-Term Evolution (“LTE”) standard; and (2) the *accused products practice* that standard.” *Godo Kaisha IP Bridge 1 v. TCL Commc’n Tech. Holdings Ltd.*, 967 F.3d 1380, 1381 (Fed.

Cir. 2020) (“*IP Bridge*”) (emphasis added). The panel found “no error in the submission of these questions to the jury in the context of an infringement trial.” *Id.* As the panel observed, this approach follows directly from this Court’s precedent “endors[ing] standard compliance as a way of proving infringement.” *Id.* at 1383 (citing *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1209 (Fed. Cir. 2014); *Dynacore Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263 (Fed. Cir. 2004)). This is not a “shortcut” to proving infringement (as TCL repeatedly suggests), but a logically rigorous approach that ensures that a patentee proves (as required) that “the accused device contains *each and every limitation* of the asserted claims.” *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1215 (Fed. Cir. 2014) (emphasis in original).

TCL’s argument (Pet. 3) that the panel’s decision “directly violates” *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), or any other Supreme Court precedent, similarly fails. TCL’s position is that only a court during claim construction may determine whether a patent claim reads on a technical standard promulgated by a standard-setting organization. But that determination is not about what a claim *means* (the basis of claim construction), but rather about what a claim *reads on*—an infringement question that is indisputably for the fact-finder. *See, e.g., ActiveVideo Networks, Inc. v. Verizon Commc’ns, Inc.*, 694 F.3d 1312, 1321 (Fed. Cir. 2012). The panel similarly did not “misapply” *Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321 (Fed. Cir. 2010), in reaching its determination. Indeed, as the panel

observed, “TCL’s entire appeal rests on its misreading of a single statement from *Fujitsu*.” *IP Bridge*, 967 F.3d at 1384 (citing *Fujitsu*, 620 F.3d at 1327). Ultimately, the panel correctly agreed with IP Bridge’s argument that the claims must be construed by the court, and that applying those construed claims to determine “standard-essentiality is a classic fact issue, and is the province of the factfinder.” *Id.* at 1383. *En banc* reconsideration is not warranted.

### **COUNTERSTATEMENT OF THE CASE**

During a seven-day jury trial, IP Bridge proffered extensive evidence, including the testimony of IP Bridge experts Drs. Paul Min and Jonathan Wells, along with voluminous supporting exhibits, establishing that the accused TCL LTE products (“Adjudicated Products”) infringe claims 9 and 12 of U.S. Patent No. 8,385,239 and claims 15 and 16 of U.S. Patent No. 8,351,538 (the “Asserted Claims” of the “Asserted Patents”). These patents are directed to important technical aspects of how mobile devices, such as smartphones, connect to and communicate with base stations, such as cell towers, in LTE cellular networks. These patents are, in fact, essential to the 4G/LTE standard as promulgated by ETSI (the European Telecommunications Standards Institute), as IP Bridge established at trial. TCL sells dozens of mobile phone models that it advertises as complying with that standard.

As the panel observed, to prove infringement, “IP Bridge put forth evidence to demonstrate that (1) the asserted claims are essential to mandatory sections of the

LTE standard; and (2) the accused products comply with the LTE standard.” *IP Bridge*, 967 F.3d at 1381-82.

With respect to the first prong of this framework, Dr. Min identified mandatory portions of the LTE standard and explained at length how those mandatory portions practice each element of each of the Asserted Claims. *See, e.g.*, Appx13150-13152, Appx13155-13159, Appx13169-13175 (Min); Appx15139-15198 (TS 36.212)<sup>1</sup>; Appx15243-15389 (TS 36.300); Appx15390-15466 (TS 36.213); Appx16458-16540 (TS 36.211); Appx19289-19334 (TR 21.801); Appx19339-19415 (TS 36.104). Among other things, Dr. Min then explained that there is no way to implement the mandatory portions of the LTE standard without practicing each of the Asserted Claims. *See, e.g.*, Appx13155-13159, Appx13169-13175 (Min); *see also* Appx13151-13152 (Min).

