



Standard essential patents

Commission proposal for a Regulation

Licensing Executives Society France

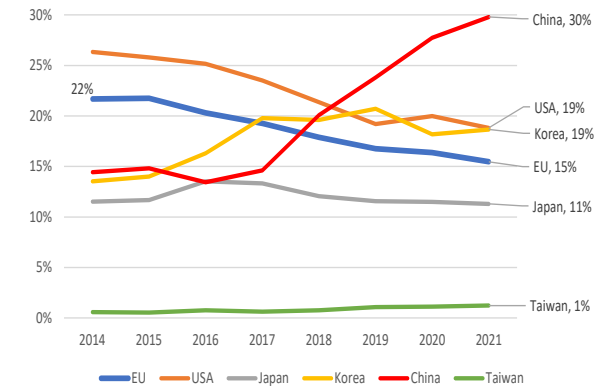
Paris, 16 November 2023

Standard essential patents - Introduction

Standard-essential patents:

Supporting technological sovereignty and the digital and green transition

- Standard Essential Patents (**SEPs**) are patents that protect technology which is necessary to comply with a technical standard.
- Communication standards (e.g. 4G, 5G, WiFi) (90% of declared SEPs), computer technology (5%), audio/video (2%), machinery, measurement, semiconductors, optics (3%).
- **EU SEPs:**
 - 80% - Nokia and Ericsson,
 - 10% - Philips and Siemens,
 - 10% - 27 companies, including telecoms (e.g. Orange, KPN), engineering (e.g. Bosch), or research institutions (e.g. Fraunhofer Gesellschaft)



- *EU and the US shares in SEP share decreased from 22% to 15% and from 26% to 19% respectively.*
- *China – SEP share increase from 15% to 30%*

Importance of SEPs

SEPs in numbers:

75,000

number of SEPs in the world

6X

increase in the number SEPs in the last 10 years

250

interoperability standards in one single laptop, of which at least 150 with FRAND commitments

1 in 7

of SEPs today is owned by an EU firm. Of around 260 SEP owners worldwide 30 are in the E

3800

approximate number of EU firms active in IoT, 85% of them are SMEs

€ 300 billion

expected value of IoT devices reading on 5G standard by 2030 (2.5 bio in 2021)

Issues in the current legal framework

- **2017 Communication on SEPs**

- Nontransparent SEP landscape, insufficient clarity in SDO declarations, lack of predictability, abusive behavior, lengthy and costly negotiations and litigation: (Commission 2017 Communication on standard-essential patents).
- Huawei v ZTE – focus on good faith negotiating path to conclude bilateral FRAND licence to address abuse of dominance by SEP holder.
- Support of transparency in standardisation, creation of licensing platforms, the use of mediation and arbitration, use of patent pools.

- **2020 IP Action Plan:**

- Self-regulation through industry-led initiatives insufficient: reform necessary to improve the framework for the declaration, licensing and enforcement of SEPs
- 2021 SEP Expert Group Report and multiple consultations in 2022: need for *“a much clearer and more predictable framework, incentivising good faith negotiations rather than recourse to litigation”*.

SEP Regulation proposal

The new rules introduce:



The establishment of a '**Competence Centre**' at the European Union Intellectual Property Office to manage the process, gather information and support SMEs



A **centralised register** and electronic database with information on relevant standards, products and processes, SEPs in force in the EU, SEP licensing FRAND terms and conditions



An **SEP aggregate royalty determination process**: i.e. maximum license fee for using a standardised technology



An **out-of-court** dispute resolution mechanism to determine Fair, Reasonable, and Non-Discriminatory (FRAND) licensing terms and conditions

SEP Regulation proposal – benefits

Benefits for Implementers (e.g. IoT):

- ▶ Easier business planning and implementation of new technology by making the total cost of a standard (Aggregate royalty) known before firms start to use them in their products
- ▶ Conciliation facilitates negotiating fair terms with SEP holders
- ▶ Around 85% of the 3 800 potential SEP implementers in the EU are SMEs. They will benefit from free advice in SEP licensing negotiations for SME implementers and reduced fees for the use of the competence centre's services

Benefits for SEP holders:

- ▶ The register will give visibility of and a positive “stamp” on their SEP portfolio,
- ▶ The aggregate royalty would help justify their royalty demands and the FRAND conciliation procedure will offer them an opportunity to seek licensing without entering into expensive litigation

Next steps

- **Public consultation following the proposal**
 - 78 replies, publicly available
- **Discussions with Member States in Council**
 - Ongoing
- **Discussions in the European Parliament**
 - Committees JURI (lead), IMCO and INTA
 - First amendments show strong engagement