

2021-2106

---

---

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

---

KONINKLIJKE PHILIPS N.V.

*Plaintiff-Counter Defendant-Appellee,*

PHILIPS RS NORTH AMERICA LLC,

*Counter Defendant-Appellee,*

*(For Continuation of Caption See Inside Cover)*

---

---

On Appeal from the United States District Court for the  
District of Delaware in No. 1:20-cv-01713-CFC

---

---

**BRIEF OF *AMICI CURIAE* CONTINENTAL AUTOMOTIVE SYSTEMS,  
INC., U-BLOX AMERICA, INC., AND AMERICAN HONDA MOTOR CO.,  
INC. IN SUPPORT OF THE THALES APPELLANTS**

Matthew W. Holder  
Martin R. Bader  
Stephen S. Korniczky  
SHEPPARD MULLIN RICHTER & HAMPTON LLP  
12275 El Camino Real, Ste. 100  
San Diego, CA 92130  
858.720.8900  
[mholder@sheppardmullin.com](mailto:mholder@sheppardmullin.com)  
[mbader@sheppardmullin.com](mailto:mbader@sheppardmullin.com)

[skorniczky@sheppardmullin.com](mailto:skorniczky@sheppardmullin.com)

*Attorneys for Amicus Curiae  
Continental Automotive Systems, Inc.,  
and u-blox America, Inc.*

John (“Jay”) Jurata, Jr.  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
1152 15<sup>th</sup> Street, N.W.  
Washington, DC 20005  
202.339.8504

[jjurata@orrick.com](mailto:jjurata@orrick.com)

*Attorney for Amicus Curiae  
American Honda Motor Co., Inc.*

---

-v.-

THALES DIS AIS USA LLC, fka Gemalto IOT LLC,  
Fka Cinterion Wireless Modules NAFTA LLC,

*Defendant-Counter Claimant,*

THALES USA, INC., THALES S.A., CALAMP CORP., XIRGO  
TECHNOLOGIES, LLC, LAIRD CONNECTIVITY, INC.

*Defendants,*

THALES DIS AIS DEUTSCHLAND GMBH, fka Gemalto M2M GmbH,

*Defendant-Counter Claimant-Appellant.*

---

## CERTIFICATE OF INTEREST

Counsel for *amicus curiae* Continental Automotive Systems, Inc. certifies the following:

1. The full names of every party represented by me are:

Continental Automotive Systems, Inc.

2. The name of the real party in interest represented by me is:

Continental Automotive Systems, Inc.

3. The parent corporations and publicly held companies that own 10% or more of stock in the party represented by me are:

Continental Automotive Systems, Inc. is wholly owned by Continental Automotive, Inc. Continental Automotive, Inc. is wholly-owned by Continental Automotive Holding Netherlands B.V., which is wholly-owned by CGH Holding B.V., which is wholly-owned by CAS-One Holdinggesellschaft mbH, which is wholly-owned by Continental Caoutchouc-Export-GmbH, which is owned 51% by Continental Automotive GmbH and 49% by Continental A.G.

4. The names of all law firms and the partners and associates that have appeared for the party in the trial court or are expected to appear for the party in this Court and who are not already listed on the docket for this case are:

None.

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal are:

None.

Dated: September 7, 2021

/s/ Matthew W. Holder

Matthew W. Holder

## CERTIFICATE OF INTEREST

Counsel for *amicus curiae* u-blox America, Inc. certifies the following:

1. The full names of every party represented by me are:

u-blox America, Inc.

2. The name of the real party in interest represented by me is:

u-blox America, Inc.

3. The parent corporations and publicly held companies that own 10% or more of stock in the party represented by me are:

u-blox America, Inc. is a wholly-owned subsidiary of u-blox AG. u-blox AG is a wholly-owned subsidiary of u-blox Holding AG. u-blox Holding AG is a publicly traded corporation that has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

4. The names of all law firms and the partners and associates that have appeared for the party in the trial court or are expected to appear for the party in this Court and who are not already listed on the docket for this case are:

None.

