

Pantech v. ASUS: A Recent FRAND Judgment From Japan

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ABSTRACT:

This article analyzes the Tokyo District Court's April 2025 decision in *Pantech v. ASUS*, which awarded damages but denied injunctive relief in a standard-essential patent (SEP) dispute. The court established a more implementer-friendly burden of proof framework for determining FRAND compliance and adopted a top-down approach to calculate FRAND royalties. The article also contrasts this decision with a later injunction granted to Pantech in a separate case against Google, suggesting that Japanese courts continue to take a fact-specific and balanced approach to SEP enforcement.

I. Introduction

On June 23, 2025, it was reported that the Tokyo District Court had granted the first injunction in a FRAND-related case in Japan.¹ While the full text of the judgment has not yet been published, Pantech reportedly obtained an injunction against Google based on its SEP essential to the LTE (4G) standard. SEP holders appear to welcome this development in Japanese case law. However, it is worth noting that the same presiding judge previously denied an injunction and awarded only past damages for infringement of a single SEP family in a case against ASUS.

Based on that judgment, it is unlikely that Japan will suddenly become a SEP-holder-friendly jurisdiction such as Germany, where the FRAND defense is rarely successful, or the United States, where juries may award substantial damages. This article provides a detailed analysis of the Tokyo District Court's judgment in *Pantech v. ASUS*.

II. *Pantech v. ASUS* Judgment (Tokyo District Court, April 10, 2025, Case No. 2022-wa-7976)

1. Background

In 2022, Pantech, a Korean SEP holder, filed suit against ASUS JAPAN in the Tokyo District Court, alleging infringement of two patents declared essential to the LTE standard. Pantech sought

damages and an injunction against ASUS smartphones. ASUS JAPAN is a subsidiary of ASUSTeK Computer Inc., a Taiwanese corporation.

In its first-instance judgment dated April 10, 2025, the Tokyo District Court found that the two SEPs were valid and infringed. It awarded damages but denied an injunction. The court's findings on the injunction and damages are discussed in detail below.

2. Injunction Request Denied as Abuse of Right

i. A More Implementer-Friendly Rule than the Precedent

The Tokyo District Court established a rule that an injunction based on an SEP is impermissible unless there are exceptional circumstances, specifically that the implementer lacks the willingness to obtain a license on FRAND terms; otherwise, such a claim constitutes an abuse of right. This approach places the burden of proof on the SEP holder to demonstrate the implementer's lack of willingness.

This represents a departure from the 2014 *Samsung v. Apple* decision of the Intellectual Property High Court, which placed the burden on the implementer to prove willingness. The shift in the burden of proof thus reflects a legal standard more favorable to implementers.

ii. Willingness of ASUS

The court denied an injunction, finding that Pantech has not shown that ASUS lacked willingness. In making the judgment, the court pointed out the following negotiation history:

- a. Shortly after receiving Pantech's initial licensing notice, ASUS expressed its willingness to engage

¹ Nikkei, "Tokyo District Court Grants Injunction Against Google for Patent Infringement, Citing Lack of Cooperation in Settlement Talks" June 23, 2025, <https://www.nikkei.com/article/DGXZQ0CD2387Y0T20C25A6000000/>.

in sincere discussions (within one month). It later reiterated its willingness to obtain a license on FRAND terms.

- b. ASUS executed the non-disclosure agreement requested by Pantech within 18 days.
- c. ASUS promptly agreed to the first negotiation meeting and requested claim charts for representative patents.
- d. Approximately two months after receiving the claim charts—and about one month after the second meeting, at which the charts were explained—ASUS submitted its arguments on non-infringement and invalidity, taking into account input from its vendors.
- e. After Pantech presented the basis for calculating licensing terms, ASUS promptly responded with its comments and submitted a counteroffer approximately three months later.
- f. ASUS continued negotiating on the royalty rate and other terms and presented multiple proposals in line with the progress of the discussions.

Based on these facts, the court recognized that ASUS had taken all feasible steps in its negotiations with Pantech.

iii. Limiting the Settlement to Japanese Patents Did Not Render ASUS Unwilling

During settlement negotiations within the litigation, Pantech proposed a global license. ASUS, however, insisted that the settlement be limited to the Japanese patents at issue.

The court acknowledged that, in general, the global nature of SEPs may support an inference that refusal to accept a global license signals unwillingness. Nevertheless, the court found that such an inference was unwarranted in this case. The FRAND royalty calculation method remains unsettled under Japanese law, and the rates proposed by the parties were significantly divergent.

However, in the author's view, there is no jurisdiction in which FRAND royalty rates are firmly established, and the fact that the FRAND rates proposed by the parties are significantly divergent is not unique to Japan. The court's judgment may be seen as reflecting a cautious stance toward making determinations regarding global licenses that include foreign patents.

3. Damages Award Granted

i. Limitation Imposed under FRAND Obligations

Pantech sought damages for past infringement of the two SEPs, as in a typical non-SEP infringement suit in Japan.

In SEP cases, damages exceeding FRAND royalties

are not allowed unless the implementer is shown to be unwilling, in which case such a claim would not constitute an abuse of right. Because Pantech failed to show ASUS's unwillingness, the court limited the award to FRAND-level royalties.