With respect to the second prong of this framework, Dr. Min explained that the Accused Products comply with the LTE standard, and, given his finding in prong 1, thus necessarily infringe the Asserted Claims. *See, e.g.*, Appx13149-13151, Appx13162 (Min). In making this compliance determination, he explained that he analyzed extensive TCL documentation, including user manuals (Appx27593-27794), compliance matrices (Appx27500-Appx27592), certificates of compliance

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<sup>1</sup> In the context of the LTE standard, “TS” means “Technical Specification,” and refers to a portion of the standard.

(Appx18139-18261), and source code (PTX-523). *See, e.g.*, Appx13159-13162 (Min).

As the panel noted, “TCL did not present any evidence to counter that showing” that both prongs were satisfied. *IP Bridge*, 967 F.3d at 1382. In fact, TCL’s own expert, Dr. Stephen Wicker, admitted during cross-examination that, even though he knew from Dr. Min’s infringement expert report that IP Bridge was relying on this two-prong framework as part of its infringement proof, he himself had no opinion at all as to either prong—i.e., he had no opinion whether (1) the Asserted Claims are essential to mandatory portions of the LTE standard or (2) TCL’s products comply with that standard. Appx13299-13300 (Wicker). Dr. Wicker further admitted that proof that both prongs were met would show infringement. Appx13299 (Wicker).

The jury ultimately found all Asserted Claims valid and infringed, and awarded IP Bridge damages. Appx11165-11168. The parties then filed post-trial motions. Among other things, TCL’s post-trial motions sought to overturn the jury’s infringement finding. Relevant to this petition, the district court denied TCL’s JMOL motion, declining to “supplant the jury’s determinations of credibility,” and finding that substantial evidence supported the jury’s verdict. Appx60.

TCL appealed the district court’s JMOL finding regarding infringement (the only issue TCL addresses in its petition). In particular, TCL argued both about how

the *Fujitsu/Ericsson* framework should be applied and that two claim limitations are not practiced by the Accused Products.

The unanimous panel disagreed with TCL. Among other things, the panel found “no error in the submission of” questions about essentiality and compliance “to the jury in the context of an infringement trial.” *IP Bridge*, 967 F.3d at 1381. Like the district court, the panel also held that the jury’s verdict was supported by substantial evidence. *See id.* at 1385. Rejecting TCL’s argument that *Fujitsu* somehow requires that the factual question of standard essentiality of a patent claim be determined by a court during claim construction, the panel concluded that “TCL’s entire appeal rests on its misreading of a single statement from *Fujitsu*.” *Id.* at 1384 (citing *Fujitsu*, 620 F.3d at 1327)). Likewise, the panel held that it is consistent with *Fujitsu/Ericsson* for the jury to determine essentiality by assessing whether the construed claims read on the standard, just as the jury determines infringement by assessing whether the construed claims read on the accused products. *Id.* at 1385.

## ARGUMENT

### **A. Proving Infringement Through Standard-Essentiality and Standard Compliance Does Not Violate Supreme Court Precedent**

Contrary to TCL’s first argument (Pet. 7-9), Supreme Court precedent does not bar proving infringement by demonstrating that: (1) a patent claim is essential to mandatory portions of a standard and (2) an accused product complies with (and so necessarily practices) those mandatory portions. None of the cases TCL cites (*see*

Pet. 8-9 (citations omitted)) has anything to do with proving infringement in this way. Rather, these cases simply restate the uncontested point that infringement turns on whether the accused products practice what is claimed. What IP Bridge did—and the panel approved—was to prove infringement of the Asserted Claims by using a rigorous methodology (which TCL’s own expert agreed would prove infringement). In this way, fully consistent with the precedent of this Court, IP Bridge showed that the accused products practice what is claimed.

