

## **Announcement**

### **3G Licensing introduces the W-CDMA Patent Licensing Programme at the “Low Cost 3G Devices” conference**

**London, UK, 13 March 2007.**

Today, 3G Licensing, the licensing administrator of the W-CDMA Patent Licensing Programme, presented the W-CDMA Patent Licensing Programme at the “Low Cost 3G Devices” conference organised by Informa telecoms & media in London.

The “Low Cost 3G Devices” conference was attended by some of the key stakeholders in the upcoming Low Cost 3G Devices industry, including major operators, handset manufacturers, chipset manufacturers and mobile software developers who shared their views on how to enhance the development and growth of the 3G markets.

3G Intellectual Property Rights (IPR) will have a significant impact on the success of the low end 3G device markets.

Best practice in IPR transparency and IPR management include (1) a credible essentiality evaluation, using a rigorous evaluation methodology and performed by an independent and global evaluation provider, (2) the adherence to the principle of a reasonable maximum cumulative royalty and (3) a method for allocating royalties to the owners of essential IPR.

The W-CDMA Patent Licensing Programme, defined by the 3G industry, currently licenses the essential patent rights of 11 major international companies, covering all components of the 3GPP standards from Release 3 and beyond. The Programme follows best practices in IPR transparency and IPR management.

To date in excess of 40M terminals were licensed under the Programme representing royalty revenues of almost \$100M. The Programme offers transparent and standard licenses granting access to more than 150 patent families that represent in excess of 270 W-CDMA certified essential patents. All patents licensed under the Programme were evaluated by the Independent Patent Evaluation Consortium. As existing members submit more patents for evaluation and as new members join the Programme, licensees under the Programme benefit from an access to a constantly growing number of essential patents.

A copy of the presentation is attached below.

#### **How to contact us:**

All enquiries should be made via the Licensing Administrator.

E-mail: [enquiries@3glicensing.com](mailto:enquiries@3glicensing.com) Website: [www.3glicensing.com](http://www.3glicensing.com)

#### **About 3G Licensing**

3G Licensing is responsible for the commercialisation worldwide of the W-CDMA Patent Licensing Programme. 3G Licensing has been specifically formed for this purpose. 3G Licensing is incorporated in England, UK.

## Low Cost 3G Devices

How Can We Achieve the Balance in IPR  
Needed to Afford 3G for All?

**3G Licensing**  
W-CDMA Technology

13 March 2007, The Cumberland Hotel, London, UK

Frederic Vincent, VP Business Development

## Outline

1. The key 3G IPR industry issues
2. What is truly essential 3G IPR?
3. Achieving the balance between IPR remuneration and IPR burden
4. The impact on affordability for the low-end of the 3G device market
5. Best practice in IPR transparency and IPR management: the way forward

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## The key 3G IPR industry issues (1)

- History: Industry view that GSM (2nd generation mobile systems) patent licensing unsatisfactory: unfair, complicated, time consuming, expensive, barrier to trade (about 20 owners of essential patents) (Reference 1)
- Now: Uncertainty concerning 3G IPR matters caused by “fragmented intellectual property in the network economy” (Reference 2):
  - “complementary” or “essential” patents rights must be exercised collectively to make or sell a handset
    - Are the cumulative maximum licensing cost (royalties) consistent with a viable commercial provision of handsets (including “3G for All”)?: patent stacking
- Very large number of companies potentially own technically essential patents for 3G and claim to offer FRAND licensing but generally refuse to publish transparent royalty terms : uncertainty as to the actual cost of 3G IPR is not good for any business

## The key 3G IPR industry issues (2)

- Key industry issue



**Industry sentiment that costly patent royalties 'inhibiting' the 3G business (including "3G for All")?**

### Dilemmas

- ☐ reward the patent owner (fairly and not excessively)
  - ☐ maintain future innovation (sustains R&D)
  - ☐ catalyses a global business/market (economic activity)
  - ☐ win-win for all (society, patent owners, vendors, etc)
- Industry challenge to limit cumulative royalties from multiple essential patent owners in a transparent manner : industry exploring "cumulative FRAND" limitation control approaches
  - However, many handset vendors not yet paying royalties to several of the essential 3G IPR owners: financial contingencies need to be shown as a liability on their balance sheet ("3G IPR time-bomb")

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## What is truly essential 3G IPR (1)?

