

**Most-Favored-Nation Clauses**  
**“Real World” Benefits and Challenges**  
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# MFNs Tend to Facilitate Deals

- Standard for negotiations in wide variety of deals
- In general, procompetitive in concept and practice -- facilitate negotiations that get deals done
- Difficult to enforce, but obligations have force and provide a check and balance
- Where business flexibility is paramount, not granted

# Most Favored Licensee (MFL) Clauses

- Small / medium sized patent litigation, where high priority on limiting costs – creates efficiencies for both sides
- Large and competitor case patent litigation, where stakes are higher and monitoring may be easier – provides protection

# MFLs in Complex Patent Litigation

These licensing agreements are highly negotiated.  
Some issues to consider:

- What types of future agreements may trigger the clause?
- Do you limit the points of comparison to key terms like the royalty rate, effective royalty rate, and number of licensed patents? Otherwise, a complete analysis is required across an almost infinite number of possible terms.
- Is notice by the licensor required?
- How is any alleged breach of the MFL clause resolved?