June 30, 2015

Susan M Cosper
Technical Director
Financial Accounting Standards Board
401 Merrit 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: Proposed ASU Topic 606 – Identifying Performance Obligations and Licensing (File Reference No.: 2015-250)

Dear Ms. Cosper:

We are writing at the invitation of the FASB to comment on the issuance of Accounting Standards Update No. 2014-09, Revenue from Contracts with Customers (“ASU 2014-09”). We have followed the project closely and we remain committed to a successful implementation of the new standard.

InterDigital is a company with over 40 years of innovation in the wireless communications arena. We design and develop advanced technologies that enable and enhance wireless communications, and we monetize such technologies through licensing and other revenue opportunities. We are a leading contributor of intellectual property to the wireless communications industry. We generate the majority of our revenues through the licensing of patents in our portfolio. We seek to enter into license agreements with companies engaged in, or that intend to become engaged in, the supply of wireless communications equipment. We offer non-exclusive, royalty-bearing patent licenses to companies that manufacture, import, use or sell, or intend to manufacture, import, use or sell, equipment that implements inventions covered by our portfolio of patents. We have entered into numerous such agreements with companies around the world. Our patent license agreements can be divided into two groups based on payment terms, 1) patent license agreements with fixed, non-refundable royalty payments and 2) patent license agreements with variable per-unit royalty payments.

As a technology development company engaged in the broad licensing of large patent portfolios, we would like to thank you for the opportunity to provide our view on the substance of these agreements and how the economics of the transactions should be reflected in the revenue recognition. We hope that this brief review will provide additional insight into the nature of patent portfolio licensing and will be helpful to your project as you develop indicators applicable to all industries to help financial statement preparers evaluate whether a license provides a customer with a right to access or a right to use an entity's intellectual property. Under the current exposure draft language, our intellectual property (“IP”) would be considered “functional” and so the comments included in our letter focus on the application of the guidance to these types of licenses. We do not believe that there should be a presumption that the economic benefits of a license to functional IP transfer at a point in time, as the facts and circumstances surrounding different types of functional IP vary significantly.
After considering the Board’s May 2014 revenue standard (ASU 2014-09) and the related proposed ASU issued May 12, 2015, as well as other publications on the revenue recognition project, we emphasize that patent portfolio licenses typically offered in technology industries are different from the intellectual property licenses typically granted in the media, entertainment, software, franchise and pharmaceutical industries. We believe it may be helpful to further understand such patent portfolio licenses when developing indicators applicable to all industries. We believe that many of the rights, benefits, and value conveyed in a patent portfolio license are created over the term of the agreement rather than at the outset, as our agreements represent the right to access our portfolio of IP which changes over the term of the license agreement. Consequently, in order to reflect the economics of the transactions, the license revenue for such agreements should be recognized over time as well.

For simplicity, we refer to rights in existence when an agreement is executed as “existing rights,” and to rights that come into existence after execution as “future rights.”

**Patent portfolio licenses in technology industries**

As defined by the United States Patent and Trademark Office, “a patent is an intellectual property right granted by the Government of the United States of America to an inventor to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States for a limited time in exchange for public disclosure of the invention when the patent is granted.” Other countries provide similar protection for patent holders.

After the initial filing of a patent application, this “parent” application may lead to continuing applications, which are separate and distinct applications. In each case, any patents issuing from these continuing applications may expand the claims of any patent issuing from the parent application, and therefore, expand the rights of the owner and licensees of the patent. In addition, in many cases, research and development efforts for technologies covered by patent applications continue after the filing of the initial patent application, and additional patent applications may be filed to expand rights within the same technology family or in a different technology family, both of which typically expand the rights of the owner and licensees. It is standard practice within our industry that the licensee obtains a license to both current and future patent filings and applications which arise during the term of the license. While these expanded rights may appear similar to “updates/upgrades” in the software industry, in patent licensing arrangements, particularly those containing patents related to industry standards, the expanded rights are critical to maintaining the value of the initial license. These expanded rights help licensees maintain their freedom of action in a particular technology market. Our licensees see these future updates and protections offered by our licensing arrangements as integral to the license as a whole. A single infringing patent could result in a licensee’s products being subject to injunctive relief (limitations around the importation/sale of products) or monetary damages, either of which could cause significant disruption to the licensee’s business. When licensees enter into an agreement with licensors of this type of IP, they require assurance that no legal action will be initiated against them for the current or future IP during the term of the license.