- An essentiality determination of a patent against an international standards is a complex legal and technical task requiring a very specialist set of skills: not a banal task
- If the essentiality determination is rigorous it will be unavoidably very costly: (1) preparation of the essentiality file is time consuming by patent professionals, and (2) undertaking the essentiality evaluation per se by patent attorneys competent in both the jurisdiction and technology of the patent
- “Cheap and quick” essentiality determinations are available but of little, if any, value in a serious licensing negotiation: moreover they distort the ownership of the truly essential 3G IPR (regarded by some as a form of misinformation)

**Unfortunately, little reliable information on the precise ownership of truly essential 3G IPR is available since the patent owners appear not to be willing to subject their patents to a rigorous essentiality determination by independent parties  
(Self-declarations made to the SDOs are questionable!!!)**



## What is truly essential 3G IPR (2)?

- What the industry requires is a credible, rigorous evaluation methodology undertaken by a neutral independent third party Evaluation Service Provider for determining *the truly essential 3G IPR*: normally the truly technical essential 3G IPR are those with substantial commercial value
- A credible essentiality determination is the only way forward for commercially meaningful essential 3G IPR licensing under FRAND terms
- Licensing truly essential 3G IPR would certainly inhibit unrealistic royalty demands resulting in a limiting of cumulative royalties consistent with lower cost handsets

**A credible industry-accepted essentiality determination would mitigate against the identified key industry issues discussed earlier**

## What is truly essential 3G IPR (3)?

- A ready-made essentiality determination structure and processes is commercially operational but currently unavailable to third party self-claimed essential 3G IPR owners: only available to essential 3G IPR owners willing to license under pre-defined FRAND terms
- International Patent Evaluation Consortium (IPEC) is a legal entity grouping together 15 international patent law firms (located the major patent jurisdictions of Australia, China, France, Germany, Italy, Japan, Korea, UK and USA) established with the exclusive purpose of determining essentiality of 3G IPR
- IPEC undertake the essentiality determination in accordance with a defined harmonised Evaluation Methodology using for each patent an Evaluation Panel of three patent attorney's (at least one qualified in the jurisdiction of the patent)

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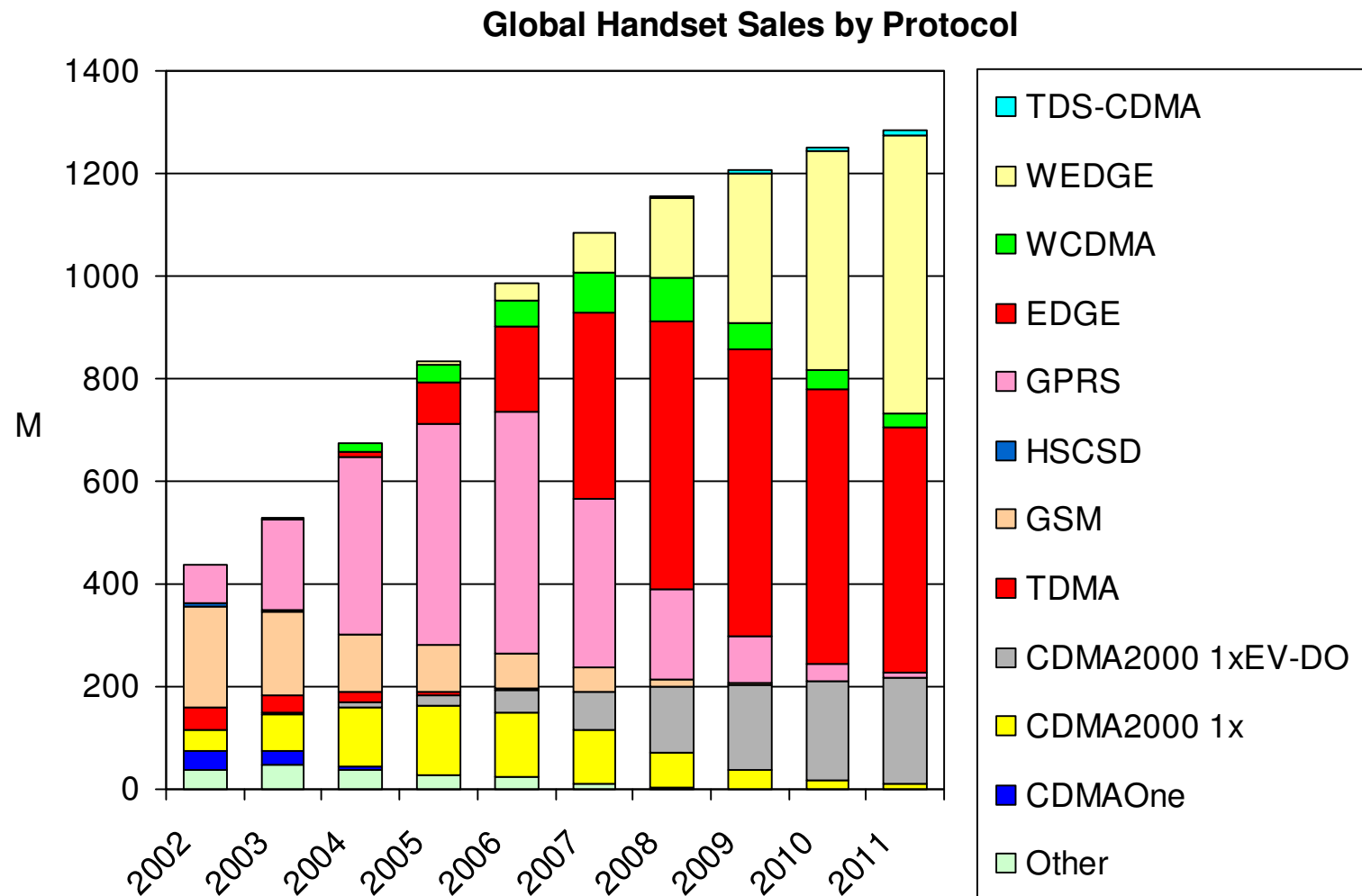
## Achieving balance between IPR remuneration and IPR burden (1)