As this Court has explained, “if an accused product operates in accordance with a[n] [industry] standard, then comparing the [asserted] claims to that standard *is the same as* comparing the claims to the accused product” if the asserted claims “cover[] every possible implementation of [that] standard.” *Fujitsu*, 620 F.3d at 1327-28 (emphasis added). That is exactly what IP Bridge proved here. As the panel pointed out, moreover, even apart from its ruling in *Fujitsu*, this Court has repeatedly “endorsed standard compliance as a way of proving infringement.” *IP Bridge*, 967 F.3d at 1383 (citing *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1209 (Fed. Cir. 2014); *Dynacore Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263 (Fed. Cir. 2004)). For example, as this Court observed in *Ericsson*, “[b]ecause the standard *requires* that devices utilize specific technology, compliant devices *necessarily* infringe certain claims in patents that cover technology incorporated into



the standard.”<sup>2</sup> 773 F.3d at 1209 (emphasis in original); *see also Dynacore*, 363 F.3d at 1266-67 (affirming summary judgment of non-infringement because patentee failed to show particular limitation, as construed, was mandatory in relevant standard).<sup>3</sup>

**B. The Panel Decision Confirms That the Court, Not the Jury, Construes the Claims—and So Does Not Violate *Markman***

As the panel correctly concluded, determining standard-essentiality is more akin to an infringement analysis than to claim construction. In arguing otherwise, TCL mischaracterizes the panel’s decision and *Markman*’s holding. TCL’s only argument is that a determination of standard-essentiality “centers upon the construction and comparison of written instruments, namely, patents and industry

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<sup>2</sup> Consistent with these other cases, *Fujitsu* itself notes that “[p]ublic policy weighs in favor of” using standard essentiality to prove infringement. *Fujitsu*, 620 F.3d at 1327. As this Court added, “If a court determines that all implementations of a standard infringe the claims of a patent, then it would be a waste of judicial resources to separately analyze every accused product that undisputedly practices the standard. This is not prejudicial to present or future litigants. If two products undisputedly operate in the same manner, a finding of infringement against one will create a persuasive case against the other. In such a case, there will be no prejudice.” *Id.*

<sup>3</sup> TCL’s discussion (Pet. 12 n.1) of *Dynacore* and *Ericsson* does not detract from those cases’ endorsement of proving infringement through standard-essentiality.

Apart from incorrectly calling this methodology a “shortcut” (which it is not), TCL has never articulated why this methodology fails to demonstrate that an accused product practices all limitations of an asserted claim. Indeed, its own expert has conceded that it would. Appx13299 (Wicker). The logic here is the simple transitive property of equality: if A=B, and B=C, then A=C. TCL (Pet. 21) may deride this logic because, as IP Bridge pointed out, it is “middle-school algebra,” but that only underscores that it is a fundamental truth.

standard documents,” which is, as discussed by *Markman*, “precisely the kind of work that judges, not juries, have historically undertaken.” Pet. 11. TCL’s argument would mean that only courts, and not juries, could ever analyze written documentation. But *Markman* does not say that fact-finders cannot consider written documents. Indeed, saying so would be nonsensical—this is precisely what juries do when considering whether a prior art reference anticipates a patent claim or whether a product infringes based on a user manual or technical document. Instead, *Markman* holds simply that “the construction of a patent, including terms of art within its claim, is exclusively within the province of the court.” *Markman*, 517 U.S. at 372.<sup>4</sup>

The jury here did not decide claim construction—i.e., the “interpretation” or “meaning” of a claim. *Id.* at 388-89. Instead, court construed the claims, and the jury appropriately applied those constructions in determining whether the construed claims *read on* mandatory portions of the LTE technical standard. As the panel explained, “[e]ssentiality is, after all, a fact question about whether the claim