An apt analogy would be antivirus software which is referenced in example 10 of 606-10-55-136, Case C [140D-140F]. This type of software requires updates that are critical to the continued utility of the software. Without the updates, the customer’s ability to benefit from the software delivered
at the outset of the arrangement would decline significantly during the remaining term of the arrangement. In fact, the customer would likely not enter into the arrangement with the entity without the updates because the software delivered at the beginning of the arrangement would have very limited benefit over the entire term. Therefore, the license as it exists at the outset of the agreement is not capable of being distinct because the customer cannot obtain the benefit from the software without also obtaining the subsequent upgrades as they substantively enhance the functionality of the original software. As a result, in these situations, the software license, together with the unspecified upgrades, would form a single performance obligation because the IP which the customer benefits from substantively changes during the term of the arrangement. A license to a patent portfolio of a company actively engaged in technology development inherently functions in the same way as the aforementioned.

Furthermore, the additional patents developed by the licensor during the license term in many cases do not simply complement or improve upon the initially licensed technology. They often offer new technologies which can be utilized with the initially licensed technology by the licensee. This is more akin to a subscription arrangement because the licensee has access to a variety of current as well as future technologies throughout a license term. Our licensees generally enjoy the right to utilize the technologies covered under the patents being licensed by incorporating subject matter claimed under the patents into their manufacturing process or in their products. In contrast to certain other licenses, licenses to use these patents do not require physical delivery (by media or otherwise) by the licensor in order for the licensee to make use of those rights. Similarly, there is no delivery or notification if and when updates or expanded rights to the licensed intellectual property occur. To the extent our innovations may be incorporated into industry technology standards, licensees would be required to adopt these innovations in order to comply with the standards.

In summary, there are several ways the rights to our company's intellectual property are enhanced during the term of a licensing arrangement:

- The typical license grants the right to use both existing and future intellectual property (IP), which is expected to be developed or acquired during the term of the agreement. For example, these future rights may arise from past patent applications that have been filed but not yet issued. The future IP often cannot be considered economically distinct because the licensee needs access to both the existing and future rights to lawfully carry out the licensed activity.

- Similarly, the typical license provides access over time to new technologies that a licensor may add to its portfolio, which maintain or increase the portfolio's value, as industry requirements change or in response to other market developments. In other words, the IP portfolio is a continually changing ("living") portfolio, which enables the licensee to continue to make or sell products as they evolve.

- Existing and future rights may create economic interdependencies. For example, existing patent A may be rendered more valuable after the issuance of future patent B, which improves upon A and forecloses alternatives to it. A typical license permits the licensee to anticipate these types of interdependencies, without having to renegotiate over them as they occur.

- Licensees are understandably unwilling to limit the scope of the license to existing rights, when it is likely that the licensee will require additional licenses to future rights, as they come into existence. A primary purpose of the license is "freedom of action" (that is, the ability to manufacture and sell products throughout the term of the license without risk of
patent infringement litigation by the licensor), an objective that would be frustrated if the licensee’s rights were limited to those in existence on the contract’s execution date.

In summary, typical large patent portfolio licenses in technology-related industries such as ours are often much more akin to a subscription to an evolving portfolio of rights that changes during the license period than they are to a transfer of a static set of rights at a single point in time. Like subscriptions, we believe that the fees we receive for licenses to our portfolio are best recognized over time as well. We ask that the board keep this in mind when they consider any proposals to change the criteria for whether revenue from licenses of functional IP should be recognized up front or over time.

We appreciate your consideration of our views and we would welcome the opportunity to provide you additional perspective. If you should have any questions, please feel free to contact me at (302)281-3621.

Sincerely,

Richard J Brezski
Chief Financial Officer