- An accepted principle in the telecommunication industry is that IPR-owners should be rewarded for their investment in innovative technologies: the difficulty is getting the balance right between rewarding the IPR-owners and encouraging the widest possible usage of the technology in real products
- The IPR-cost element of a handset could be substantial: the actual IPR-costs depend on a multitude of factors (some handset vendors may achieve a competitive advantage through “low” IPR-costs)
- Long-standing industry consensus to limit the cumulative royalty from all truly essential 3G IPR-owners to about 5% of the Net Selling Price: considered to be a level that adequately rewards the IPR-owner and ensures a commercially viable business case for handsets at attractive market prices

## Achieving balance between IPR remuneration and IPR burden (2)

- Industry wrestled with the challenge over many years to limit cumulative royalties for 3G handsets (only with partial success)
- Many license agreements are still not in place and many parties are enforcing their patent rights in the courts: few, if any, vendor know their true long-term exposure to IPR-costs now !
- It is speculative to suggest the average IPR-cost element of a handset since it varies from one manufacturer to another (moreover not all license agreements are in place so the ultimate IPR-costs are not known even to a specific vendor)
- Given the potential market size for 3G handsets during the next 15 years a 5% (or thereabouts) cumulative royalty is considered to be the right order of magnitude to achieve the desired balance

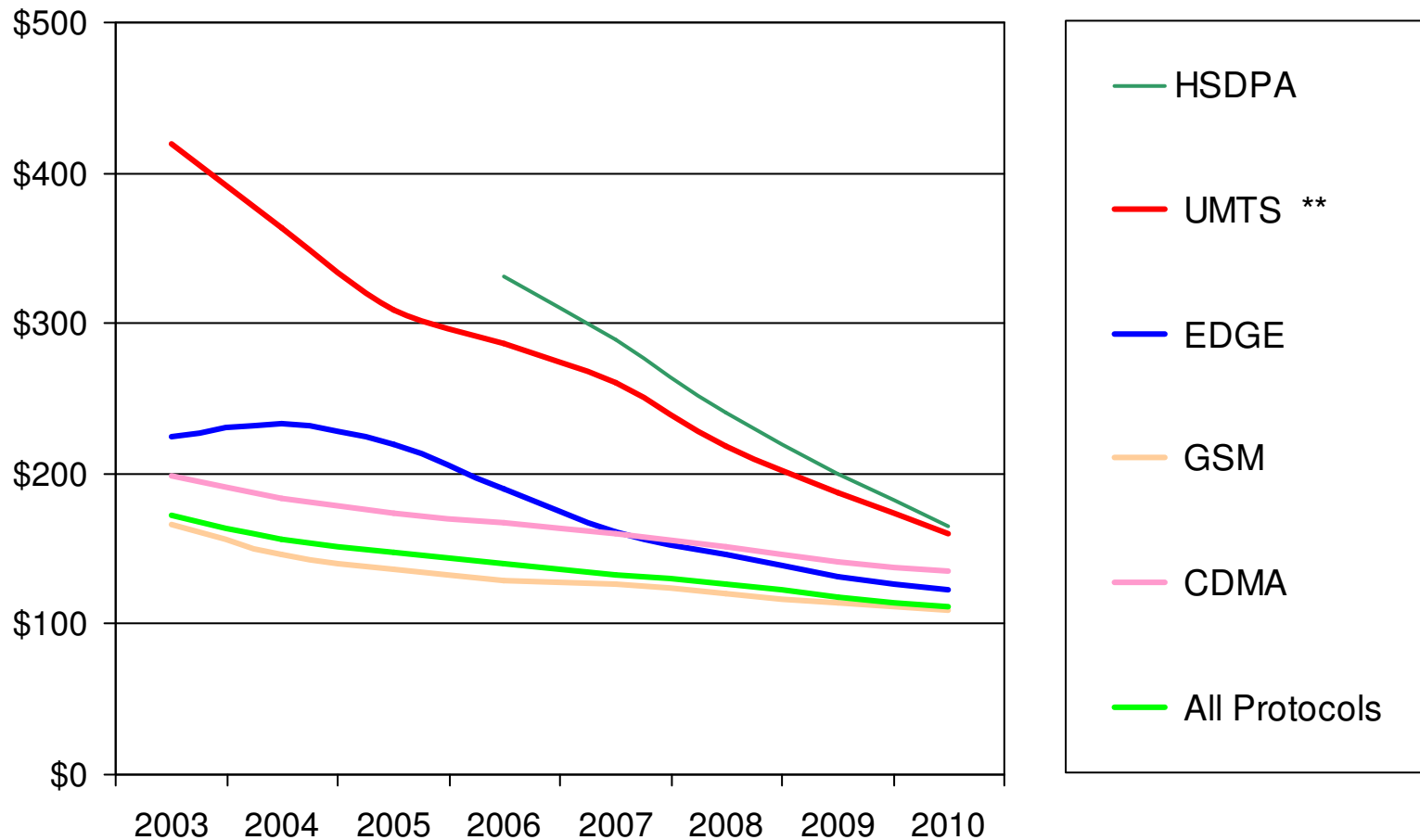
## 3G market forecasts: IPR exposure (1/2)