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<sup>4</sup> As this Court has frequently reiterated, claim construction should be focused on the claim language and intrinsic record, not extrinsic material, such as a standard. *See Ruckus Wireless, Inc. v. Innovative Wireless Sols., LLC*, 824 F.3d 999, 1003 (Fed. Cir. 2016); *see also Phillips v. AWH Corp.*, 415 F.3d 1303, 1317-19 (Fed. Cir. 2005) (*en banc*). If anything, TLC’s suggestion that courts must determine essentiality during claim construction would complicate the *Markman* process, as such a determination would require resolution of complicated issues of fact and extensive expert testimony regarding particular industry standards, turning a straightforward *Markman* hearing into a mini-trial on infringement.

elements read onto mandatory portions of a standard that standard-compliant devices must incorporate.” *IP Bridge*, 967 F.3d at 1385. And, as the panel agreed, whether a properly construed claim reads on a product, or reads on mandatory portions of a standard, is a quintessential fact question that is properly the province of a factfinder. *See id.*; *see also ActiveVideo Networks, Inc. v. Verizon Commc’ns, Inc.*, 694 F.3d 1312, 1321 (Fed. Cir. 2012). Indeed, the basic and fundamental premise of U.S. patent law is that factfinders analyze infringement. *See, e.g., Siemens Med. Sols. USA, Inc. v. Saint-Gobain Ceramics & Plastics, Inc.*, 637 F.3d 1269, 1279 (Fed. Cir. 2011); *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1302 (Fed. Cir. 2005); *ActiveVideo*, 694 F.3d at 1321; *see also* U.S. Const. amend. VII (guaranteeing right to a jury trial).<sup>5</sup>

Here, analyzing the standard is simply a step in determining whether the claims read on the products: the jury decides whether the claims read on the standard, and then whether the products practice that standard. This is no different from the mine-run case in which a jury determines infringement by determining whether the

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<sup>5</sup> TCL’s strained analogy (Pet. 15-16) to an ensnarement analysis under the doctrine of equivalents does not change the fact that infringement is a question for the factfinder. Moreover, TCL has never previously argued below or in this appeal that, even if essentiality is a fact issue, it *should* nonetheless be decided as a question of law. As such—even apart from the problems with the substance of this argument—TCL has waived it. *See, e.g., Apple Inc. v. Voip-Pal.com, Inc.*, 976 F.3d 1316, 1319 (Fed. Cir. 2020) (“Apple failed to raise these arguments below, and thus it has waived these arguments on appeal.”). In any event, no court has ever endorsed this view of standard essentiality, nor would it make sense to do so.

construed claims read on a product manual and that the products work as the manual describes. *E.g.*, *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1369 (Fed. Cir. 2018) (finding substantial evidence to support jury finding of infringement from user manual). And it certainly does not violate Supreme Court precedent.

**C. The Panel Did Not Misread This Court’s Decision in *Fujitsu***

TCL’s argument (Pet. 9-11) that the panel misread this Court’s decision in *Fujitsu*, like its argument before the panel concerning *Fujitsu*, “rests on its misreading of a single statement from *Fujitsu*.” *IP Bridge*, 967 F.3d at 1384 (citing *Fujitsu*, 620 F.3d at 1327)). In particular, TCL argues that “*Fujitsu* expressly requires a ‘district court’ to consider whether the ‘*reach of the claims* includes any device that practices a standard’ and whether a ‘patent *covers* every possible implementation of a standard.’” Pet. 10 (citing *Fujitsu*, 620 F.3d at 1327-28 (emphases added in Petition)). But, as the panel pointed out after considering the full context of that sentence from *Fujitsu* that TCL misreads, “we *did not say* in *Fujitsu* that a district court must first determine, as a matter of law and as part of claim construction, that the scope of the claims includes any device that practices the standard at issue.” *IP Bridge*, 967 F.3d at 1384 (emphasis added). Instead, the *Fujitsu* court addressed an appeal from motions for summary judgment filed after the district court issued its claim construction order (which did not address standard