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal are:

None.

Dated: September 7, 2021

/s/ Matthew W. Holder

Matthew W. Holder

## CERTIFICATE OF INTEREST

Counsel for *amicus curiae* American Honda Motor Co., Inc. certifies the following:

1. The full names of every party represented by me are:

American Honda Motor Co., Inc.

2. The name of the real party in interest represented by me is:

American Honda Motor Co., Inc.

3. The parent corporations and publicly held companies that own 10% or more of stock in the party represented by me are:

American Honda Motor Co., Inc. is a wholly owned subsidiary of Honda Motor Co., Ltd., which is a publicly traded corporation.

4. The names of all law firms and the partners and associates that have appeared for the party in the trial court or are expected to appear for the party in this Court and who are not already listed on the docket for this case are:

None.

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal are:

None.

Dated: September 7, 2021

/s/ Jay Jurata

John ("Jay") Jurata, Jr.

## TABLE OF CONTENTS

	<b>Page</b>
STATEMENT OF INTEREST.....	1
ARGUMENT.....	5
I. PARTIES MUST <i>MEANINGFULLY</i> HAVE THE ABILITY TO ADJUDICATE FRAND DISPUTES IN COURT. ....	5
II. INJUNCTIONS UNDERMINE THE ABILITY OF WILLING LICENSEES TO ADJUDICATE FRAND DISPUTES. ....	8
III. ENJOINING SEP OWNERS FROM SEEKING PATENT INJUNCTIONS PROTECTS THE JURISDICTION OF DISTRICT COURTS AND THE IMPLEMENTER’S FRAND RIGHTS.....	11
IV. CONCLUSION.....	14

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<u>Cases</u>	
<i>Continental Automotive Sys. Inc. v. Avanci, LLC, et al.</i> Case No. 3:19-cv-02933-M (N.D. Tex.).....	3
<i>Continental Automotive Sys. Inc. v. Nokia Corp., et al.</i> Case No. 1:21-cv-00345-MN (D. Del.).....	3
<i>Huawei Techs., Co. v. Samsung Elecs. Co.</i> No. 3:16-CV-02787-WHO, 2018 WL 1784065 (N.D. Cal. Apr. 13, 2018) .....	13, 14
<i>Microsoft Corp. v. Motorola, Inc.</i> 696 F.3d 872 (9th Cir. 2012) .....	2, 12, 13
<i>Realtek Semiconductor Corp. v. LSI Corp.</i> 946 F. Supp. 2d 998 (N.D. Cal. 2013).....	11, 12
<i>TCL Commc’n Tech. Holdings Ltd. v. Telefonaktiebolaget LM Ericsson</i> 943 F.3d 1360 (Fed. Cir. 2019) .....	5, 6, 13
<i>TCL Communication Technology Holdings, Ltd. v. Telefonaktienbolaget LM Ericsson</i> No. 8:14-cv-00341-JVS-DFM, Dkt. 279-1 (C.D. Cal. June 29, 2015) .....	13
<i>u-Blox AG, et al. v. Interdigital, Inc. et al.</i> Case No. 3:19-cv-00001 (S.D. Cal.).....	3
<i>u-blox AG, et al. v. Koninklijke KPN NV</i> Case No. 3:21-cv-01220 (S.D. Cal.).....	3
<i>u-blox AG, et al., v. Koninklijke Philips NV</i> Case No. 3:18-cv-01627 (S.D. Cal.).....	3
<i>u-blox AG, et al. v. Sisvel International SA, et al.</i> Case No. 3:20-cv-00494 (S.D. Cal.).....	3
<u>Other Authorities</u>	
Federal Rule of Appellate Procedure 29.....	5

