

Dr. Vilen Lipatov

Abstract:

### **"Reverse Hold-up in Litigation for Standard Essential Patents"**

Whether or not injunctive remedies should be available to owners of standard essential patents who have committed to license these under FRAND terms is a matter of a heated debate. However, this debate often overlooks that a number of safeguards are in place that protect an implementer of standard essential patented technology from being enjoined. We show, using a formal model which explicitly takes some relevant features of the legal framework into account, that often, instead of being held up by the patent holder, the licensee holds up the patent holder and may be able to obtain royalties which are below FRAND. Thus, the current legal framework for enforcement of SEPs may result in a reverse hold up. Whether reverse hold up arises depends on a number of parameters. We focus on the length of the legal procedures for injunctions, the cost of litigation and the strength of the patent and characterize equilibrium royalty rates. Reverse hold up may arise for relatively weak patents in situations when the cost of litigation are not very low in relation to the profits available in the market for final products. Unlike in most models of bargaining in the shadow of litigation, in our model litigation sometimes arises as the equilibrium outcome. This is more likely to be the case for relatively low cost of litigation and when the patents are neither very weak nor very strong.