Source: Strategy Analytics

## ASP forecasts: IPR exposure (2/2)

Global Handset ASPs : 2003 – 2010 \*



Source: Strategy Analytics

\* Wholesale (Trade) Price; includes FOMA

## W-CDMA Patent Licensing Programme

- W-CDMA Patent Licensing Programme has determined FRAND licensing terms for a large number of essential patent owners owning a substantial proportion of the totality of W-CDMA essential patents necessary for realising a handset: royalty is of the order of 1% to 1.5% (this value may increase as the number of essential patent owners increases)
- During 2006 there were more than 21 million W-CDMA handsets under license indicating the acceptance of the FRAND royalty terms
- The W-CDMA Essential Patent portfolio currently amounting to more than 170 essential patent families is based on an essentiality determination by a neutral independent evaluator (IPEC): the patents are truly essential 3G IPR

**More details concerning the W-CDMA Patent Licensing Programme are given at the end of this presentation for reference purposes only (these will not be presented due to time limitations)**



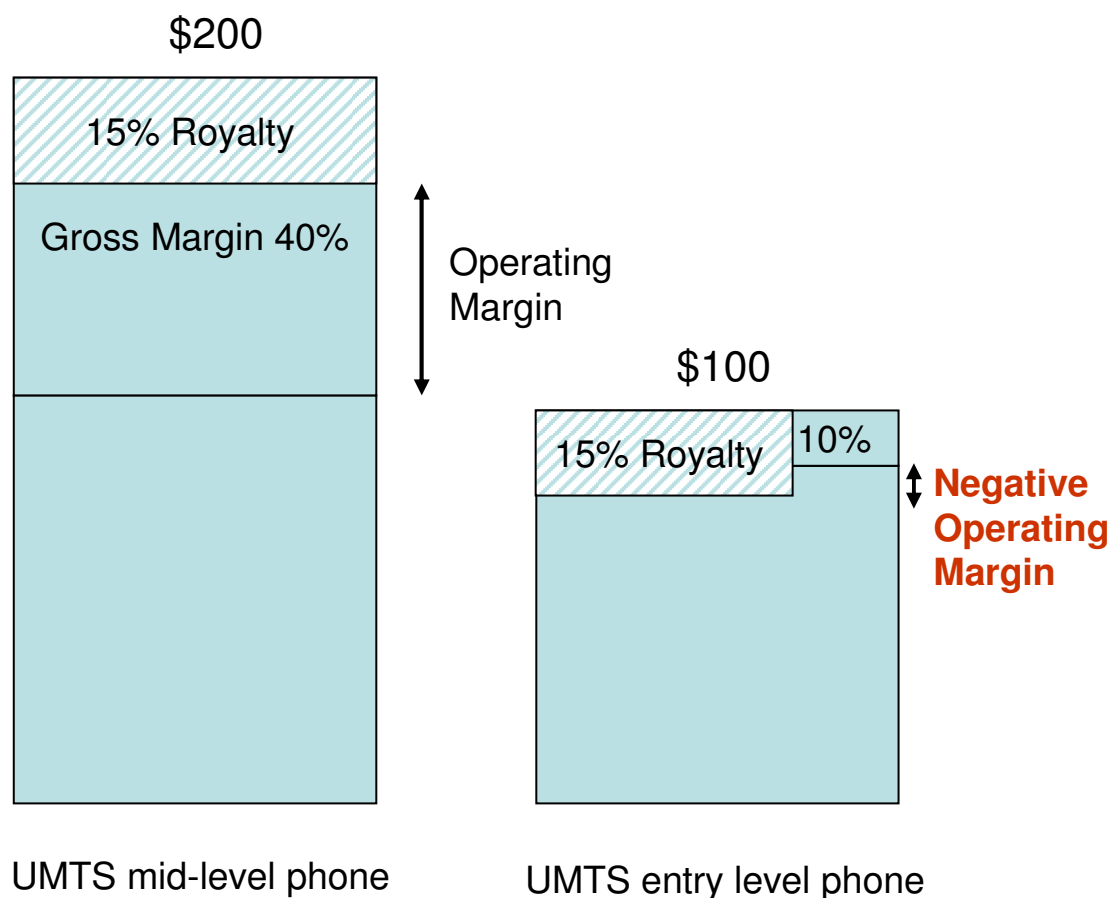
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## Impact of high cumulative royalties on low cost terminals (1)