## **STATEMENT OF INTEREST**

*Amicus Curiae* Continental Automotive Systems, Inc. (“Continental”) is a leading innovation company that creates, designs, and supplies telematics equipment, including telematics control units (“TCUs”) and network access devices (“NADs”), for use in automotive vehicles and other products. These telematics devices connect to networks which utilize the 2G, 3G, 4G, and 5G standards, thereby enabling telecommunications, infotainment, and safety features in vehicles. *Amicus Curiae* u-blox America, Inc. (“u-blox”) is the U.S. subsidiary of u-blox AG, a leading developer of positioning and wireless semiconductors for the automotive industry. *Amicus Curiae* American Honda Motor Co., Inc. (“Honda”) is a leading member of the world’s seventh-largest automotive OEM. Through its dealer network, Honda provides American consumers with over one million automobiles a year, the vast majority of which are produced in the United States. The Honda companies in America have invested \$22 billion in innovation and operations within the United States alone, and currently employ over 30,000 Americans.

In the automotive industry, the car makers (OEMs) traditionally require suppliers like Continental and u-blox to deliver components “free of third-party rights,” which includes assurances that the products supplied do not violate patents or other intellectual property rights, as well as indemnification clauses for claims against the OEM for using and/or selling the component as part of a vehicle.



Accordingly, as companies bringing to market automotive components incorporating standardized telecommunications technologies, Continental and u-blox have a strong interest in the availability of licenses to standard-essential patents (“SEPs”) on fair, reasonable, and non-discriminatory (“FRAND”) terms. Likewise, as a leading OEM that uses TCUs and NADs in its business, and relies on its suppliers to develop and supply legally-conforming products, Honda has a direct and substantial interest that licenses for such devices be available to its suppliers on reasonable terms.

In principle, the FRAND commitments required by standard-setting organizations, including those at issue in this case, are intended to “mitigate the threat of patent holdup by requiring members who hold IP rights in standard-essential patents to agree to license those patents to all comers . . . .” *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872, 876 (9th Cir. 2012). But in practice, licensors are using the threat of patent injunctions and exclusion orders to deny implementers meaningful opportunities to adjudicate the FRAND terms for their SEPs.

Consistent with the automotive industry practice of licensing at the component supplier level, Continental and u-blox sought to obtain licenses from major SEP owners that began asserting their patents against their customers. Pursuant to basic principles of patent exhaustion, a license to Continental or u-blox would exhaust the SEP owners’ patent rights, such that Continental and u-blox could

then sell fully-licensed components to their customers and thereby protect their customers from any patent infringement lawsuit. Yet rather than offering FRAND licenses to all comers, Continental and u-blox have found that many SEP owners (1) failed and refused to offer licenses to component suppliers, instead insisting on licensing OEMs, and/or (2) insisted on royalty rates which were far in excess of FRAND terms and conditions. Faced with the intransigence of SEP owners, Continental has filed two lawsuits in the U.S. against various SEP owners and licensors seeking to enforce its right to receive a FRAND license, as well as a binding adjudication of the FRAND terms and conditions for such a license.<sup>1</sup> u-blox has similarly had to resort to filing lawsuits seeking to enforce its right to receive FRAND licenses, along with a binding adjudication of the FRAND terms and conditions for such licenses.<sup>2</sup>

At the same time Continental and u-blox have been doing the above, the same SEP owners continue to threaten their customers, including OEMs such as Honda,

---

<sup>1</sup> See *Continental Automotive Sys. Inc. v. Avanci, LLC, et al.*, Case No. 3:19-cv-02933-M (N.D. Tex.); *Continental Automotive Sys. Inc. v. Nokia Corp., et al.*, Case No. 1:21-cv-00345-MN (D. Del.).