essentiality), where the district court reached a conclusion about infringement (in the summary judgment order) only after determining that there was no genuine dispute of material fact. As the panel explained, in that context of “reviewing the district court’s summary judgment decision (where no facts were genuinely in dispute), we stated that, if a district court *finds* that the claims cover any device that practices a standard, then comparing the claims to that standard is the same as the traditional infringement analysis of comparing the claims to the accused product.” *IP Bridge*, 967 F.3d at 1384 (emphasis in original). TCL’s strained reading of *Fujitsu* as imposing a procedural requirement that a court during claim construction make an essentiality determination is both unsupported and illogical, given that (as the panel also noted) whether a patent claim is essential to a technical standard is “a fact question” about whether “the claim elements read onto mandatory portions of a standard.” *IP Bridge*, 967 F.3d at 1385.

**D. TCL’s Strawman Argument About Standard Essentiality Does Not Merit En Banc Review**

TCL’s final argument (Pet. 17-21), that standard essentiality must be decided by a court during claim construction rather than a fact-finder due to “the ease at [*sic*] which patents can be declared essential, and the number of patents that have been so declared,” is a strawman argument that does not warrant *en banc* review.

TCL first argues (Pet. 18-19) that the fact that a product complies with a standard may not mean that the product “satisfies every mandatory requirement of

an industry standard.” But, as Dr. Min testified in this case, to “comply” with the standard, a product *must* practice all mandatory portions of that standard. Appx13151. If, in another case, an implementer maintains that it is holding out its products to consumers as standard-compliant even though they do not, in fact, practice all mandatory portions of the standard, that issue should be addressed through expert testimony and cross-examination in front of the factfinder. *See, e.g., Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 596 (1993) (explaining that cross-examination and contrary evidence are the traditional and appropriate means of attacking expert testimony).

TCL next argues (Pet. 19-20) that many patents are *declared* essential when they are not *actually* essential, and that allowing patentees to prove infringement as IP Bridge did in this case would “impose a significant and unfair burden on industries relating to standard-complaint products.” But (despite TCL’s consistent misrepresentations) IP Bridge never argued—and the panel never held—that a patentee can prove infringement merely by relying on a declaration that a patent is essential. To the contrary, as the panel noted, “*Fujitsu* teaches that where, but only where, a patent covers mandatory aspects of a standard, is it enough to prove infringement by showing standard compliance.” *IP Bridge*, 967 F.3d at 1384. Here, in accordance with the framework addressed in *Ericsson*, *Dynacore*, and *Fujitsu*, IP Bridge and Dr. Min proved, through rigorous analysis, that the Asserted Claims

actually read on (i.e., actually are essential) to mandatory portions of the LTE standard. *See, e.g.*, Appx13150-13152, Appx13155-13159, Appx13169-13175 (Min); Appx15139-15198 (TS 36.212); Appx15243-15389 (TS 36.300); Appx15390-15466 (TS 36.213); Appx16458-16540 (TS 36.211); Appx19289-19334 (TR 21.801); Appx19339-19415 (TS 36.104). The requirement that patentees do so obviates any speculative concerns TCL may have that patentees could prove infringement with patents declared, but not actually, essential.

### CONCLUSION

IP Bridge respectfully requests the Court deny TCL's *en banc* petition.

Respectfully submitted,

/s/ Douglas Hallward-Driemeier

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Dated: October 29, 2020

**CERTIFICATE OF SERVICE**

On October 29, 2020, the undersigned caused the foregoing document to be filed electronically by using the Court's CM/ECF system. All parties are represented by registered CM/ECF users and will be served by the appellate CM/ECF system.

*/s/ Douglas Hallward-Driemeier*  
\_\_\_\_\_  
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## CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). The brief contains 3,368 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font.

*/s/ Douglas Hallward-Driemeier* \_\_\_\_\_  
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