

May 7, 2017

**Multi-Stakeholder Comments to
The European Commission's Directorate-General for Internal Market,
Industry, Entrepreneurship and SMEs**

on the

**Draft Roadmap, "Communication from the Commission on Standard
Essential Patents for a European digitalised economy"**

Director-General Evans:

In response to the European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs' (hereafter "DG") issuance of its Roadmap, "Communication from the Commission on Standard Essential Patents for a European digitalised economy,"¹ we write to you as innovative European technology businesses that have concerns about the direction of European standardisation policies involving standard essential patents (SEPs) that are subject to commitments to license on fair, reasonable and non-discriminatory (FRAND) terms.

We appreciate the DG's public call for feedback regarding SEPs and the European digitalised economy. However, we believe that the European Commission should ensure that any future communication on Standard Essential Patents for a European digitalised economy better reflect the needs of the thousands of innovative European SME's who rely on open standards. While we are pleased to provide the views contained in these comments, without draft communication text to review, we cannot fully understand the European Commission's proposals and their effects on our dynamic community.

We, along with our customers, rely on the standardised communication technologies that are integrated into our products. As we move toward an "everything connected" future embodied by the label "Internet of Things" (IoT), we are concerned that Commission policies in the areas of standardization and SEP licensing could impede downstream innovation, undermine the ability of companies like ours to grow and compete in the European economy, and ultimately raise consumer prices.

¹ Standard Essential Patents for a European digitalised economy (Apr. 10, 2017), *available at* https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-1906931_en#initiative-givefeedback.

We fully agree that SEP holders are entitled to fair compensation based on the value of their patented contributions to standards. However, SEP holders should not be entitled to any additional compensation, such as, for example, value attributable to the standard or to the inventions of others. We understand that the Commission's SEP communication seeks to authorise "use based" licensing approaches – whereby licensing values are calculated based on the value of the downstream technologies that our companies create rather than solely on the patented inventions themselves.

Any authorization, express or implicit, of use-based SEP licensing practices would pose a substantial threat to the innovation process around the roll-out of 5G in Europe, and could undermine the emergence of IoT in a wide range of revolutionary products in areas including healthcare, car manufacturing and heavy industry, among many others. It would also put Europe on a collision course with international norms and accepted practices, and potentially place European companies like ours at a competitive disadvantage to those based in other jurisdictions.

Standards provide a common platform for new, downstream innovations. Without them we would not have seen the biggest technological breakthroughs of the internet age, such as the invention of the smart phone. But if our innovations, built on the nuts and bolts inventions provided by SEP holders, have their value undermined by the additional compensation offered through use-based licensing, then companies like ours will not survive in Europe.

We are also concerned that the SEP communication veers away from FRAND's fundamental prohibition on non-discrimination. Licensed components must be available regardless of how they might be integrated into downstream technologies, and regardless of how the supply chain may be structured (*e.g.*, via use of distributors, resellers, direct sellers or otherwise). The draft SEP communication suggests that many suppliers might not be able to obtain licenses unless they would seek to monitor their customers' business practices, and charge different prices for such components depending on which customer and industry they might sell to.

For example, if you buy a sensor for an everyday consumer product at one price, and then succeed in creating a new and innovative use for that sensor as part of a health app that can save lives, under the use-based licensing approach you may well find that the price of the sensor somehow changes and becomes higher for this secondary functionality. In this way, use-based licensing usurps the value created by new innovators, and transfers that value to SEP holders that had no hand in developing those advances. This goes against globally accepted principles in standardization policy, and against existing European and international law

In summary, we urge the Commission to work to fully understand the effects of the SEP communication on the European Union's innovators, and refuse to authorise, expressly or implicitly, use-based SEP licensing practices.

We thank the Commission in advance for its consideration of our concerns.

Sincerely,

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