

[ ] October 2017

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**VIA EMAIL**

*RE: Joint Letter Regarding CEN-CENELEC Workshop on Standard Essential Patents and Comments on the Draft Project Plan*

Dear All,

We write to you, the listed sponsors of the upcoming “CEN-CENELEC Workshop on Standard Essential Patents” (the “Workshop”), scheduled to take place at AFNOR on 6 October 2017. We wish to constructively convey our desire that the Workshop and the draft Project Plan display a careful balance of interests. Our concern is that the current draft Project Plan and the current Agenda for the Workshop unduly emphasize the perspectives of some interested companies, while failing to represent the broader views of a much larger section of European and international businesses, SMEs, consumers and other stakeholders.

Our innovative companies are large and small; some of us are multinational corporations headquartered in Europe and elsewhere, while others are SMEs and start-ups. Together we hold hundreds of thousands of patents. Together we spend billions of euros annually on R&D, and employ over 100,000 people.

We recognize and respect that the Project Proposers, IP Europe (a lobbying organization on behalf of some licensors) and Nokia have their own perspectives on licensing and SEP issues. However, it must also be recognized that many stakeholders and

organizations have quite different, competing perspectives. Indeed, many SMEs and other organizations are stakeholders in this debate (several of whom have written to the European Commission to express their concerns around certain IoT licensing proposals) but these entities may not even be aware of the Workshop.<sup>1</sup> The Workshop and project should include perspectives representing all relevant stakeholders—not just those of a few large companies with large patent licensing businesses.

Many of the signatories plan to attend the October 6 “kick-off” meeting, but many others will not be able to join—particularly given that the event was just recently publicized and we had only very short notice that CEN-CENELEC was even contemplating such an endeavor. Accordingly, while some of us may also offer separate comments, we write jointly to offer a few preliminary concerns and suggestions for the event and comments to the Project Plan.

- *Processes for Consensus and Timing.* Issues and debates around SEPs and licensing have been the subject of debate for many years, and are currently the subject of formal court and competition agency actions around the world. The project and Project Plan should adhere to rigorous requirements of consensus, and should *not* address or purport to resolve issues where consensus cannot be achieved. The rules regarding requirements for consensus and project-related decisions should be carefully set forth in advance. Issues around SEPs and licensing are too important to get wrong and too important to rush. The group should endeavor to move efficiently with its work, but imposing a “hard” deadline of Q1 2018 may result in substandard results.
- *Chairmanship.* Given the highly partisan debates around SEP issues, we do not think it appropriate to appoint a Chair representing the perspective of only some stakeholders. We strongly believe that the project should include a Co-Chair with equal rights and responsibilities who represents other perspectives. In this way, a greater balance might be obtained in the Project Plan, and may help ensure that any future deliverables are truly the product of consensus work.
- *Agenda for Workshop.* We note that the Agenda currently includes an address by IP Europe, which was one of the proposers of the project. While we recognize that IP Europe has taken the lead in working to establish the project, we are concerned that providing a keynote representing one perspective may incorrectly imply that CEN-CENELEC or the other Workshop sponsors endorse that perspective over the perspectives of other stakeholders. It may be appropriate to add a second agenda item providing time for a speaker with differing perspectives.

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<sup>1</sup> See, e.g., Feedback from SolidQ and other SMEs, available at [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-1906931/feedback/F1752\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-1906931/feedback/F1752_en); Feedback from ACT | The App Association, available at [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-1906931/feedback/F1751\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-1906931/feedback/F1751_en); Feedback from the Fair Standards Alliance, available at [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-1906931/feedback/F1743\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-1906931/feedback/F1743_en).

- *Engagement.* With the very high price required for participation (2900 euros for most companies, 290 euros for SMEs, excl. VAT), we are concerned that only few companies will participate in the project, most likely only the larger ones. This means that many interested parties will be excluded. While we recognize the need to recoup costs associated with the project, we are concerned that the current fees may be viewed as excessive for many companies and thus undermine engagement with stakeholders, leading to an unbalanced approach.
- *Project Plan.* The draft Project Plan appears to unintentionally have been drafted in an imbalanced fashion, and does not address competing perspectives or the important competition law interests associated with standards development and SEP licensing. Indeed, some of the statements in the draft Project Plan are contrary to existing law and common practice. We do not support the Project Plan as currently drafted, and do not support it as a starting point. We believe a new Project Plan should be drafted based on a consensus approach that addresses all relevant perspectives. These perspectives should take an inclusive approach. Current plans to exclude certain aspects from the discussion do not promote a balanced outcome in the interest of European standardization.

We thank each of your organizations for its engagement on these important issues, and for the opportunity to submit our perspectives in advance of the Workshop. For those of us who cannot attend the Workshop, we would be pleased to make ourselves available should any of you have follow-up questions or wish to have further insight regarding our perspectives.

Sincerely,

[Name]  
[Title]  
[Company]

[Name]  
[Title]  
[Company]

[Name]  
[Title]  
[Company]

[Name]  
[Title]  
[Company]

Etc.