<sup>2</sup> See *u-blox AG, et al., v. Koninklijke Philips NV*, Case No. 3:18-cv-01627 (S.D. Cal.); *u-Blox AG, et al. v. Interdigital, Inc. et al.*, Case No. 3:19-cv-00001 (S.D. Cal.); *u-blox AG, et al. v. Sisvel International SA, et al.*, Case No. 3:20-cv-00494 (S.D. Cal.); *u-blox AG, et al. v. Koninklijke KPN NV*, Case No. 3:21-cv-01220 (S.D. Cal.).

with patent injunctions (*i.e.*, a prohibition on the sale of entire vehicles) based on the customers' alleged infringement of the SEP owners' patents via the customers' use of Continental and u-blox's telematics components in those vehicles. These SEP owners are engaging in global forum shopping for injunction-friendly jurisdictions, threatening and actually filing numerous lawsuits against OEMs seeking, and in some cases obtaining, injunctions barring the sale of automobiles incorporating telematics components. Faced with substantial financial losses resulting from these threatened (and entered) injunctions, several of these OEMs have been forced to accept licenses on terms they expressly say are in excess of FRAND rates. In turn, these customers have sought indemnification from their suppliers, including companies like Continental and u-blox, of the *supra*-FRAND royalty rates obtained by the SEP owners. Through the coercive effect of the injunctions, the SEP owners were able to force Continental and u-blox's customers to take non-FRAND licenses, all before Continental and u-blox had a chance to adjudicate their claims as a willing licensee affirmatively seeking a license which would have exhausted the SEP owner's patent rights vis-à-vis their downstream customers.

Philips' seeking of an exclusion order against a willing licensee prior to the adjudication of the parties' dispute over the FRAND terms and conditions in the district court follows a similar pattern. In practice, Thales would be denied any meaningful opportunity to adjudicate the terms of a FRAND license to Philips'

patents if it must do so while its products, as well as its customers' products incorporating Thales' components, are excluded from the U.S. market. Most businesses are simply not able to accept the consequences of such an injunction, and thus accept whatever license the SEP owner is demanding prior to the injunction going into effect. Such exclusion orders undermine willing licensees' ability to obtain judicial relief for violations of the FRAND obligation and tilt the balance of power greatly in favor of SEP licensors, which allows them to extract hold-up value in the form of *supra*-FRAND royalty rates. For these reasons, the Court should reverse the district court and prohibit SEP owners from seeking patent injunctions and exclusion orders against a willing licensee.<sup>3</sup>

### **ARGUMENT**

#### **I. PARTIES MUST *MEANINGFULLY* HAVE THE ABILITY TO ADJUDICATE FRAND DISPUTES IN COURT.**

As this Court has acknowledged, interoperability standards such as those at issue in this case require implementers' products to practice the technologies embodied in standard-essential patents (to the exclusion of other technical alternatives), and therefore "owners of such SEPs wield significant power over implementers during licensing negotiations." *TCL Commc'n Tech. Holdings Ltd. v.*

---

<sup>3</sup> Pursuant to Federal Rule of Appellate Procedure 29, no party or party's counsel has authored any portion of this brief, and no one other than *amici curiae* have funded it.

*Telefonaktiebolaget LM Ericsson*, 943 F.3d 1360, 1364 (Fed. Cir. 2019). In the context of the ETSI IPR Policy, the contractual FRAND obligation was intended “[t]o offset this power imbalance and promote interoperability.” *Id.*

Yet the mere existence of the FRAND obligation, as an abstract concept without more, is insufficient to offset the power imbalance between SEP owners and implementers of these interoperability standards. Instead, implementers need to be able to seek *and obtain* judicial relief if they believe an SEP owner is not offering a license on terms and conditions that are *actually* FRAND. This is consistent with the ETSI Guide on Intellectual Property Rights, which explicitly states that “national courts” are the appropriate venue for resolving disputes over intellectual property rights. ETSI Guide on Intellectual Property Rights, §4.3 (ETSI Guide on Intellectual Property Rights), <https://www.etsi.org/images/files/ipr/etsi-guide-on-ipr.pdf>. Indeed, SEP owners previously resisted efforts within ETSI to more specifically define the FRAND obligation by insisting that such disputes *can and should be resolved in court*. See ETSI/GA#42(03)20, pp. 8–9 (“the other group (basically holders of big IPR portfolios) saw no sense in such attempts [to more specifically define FRAND] as each case is different and the decision on FRAND conditions is, finally, a matter for the courts of law.”); ETSI/IPR(12)12\_002rt, p. 4 (“The Court system is generally well prepared to resolve possible disputes on what are fair, reasonable and nondiscriminatory terms and conditions on a case-by-case basis” and

“[a]dopting any of the proposed changes to [the] ETSI IPR Policy with respect to the determination of royalties would be a clear overreach and interference with individual bilateral commercial negotiations and pending patent litigation of ETSI members.”).