Under the court's standard, if an SEP holder successfully proves the implementer's unwillingness, damages exceeding the FRAND rate may be granted. Such damages would typically reflect the SEP holder's lost profits—namely, profits lost due to the infringer capturing market share, assuming the SEP holder practices the invention.

However, standardized technologies are broadly adopted across the industry. Therefore, even if an implementer is deemed unwilling and higher damages are theoretically available, the author believes that such enhanced damages would be difficult to obtain in practice, in light of this judgment.

ii. Calculation of the Damages (i.e., the FRAND Rate for the Infringed SEPs)

The court adopted a top-down approach using the following formula for calculating the FRAND rate for the two SEPs at issue (which belong to a single patent family):

$$\text{FRAND rate} = (\text{Sales revenue}) \times (\text{Aggregate royalty}) / (\text{Number of all LTE-related SEP families})$$

a. Sales Revenue

ASUS disclosed its sales revenue, and the amount was undisputed.

b. Aggregate Royalty

For LTE-only products ("Defendant LTE Products"), the court determined an aggregate royalty of 9%, based on:

Judicial findings in *Unwired Planet v. Huawei* (UK High Court, 2017), *TCL v. Ericsson* (U.S. District Court, C.D. Cal., 2017), and *Huawei v. Samsung* (Shenzhen Intermediate Court, 2018) found aggregate LTE royalties to be 8.8%, 6–10%, and 6–8%, respectively. The average of the upper bounds is 8.9%.

Defendant LTE Products also support Wi-Fi and Bluetooth and include many non-communication functions that contribute to sales.

ASUS's brand image, shaped through marketing efforts, also contributed to product sales.

For products supporting both LTE and 5G ("Defendant 5G Products"), the court found that LTE's contribution was relatively smaller and set the aggregate royalty at 8%.

The court acknowledged that, in general, comparable license agreements may be considered. However, it found that the licenses submitted by Pantech were not comparable and therefore did not take them into account in this case.

c. Number of LTE-Related SEP Families

Pantech relied on the judgment of *Unwired Planet* and argued that the number of SEP families related to LTE was approximately 800. However, the court noted that since that 2017 judgment, the number of SEPs incorporated into the LTE standard has likely increased.

ASUS, citing *Unified Patents*, asserted that at least 1,817 SEP families exist. The court observed that this figure includes invalid patents and concluded that the number relevant for FRAND licensing would be lower.

Without providing further detail, the court ultimately set the number at 1,300, roughly the midpoint between the parties' figures.

d. Total Amount of Damages

The public version of the judgment redacted the final damages amount, but it appears to be less than the JPY 10 million claimed by Pantech.

For reference, in *Apple v. Samsung* (2014), damages of approximately JPY 10 million (about USD 70,000 at the current exchange rate) were awarded for infringement of a single 3G-related SEP by the iPhone 4 and the iPad 2.

In the present case, Pantech acknowledged that ASUS's sales in Japan were "insignificant compared to Apple's iPhones." ASUS discontinued the accused products in February 2022, during which Apple held 67.6 percent of Japan's smartphone market, and ASUS only 0.55 percent.² It is therefore reasonable to infer that the damages awarded were substantially below JPY 10 million.

4. Appeal to the Judgment

The judgment has been appealed to the Intellectual Property High Court. It remains to be seen whether the appellate court will uphold the Tokyo District Court's findings.

² StatCounter, "Mobile Vendor Market Share Japan," <https://gs.statcounter.com/vendor-market-share/mobile/japan/2022>.

III.

Pantech v. Google Judgment (Tokyo District Court, June 23, 2025)

Although the full judgment has not yet been published, on June 23, 2025, Judge Nakashima – who also presided over *Pantech v. ASUS* – granted an injunction against Google concerning its Pixel 7 smartphones.

In open court, the judge stated that Google was an unwilling licensee for the following reasons:³

After expressing a preliminary view that Google had infringed the patent, the court recommended a global settlement covering Pantech's SEP portfolio. Both parties agreed to conduct settlement discussions before the Tokyo District Court.

The court requested that Google submit a settlement proposal based on the sales revenue of the accused end products.

Google failed to present any such proposal and did not disclose either the sales figures or shipment volumes of the accused products.

IV.

Conclusion

The injunction granted in *Pantech v. Google* may give the impression that Japan is becoming more favorable toward SEP enforcement. Media reports have highlighted this rare instance of injunctive relief in a FRAND-related case, and some SEP holders may regard it as a sign of a broader judicial shift.

However, such an interpretation warrants caution. Notably, the same presiding judge had previously (i) denied an injunction in *Pantech v. ASUS* by shifting the burden of proof in favor of the implementer, and (ii) awarded damages of less than JPY 10 million. In the author's view, Japanese courts are likely to maintain a fact-specific and balanced approach: while injunctive relief is not categorically precluded, courts continue to scrutinize the conduct of both SEP holders and implementers, particularly with respect to FRAND negotiations and indications of willingness. It remains to be seen how the Intellectual Property High Court will assess these issues on appeal. ■

³ See *supra* note 1.