Hypothetical

Company A owns a patent that is essential to a wireless standard. Company A has made a commitment to a standard-setting organization to license its essential patent on fair, reasonable, and nondiscriminatory (FRAND) terms. Company A then sues Company B for patent infringement, seeking (1) an injunction prohibiting Company B from practicing the FRAND-encumbered essential patent at issue, and (2) damages for past infringement.

Hypothetical (cont.)

ASSUMPTIONS:

1. The patent at issue is in fact essential to the relevant standard.
2. Company B admits that it practices the patent at issue and that the patent is valid and enforceable.
3. Company A has made a valid and binding commitment to license its patents on FRAND terms.

Hypothetical (cont.)

Companies A and B have offered into evidence the following licenses for the same patents at issue, which each asserts is comparable to what it would have paid in a hypothetical negotiation:

1. Company B: 1% of the purchase price of the chipset, negotiated at arms-length and in the absence of litigation.

2. Company A: 2.25 % of the purchase price of the end-product (e.g., mobile phone), negotiated at arms-length and in the absence of litigation.

3. Company A: 3% of the purchase price of the end-product, negotiated after Company A filed suit seeking injunctive relief.

4. Company A or B: Entire portfolio cross-license, negotiated at arms length.