In keeping with the Congress’s theme of trying to achieve balance in the exploitation of intellectual property rights, I propose to give a talk about jurisdictional problems in resolving global (F)RAND disputes. The FRAND commitment itself illustrates an attempt to create a balance between the compelling public benefits gained from the rapid advancement of telecommunications technology, the public interest in avoiding anticompetitive market behaviours, and the need to encourage and reward inventors for their investment and labour. As smart technologies become more widespread, standard-setting becomes an increasingly important priority for manufacturers; consequently, disputes over the licensing of standard essential patents will no doubt become ever more frequent in the coming years. Yet, who is in the position to resolve these disputes, which usually involve issues of patent validity and competition (antitrust) laws in multiple jurisdictions across the world? Some jurisdictions, like the UK, have controversially allowed national courts to set global FRAND rates with for multinational patent portfolios in certain circumstances.

With the complexity of these cases and the proliferation of anti-suit, and even anti-anti-suit, injunctions, many lawyers and judges, as well as the European Parliament and the World Intellectual Property Organisation, have promoted international commercial arbitration as the most effective means of resolving global FRAND disputes. While dealing with the problem of jurisdiction by removing such disputes from national legal systems may have its appeal, widespread FRAND arbitration raises concerns about the broader implications of privately resolving disputes with profound public policy implications through a mechanism that provides only very limited opportunities for appeal or governmental oversight in terms of ensuring compliance with national or regional competition or intellectual property laws. The confidentiality of such disputes also means that data that could potentially be essential for resolving other FRAND disputes is unavailable. This talk will discuss some of the current developments in FRAND and consider the future impact of jurisdiction in global FRAND disputes on intellectual property law and policy.