ACT Association for Competitive Technology

April 20, 2026

Association for Competitive Technology ("ACT") response to the European Commission's Evaluation of the legislation (Regulation (EU) No 608/2013) concerning customs enforcement of intellectual property rights

Association for Competitive Technology (ACT) welcomes the opportunity to respond to the European Commission's evaluation of Regulation (EU) No 608/2013. Our organisation represents micro, small, and mid-sized (MSME) technology firms that develop products across the internet of things (IoT), consumer electronics, and enterprise solutions. Our members include entrepreneurs, independent developers, and small businesses that collectively support an ecosystem valued at more than €86 billion annually and responsible for more than 1.3 million jobs in the European Union (EU).[1]

Strong and balanced intellectual property (IP) protection is a cornerstone of the European Union's innovation economy. It provides creators, inventors, and businesses of all sizes with the legal certainty needed to invest in research, develop new products, and bring them to consumers across the single market. For MSMEs in particular, effective IP frameworks level the playing field, allowing smaller players to protect their innovations against infringement while also ensuring that they can lawfully access technologies developed by others. The EU has long recognised this dual objective: encouraging innovation while preventing abuse. Regulation (EU) No 608/2013 is one component of this broader architecture, equipping customs authorities to intercept goods at the border that clearly violate IP rights. When applied appropriately, such rules benefit both rights holders and the wider economy by safeguarding legitimate trade and consumer welfare.

Many of our members invent, develop, and sell IoT devices—from smart sensors and wearables to connected home appliances and industrial monitoring equipment. The IoT sector is expected to generate trillions for the global economy by 2030, with the EU positioned as a key hub for innovation and manufacturing. This sector, however, is fragmented, competitive, and highly cost sensitive. Our members operate on thin margins, rely on global supply chains, and depend on the lawful implementation of standardized technologies such as Wi-Fi, Bluetooth, and 5G that are essential to their products.

While we support the Regulation as a mechanism for addressing clear cases of counterfeiting and other soft IP infringement at the EU border, standard-essential patents (SEPs)—which are subject to voluntary commitments to licence on fair, reasonable, and non-discriminatory (FRAND) terms—should be treated differently because they fundamentally differ from other types of IP.

[1] *The App Economy in Europe*, Deloitte (Aug. 2022), https://actonline.org/wp-content/uploads/220912_ACT-App-EU-Report.pdf.

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I. Standard-Essential Patents Are Different from Other Forms of Intellectual Property

Standard-essential patents occupy a unique position within intellectual property law. When a patent holder voluntarily commits to licence its technology on fair, reasonable, and non-discriminatory (FRAND) terms, it enters into a deliberate bargain. In exchange for making that technology available to all who wish to implement the standard, the SEP holder gains access to an entire market of compliant products. This arrangement has successfully driven decades of innovation and interoperability, particularly in telecommunications and the IoT. However, it also creates a distinctive dynamic. Unlike an ordinary patent dispute where the patent holder may genuinely wish to exclude a competitor from the market, an SEP holder typically wants implementers to keep selling products so that it may reap more potential licence fees. The real disagreement is almost always about the price of the licence, not about whether the technology should be used at all. When an SEP holder seeks an injunction—or, in the customs context, a detention that has the practical effect of an injunction—it is not pursuing the traditional exclusionary purpose of patent law. It is using leverage to extract licencing terms unbounded by what a court would consider fair or reasonable. Customs enforcement, designed for clear-cut cases of counterfeiting, is a poor fit for resolving what is essentially a pricing dispute—particularly one that also entails complex questions of patent law.

Regulation 608/2013, as currently applied, poses a serious and disproportionate risk to innovators who incorporate standardized technologies into their products. While the Regulation serves a legitimate purpose in combating physical counterfeits and piracy, its extension to SEPs, without adequate safeguards, threatens to undermine innovation and EU competitiveness. SEP holders—some of whom do not create any products themselves—can use customs detentions as a weapon to block genuine, FRAND-licenced products, extract supra-FRAND royalties, and bypass proper judicial or arbitral determination of fair terms.

The Regulation was designed for a world where infringement was binary: counterfeit versus genuine. SEP disputes are not binary. They involve complex questions of validity, essentiality, and FRAND compliance, none of which can be answered by a customs officer inspecting a shipping box.

II. Concrete Harms to MSMEs

Most MSMEs do not have the in-house expertise and resources capable of responding to an unexpected customs detention within days. They operate on low margins, where a single detained shipment can be detrimental.

Hold-Up: SEP holders can file an Application for Action (AFA) without any prior judicial determination of infringement or FRAND breach. A customs detention—even if ultimately unfounded—creates a powerful negotiation lever: the SEP holder can offer to release the goods in exchange for accepting a licence on supra-FRAND terms, a phenomenon called “hold-up.” For a small business with cash tied up in inventory, it may have no choice other than to accept a licence.

Double Dipping: Device-makers use multiple SEPs from dozens of holders in a single device—a €15 smart plug may implement Wi-Fi, Bluetooth, and potentially 5G, each with its own patent landscape. They also source components from upstream suppliers who often already hold SEP licences. For example, a Wi-Fi chip purchased from a licenced chipmaker may be fully paid up, yet under current customs rules, the finished product can still be detained even if the SEP holder has already licenced the component to the chipmaker. This practice, sometimes called double dipping, is particularly harmful to MSMEs that may not be able to verify the scope of upstream licences and creates a double payment risk that MSME's typically cannot absorb.

III. The Border Is the Wrong Forum for SEP Disputes

Border enforcement relies on speed and decisiveness. That logic works for counterfeit items; it fails for SEPs. Under border enforcement assumptions, infringement is visually or physically identifiable, the right is clear and uncontested, no prior licence negotiation is required, and the public interest favours exclusion. With SEPs, infringement requires expert analysis, technical comparison, and expert testimony; validity and essentiality are frequently challenged; and the public interest favours widespread adoption of standards. Further, FRAND negotiation is a mandatory pre-condition under CJEU case law (*Huawei v. ZTE*). A customs detention has the practical effect of an injunction—goods are blocked from the market—yet it occurs without any of the procedural safeguards required by EU law.

IV. Conclusion

We urge the Commission to use this evaluation to draw a clear distinction: customs enforcement is for counterfeits and clear infringements, not for complex SEP disputes that belong in courts or arbitration. By confirming the regulation does not apply to SEP-related infringement claims, the Commission can protect legitimate rights while ensuring that small IoT innovators can continue to create jobs, grow the EU economy, and deliver the next generation of connected products.

ACT thanks the Commission for this opportunity to comment on the Evaluation and commits that it will remain available to the Commission if there are any follow-up questions or issues.

Respectfully submitted,

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