- A base-multiplier of the Net Selling Price (excluding the non-3G functions) is a recognised basis for royalty determination
- This concept works well for most handset types: but does it have an impact on the “3G for All” handsets?

## Impact of high cumulative royalties on low cost terminals (2)\*



- Low cost terminals typically command a lower Gross Margin
- A high cumulative royalty regime can simply inhibit competition in the low cost handset market (only players able to trade a large portfolio against a lower royalty can address the low-cost handset market including “3G for All”)

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## Key elements of best practice: simple rules

### (1) (Reference 3)

- Credible essentiality determination using a rigorous evaluation methodology and independent 3<sup>rd</sup> party Evaluation Service Provider with the necessary coverage in the major patent jurisdictions: identifies the truly essential 3G IPR (a costly but necessary investment given the size of the royalty revenues)
- An agreed industry understanding on a limiting cumulative royalty consistent with the cost effective provision of handsets: a cap on “cumulative FRAND” royalty for all IPR
- An agreed method for assigning the cumulative royalty to the owners of the truly essential 3G IPR: there are many ways to determine this apportionment

## Key elements of best practice: simple rules

(2) (Reference 3)

- An agreement to license all truly essential 3G IPR under a single license agreement satisfying FRAND terms: a cumulative FRAND royalty would be of the order of 5% (or thereabouts)
- Licensing Administrator: intimately familiar with the mobile sector and the major players, a knowledge of the intersection of antitrust and intellectual property laws and international standards, a knowledge of licensing and patent essentiality evaluation, a knowledge of international taxation for royalty receipt and distribution purposes, etc.

## Affordable 3G IPR costs for “3G for All” handsets: the way forward

- Industry should commit to a maximum limiting cumulative royalty of between 5% to 7% of the Net Selling Price of the handset (excluding the non-3G functions)
- Industry should commit to the W-CDMA Patent Licensing Programme which is committed to FRAND licensing of truly essential 3G IPR
- Adherence to this approach provides transparency on 3G IPR costs and business case certainty for product planning

## Background information on the W-CDMA Patent Licensing Programme

Further detail please see [www.3glicensing.com](http://www.3glicensing.com)



# The three phases of the 3G Patent Platform

(most major companies involved)

## Definitions:

- UMTS IPR WG (UMTS Intellectual Property Rights WG)
- UIPA (UMTS Intellectual Property Association)
- 3G3P (3G Patent Platform Partnership)

### PHASE 1

#### Definition Phase

- UMTS IPR WG
- UIPA

February 1998 - June 1999

#### Deliverable :

- 3G Patent Platform : Platform Specification (version 1)

### PHASE 2

#### Implementation Phase

- 3G3P

September 1999 - Dec.2003

#### Deliverable :

- 3G Patent Platform : Platform Specification (version 2)
- antitrust approval worldwide
- operational and legal structure

### PHASE 3

#### Commercialisation Phase

- 3G Licensing Ltd

January 2004 onwards

#### Deliverable :

**W-CDMA Patent Licensing Programme**

**Key objective: to set significant benchmark for cumulative royalties for W-CDMA products, to make IPR costs transparent for market participants, generate licensing income for technologie providers and catalyse market for benefit of vendors and operators**

**W-CDMA Patent Licensing Programme  
is a commercial realisation of the 3G Patent Platform  
for the W-CDMA FDD technology**