In *amici*'s experience, an implementer of the standards often has no choice but to seek judicial relief in order to secure a license on truly FRAND terms and conditions. That is both because certain SEP owners simply refuse to license component suppliers like Continental and u-blox, and also because SEP owners routinely insist on inflated royalties that are far in excess of what is FRAND, whether from suppliers or directly from OEMs. In so doing, the SEP owners refuse to meaningfully explain how their royalty rates are derived, refuse to provide evidence supporting the claim that their royalty rates have been accepted in other licenses, and refuse to modify their unreasonable royalty demands. It is only through the transparency and analytical rigor obtained through litigation—coupled with the ability to obtain a final, binding adjudication of license terms—that truly FRAND royalty rates can be achieved.

*Amici* emphasize this point because the Court should not operate under the misimpression that FRAND licenses are almost always negotiated outside of court in a process that reflects reasonable negotiating behavior and transparency. That is not the case; unfortunately, resort to litigation is often required. And as discussed

below, where FRAND disputes are “resolved” outside of court, it is often because the licensee simply succumbs in the face of the SEP owner’s threat of a patent injunction or exclusion order.

## **II. INJUNCTIONS UNDERMINE THE ABILITY OF WILLING LICENSEES TO ADJUDICATE FRAND DISPUTES.**

While SEP owners may have relied on theoretical access to national courts to resolve FRAND disputes as an excuse to reject clarifications to the ETSI IPR Policy, in the real world many of those same SEP owners have sought to use the threat of patent injunctions or exclusion orders (often using forum shopping to seek out the most injunction-friendly courts) to deny willing licensees a meaningful opportunity to adjudicate the FRAND terms and conditions for a license.

The nature of the threat posed by exclusion orders, or other forms of injunctive relief, to those who are willing to license the SEPs on FRAND terms and conditions was accurately summarized by then-FTC Chairwoman Edith Ramirez in a submission to the ITC:

Any negotiation that takes place after initiation of a Section 337 investigation occurs under the threat of an exclusion order. Because implementers are often locked into practicing the relevant standard, this threat may lead to a license on terms that reflect not only ‘the value conferred by the patent itself’ but also the ‘additional value—the hold-up value’ conferred by the patent’s incorporation into the standard. The threat may be particularly outsized where the asserted SEP relates to a small component of a complex multicomponent product and the SEP holder seeks exclusion of the entire product.

*Certain 3G Mobile Handsets And Components Thereof*, Inv. No. 337-TA-613,

Written Submission On the Public Interest of Federal Trade Commission Chairwoman Edith Ramirez, 2015 WL 4396145, at \*2 (July 10, 2015) (arguing that exclusion orders should only be available where the SEP owner demonstrates the implementer is unwilling or unable to take a FRAND license).

*Amici* have witnessed exactly the scenario described by Former Chairwoman Ramirez in their own attempts to obtain FRAND licenses for their telematics components. For example, rather than let the judicial process play out and submit to binding adjudications of the FRAND terms and conditions for a license to their patents, SEP owners have instead threatened and pursued patent infringement lawsuits against Continental and u-blox's customers, wherein they have sought injunctions that would prohibit the making and sale of vehicles that include Continental and u-blox components. The SEP owners understand what is otherwise common sense—an OEM cannot risk an injunction that shuts down production of an entire line of vehicles while fighting over FRAND terms and conditions. Several of Continental and u-blox's downstream customers have surrendered to these abusive tactics and entered into licenses on terms and conditions which they otherwise have explicitly said are not FRAND, thus enabling the SEP owners to achieve the improper “hold-up value” described by Former Chairwoman Ramirez. In turn, they demand indemnification for the *supra*-FRAND royalty rates.

