



# THINK FORWARD

## Developing IP In Evolving Autonomous Vehicle Market Demands Thorough Understanding Of FRAND Commitments

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**ANN ARBOR**—Emerging technologies continue to infiltrate cars, and notably autonomous vehicles, making them increasingly complex, intelligent and connected. This outgrowth calls for the industry's standard-setting bodies to strike a balance between the intellectual property rights driving these standards and the benefits derived from others' needs to utilize them, according to Jon Beaupré, a shareholder in the Ann Arbor office of Brinks, Gilson & Lione, one of the largest intellectual property law firms in the U.S.

One customary approach is the use of a licensing obligation that is fair, reasonable and non-discriminatory or "FRAND," also known as "RAND" (reasonable and non-discriminatory). Under FRAND terms, the standard-setting bodies may require their members to provide benefits such as agreeing to grant licenses or disclose intellectual property rights.

Companies that enter into FRAND commitments often do so through membership or participation in standard-setting organizations ("SSOs"), which are organizations that develop technical standards for all adopting parties in a particular field. For example, SSO members often indicate their willingness to allow their particular platform, technology, or product to be available for licensing, which in turn, enables widespread adoption in the marketplace.

"Businesses often consent to FRAND-type commitments for their reciprocal terms and the fact that the benefits may outweigh the value of the intellectual property disclosure in the long run," Beaupré said. "Also, many businesses realize that consenting to these commitments is the price of admission for being a member of a standard-setting organization."

"In the case of autonomous vehicles, the multitude of new technologies that have to interface with each other, as well as the numerous parties involved in the operation, has brought renewed interest and scrutiny to FRAND," Beaupré said.

Before jumping into a FRAND commitment, Beaupré advises businesses to carefully consider all legal implications involved in doing so. Besides licensing, other factors to bear in mind include:

- **Patent Portfolio Management:** Patents can add to the overall value of a growing company and should be taken into account when setting business and financial strategy.
- **Escalation of FRAND Litigation:** Recent litigation over FRAND patent royalties has some experts asking whether FRAND is effective.
- **Antitrust Compliance:** Issues may include attempts to set prices or financial terms or activity that blocks new market entrants or suppresses competition.
- **Software Licensing:** Copyrights and legalities regarding the creation, use and licensing of software

have a growing role in new vehicles technologies, and therefore, must be carefully managed.

“Businesses that proactively manage the legal implications of FRAND within a changing automotive industry will be best positioned to take advantage of these new developments,” Beaupré concludes.

**Brinks Gilson & Lione**

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