Objectification of FRAND  
+  
flexible licensing a  
« must » for industry

Rigorous patent  
essentiality evaluation  
and certification by  
independent Evaluation  
Service Provider (IPEC)

Low transaction costs  
due to standardized  
license agreements

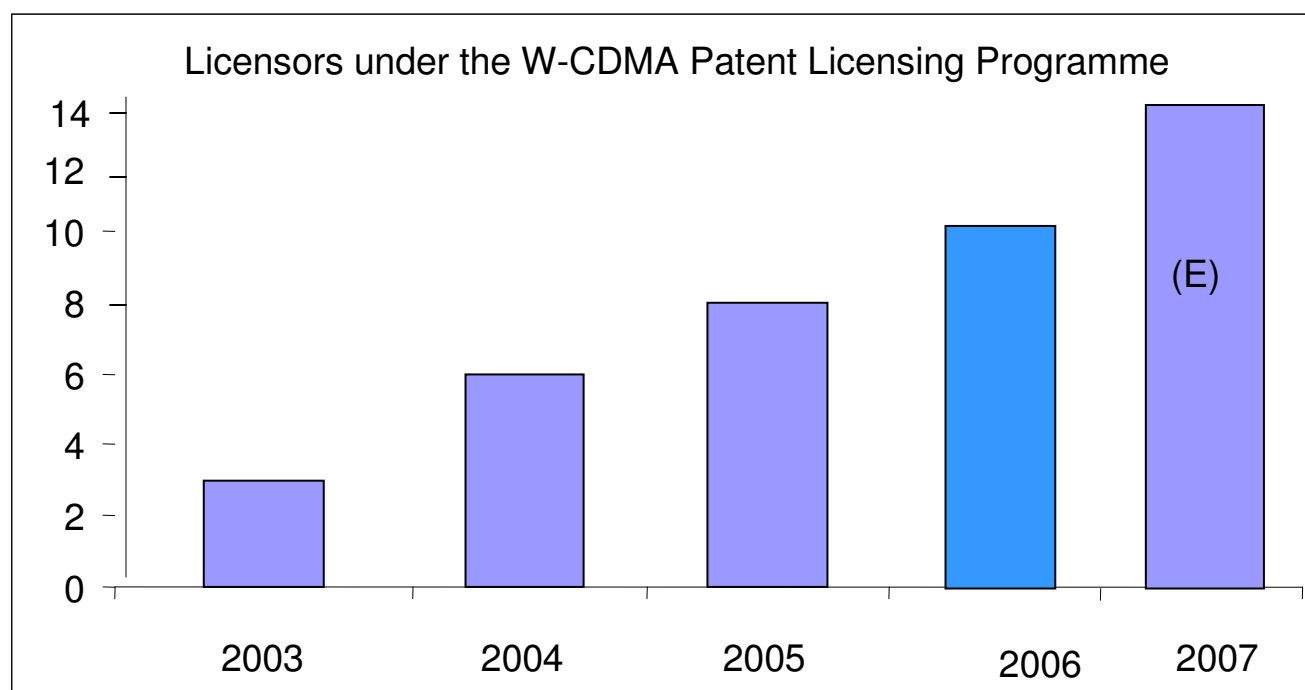
Antitrust approval letters from US DoJ Antitrust Division, European Commission (EU) and Japanese Fair Trade Commission (JFTC)