To be clear, this is not simply a case of SEP owners “driving a hard bargain”



in license negotiations. Rather, it is SEP owners making “take it or leave it” offers on their chosen royalty terms, believing there is no need to engage in good faith negotiations because they can use the threat of injunctions to force implementers to take a license before any court has a chance to adjudicate FRAND terms and conditions. Despite previously arguing that access to the national courts to resolve FRAND disputes is a fundamental part of the FRAND bargain, these SEP owners are using injunctive relief to circumvent the efforts of willing licensees to adjudicate FRAND terms and conditions in court.

In this case, seeking an exclusion order at the ITC gives Philips particularly acute leverage because a number of administrative law judges have held that an SEP owner’s breach of the FRAND obligation should *not* be considered under the public interest factors when issuing an exclusion order. *See Certain Wireless Standard Compliant Elec. Devices, Including Commc’n Devices & Tablet Computers*, Inv. No. 337-TA-953, Ord. No. 33: Granting-in-Part & Denying-in-Part Complainants’ Motion to Compel, p. 3 (Nov. 10, 2015) (“satisfaction of FRAND obligations similarly is not listed as a public interest factor, and the Commission similarly is not bound to consider FRAND obligations in making any decision on an appropriate remedy.”); *Certain LTE- & 3G-Compliant Cellular Commc’ns Devices*, Inv. No. 337-TA-1138, Recommendation on the Pub. Int., & Recommendation on Remedy & Bond, p. 1 (Apr. 3, 2020) (finding the SEP owner “did not offer licenses to

[Respondents] on FRAND terms” but concluding such a FRAND violation “is not one of the public interest factor considerations and would not preclude the Commission from issuing a remedy.”). Should the ITC grant an exclusion order, Thales would be under extreme pressure to abandon its attempts to obtain a judicially-determined FRAND license (a process that often requires several years or more of litigation) and instead acquiesce to whatever terms Philips demands, with those added costs presumably being passed on to consumers. This leaves Thales without any meaningful access to national courts to resolve its FRAND licensing dispute—one of the key benefits of the FRAND bargain—despite Thales being a willing licensee.

### **III. ENJOINING SEP OWNERS FROM SEEKING PATENT INJUNCTIONS PROTECTS THE JURISDICTION OF DISTRICT COURTS AND THE IMPLEMENTER’S FRAND RIGHTS.**

The preliminary injunction requested by Thales was not extraordinary or outside the bounds of prior FRAND cases. A number of U.S. courts have recognized that seeking patent injunctions against a willing licensee serves no purpose but to threaten the court’s jurisdiction to hear FRAND licensing disputes and deny willing licensees the opportunity to adjudicate the terms of a FRAND license.

For example, in *Realtek v. LSI*, the Northern District of California correctly recognized that seeking an exclusion order against a willing licensee is inconsistent with an SEP owner’s FRAND obligation. *See Realtek Semiconductor Corp. v. LSI*

*Corp.*, 946 F. Supp. 2d 998, 1008–09 (N.D. Cal. 2013) (“Unless and until Realtek were to refuse a license under the court’s-determined RAND terms (which Realtek indicates it will *not* do), then any exclusion order or injunctive relief is inconsistent with defendants’ RAND obligations.”). The *Realtek* court correctly concluded that an exclusion order against a willing licensee created irreparable harm by threatening Realtek’s relationships with its customers and forcing Realtek “to negotiate a license in the disadvantaged position of having an exclusion order hanging over its head.” *Id.* In other words, the pressure of an exclusion order would force Realtek to accept non-FRAND terms rather than allow its products, and its downstream customers products, to be excluded from the U.S. market. These concerns are not merely theoretical. Continental and u-blox’s customers, faced with either SEP owners threatening to seek injunctions or, in some cases, actually obtaining injunctions, have accepted license terms they do not believe to be FRAND rather than see their vehicles worth tens of thousands of dollars be excluded from the market.