# A quality membership of programme (all active in 3GPP)

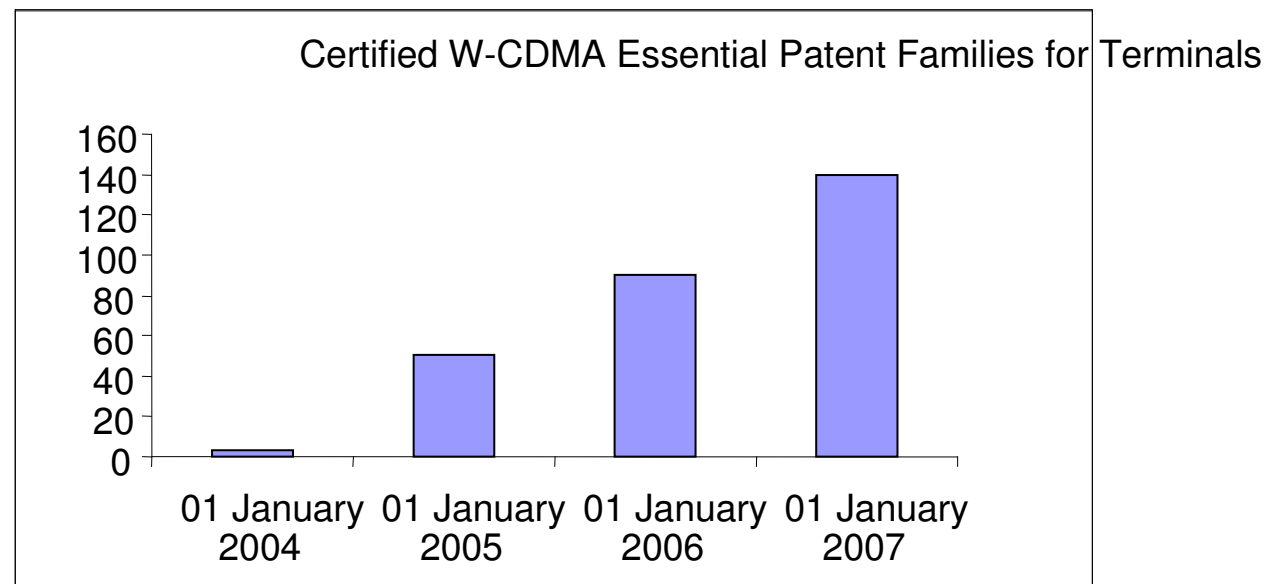


Discussions under way with several other prospective Licensors

## A growing membership: Licensors



## A growing portfolio



A substantive, quality and truly W-CDMA ESSENTIAL PATENT PORTFOLIO with geographical coverage in major markets (arguably one of the biggest worldwide):

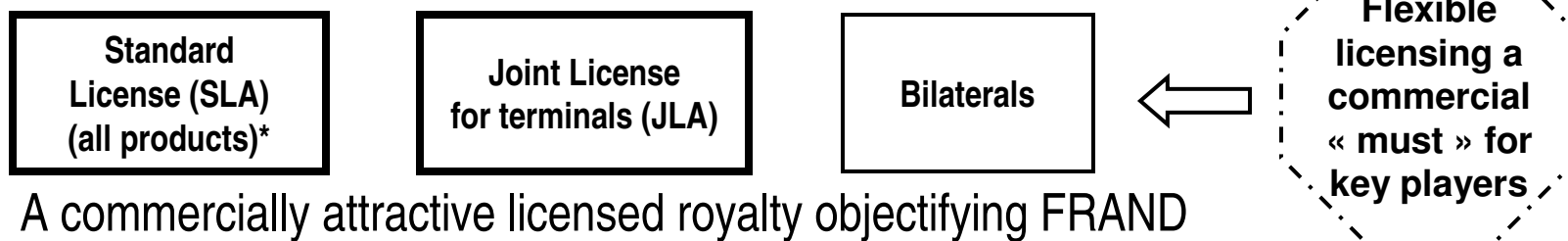
- Currently 153 certified W-CDMA Essential Patent families for terminals and growing fast
- Representing 250 individual W-CDMA Essential Patents (each patent is evaluated)
- Growing to more than 500 individual W-CDMA Essential Patents based on current portfolio
- Current Licensors will submit further patents as the 3GPP standards evolve and new Licensors will bring additional patents

# W-CDMA Patent Licensing Programme

(A « Platform » and not a classical « Pool »)

- Range of different license options for all W-CDMA products based on a truly W-CDMA Essential Patent portfolio

\* multiple-bilaterals



- A commercially attractive licensed royalty objectifying FRAND
- Membership is « voluntary »
- Licensing terms « open and transparent » providing business certainty
- The royalty is split among Licensors in proportion to the size of their patent portfolios (also reflects actual market considerations and jurisdiction of patents) ~ Proportionality
- No « double-dipping »: no licensee pays same Licensor twice (Royalty Exemption feature in JLA for terminal: no party is likely to pay full royalty)
- Extremely competitive low transactional costs (low-cost licensing)
- International Patent Evaluation Consortium (IPEC): legal grouping of 15 law firms in major countries: under exclusive contract to 3G Licensing using same Evaluation Methodology