The preliminary injunction sought by Thales, and the anti-suit injunction granted in *Realtek*, are not unique. Indeed, a number of courts have stopped SEP owners from seeking patent injunctions or exclusion orders on the same basis. In *Microsoft v. Motorola*, for example, the Ninth Circuit upheld the district court’s anti-suit injunction preventing Motorola from enforcing patent injunctions obtained in

parallel German litigation. At the heart of this decision was the district court's correct determination that such injunctions "compromis[ed] the court's ability to reach a just result in the case before it free of external pressure on Microsoft to enter into a 'holdup' settlement before the litigation is complete." *Microsoft*, 696 F.3d at 886.

Likewise, in *TCL v. Ericsson*, the district court granted an anti-suit injunction to prevent Ericsson from pursuing foreign patent claims, including requests for injunctive relief, where the U.S. litigation would result in the adjudication of FRAND terms for a license to Ericsson's patents. *TCL Communication Technology Holdings, Ltd. v. Telefonaktienbolaget LM Ericsson*, No. 8:14-cv-00341-JVS-DFM, Dkt. 279-1 at 5 (C.D. Cal. June 29, 2015) ("the [domestic] FRAND action should resolve [the parties'] global licensing dispute").

The Northern District of California reached a similar conclusion in the *Huawei v. Samsung* case, granting Samsung's motion for anti-suit injunction where "[t]he Chinese injunctions would likely force [Samsung] to accept Huawei's licensing terms, before any court has an opportunity to adjudicate the parties' breach of contract claims." *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-CV-02787-WHO, 2018 WL 1784065, at \*10 (N.D. Cal. Apr. 13, 2018). The decision was not based on a finding that Samsung was likely to succeed in its claims that it was a willing licensee, but rather on the court's conclusions that Huawei obtaining

injunctions would undermine the court’s ability to decide that issue at all. *Id.* (“The integrity of this action, therefore, will be lessened without an anti-suit injunction.”).

#### IV. CONCLUSION

Allowing SEP owners to seek patent injunctions and exclusion orders against willing licensees undermines the integrity of any proceeding brought in court to adjudicate the terms and conditions of a FRAND license, such as Thales’s counter-claims in this case. As a result, for all the foregoing reasons, this Court should reverse the district court’s denial of Thales’s motion for preliminary injunction and adopt a policy that would protect willing licensees’ ability to seek adjudication of FRAND licensing claims in court, free from the coercive threat of patent injunctions and exclusion orders.

Dated: September 7, 2021

Respectfully submitted,

*/s/ Matthew W. Holder*

---

Matthew W. Holder  
Martin R. Bader  
Stephen S. Korniczky  
SHEPPARD MULLIN RICHTER &  
HAMPTON LLP  
12275 El Camino Real, Ste. 100  
San Diego, CA 92130  
858.720.8900  
mholder@sheppardmullin.com  
mbader@sheppardmullin.com  
skorniczky@sheppardmullin.com  
*Attorneys for Amicus Curiae  
Continental Automotive Systems, Inc.,  
and u-blox America, Inc.*

*/s/ Jay Jurata*

---

John (“Jay”) Jurata, Jr.  
ORRICK, HERRINGTON &  
SUTCLIFFE LLP  
1152 15<sup>th</sup> Street, N.W.  
Washington, DC 20005  
202.339.8504  
jjurata@orrick.com  
*Attorney for Amicus Curiae*  
*American Honda Motor Co., Inc.*

**CERTIFICATE OF COMPLIANCE**

This brief complies with the word limitation of Federal Rule of Appellate Procedure 29(a)(5) and Federal Circuit Rule 32(a). The brief contains 3,177 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 32(b).

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 proportionally spaced typeface using Microsoft Word 2016 and 14-point Times New Roman font.

Dated: September 7, 2021

*/s/ Matthew W. Holder*

---

Matthew W. Holder