## Delivering tangible results despite a complex competitive business and IPR environment

**2005: 37% of worldwide W-CDMA terminal market licensed under JLA**

**+90% growth in royalty in Q1 2006**

**Recent news**  
**Detecon and France Telecom new licensors**  
**21M units under license in 2006**

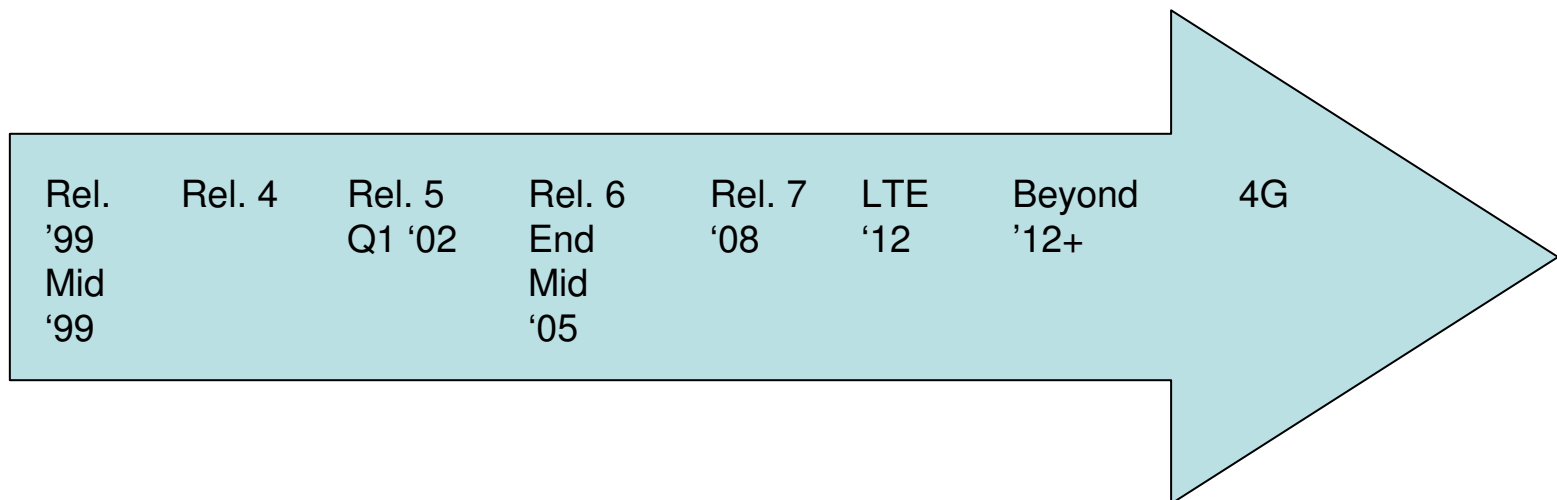
**Extensive on-going negotiations with major patent owners and licensees**

Substantial measurable success achieved despite the intense competitive business environment in which IPR is a commercial weapon:

- The mobile telecom technology industry structure and technology are far more complex than other industries
- The mobile telecom industry historically relies on complex cross-licensing / bi-lateral agreements
- The mobile business and IPR have a high economic and strategic value that needs to be defended and fully exploited for commercial advantage
- There is a natural historical reluctance for many players to conclude license agreement timely e.g. many GSM cases are still outstanding or just being resolved

## Programme scope includes all 3GPP releases and beyond

- The licensors are pro-active in 3GPP and their stated intent is to license their 3GPP essential patents under this programme
- The licensors are making available under the W-CDMA Patent Licensing Programme all their W-CDMA IPR they own or will own related to all existing and future 3GPP Releases as they evolve





## Role of 3G Licensing

- 3G Licensing Limited nominated as the legal entity responsible for the commercialisation of the **W-CDMA Patent Licensing Programme** (incorporated as an English company)
- Role of 3G Licensing:
  - Patent evaluation and certification using an independent 3rd party evaluation service provider (IPEC)
  - Marketing of the licensing programme worldwide to prospective licensees and licensors
  - Licensing-related functions such as granting of licenses, negotiations, etc
  - JLA royalty receipt and distribution (including taxation)
  - Recruitment of new licensors: essential patent owners
  - Internal management of the licensing programme (excluding setting of licensing terms and conditions)

## Competence of 3G Licensing

- A knowledge of the interaction of international standards and patent licensing
- A knowledge of the intersection between antitrust and IPR laws and international standards
- A comprehensive understanding of the main types of licensing, that is, bilateral, pools and platforms
- Extensive experience in defining rigorous evaluation processes for determining technical essentiality against an international standard and its effect on the valuation of a patent
- Experience of establishing licensing terms which are FRAND in a competitive business environment in which IPR is a commercial weapon
- Extensive experience is obtaining no-action letters from the major antitrust authorities
- Experience in planning and implementing organised licensing arrangements for international standardised technologies involving multiple parties

## References

- (1) International Telecom Standards Users Group (ITSUG), “The GSM Standards, IPR and licensing (an example of the restrictive effects of Standardisation)”, ITSUG, December 1998, p.4
- (2) Rahnasto, Ilkka, “Intellectual Property Rights, External Effects, and Antitrust: Leveraging IPRs in the communication Industry”, Oxford University Press, 2003, sections 5.06-5.25, pp.174-181
- (3) Goldstein, Larry and Kearsey, Brian, “Technology Patent Licensing: An International Reference on 21<sup>st</sup> Century Patent Licensing, Patent Pools and Patent Platforms”, Aspatore, 2004, pp 304-337

# Thank you

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