

February 20th, 2025

Working Party on Intellectual Property
Members of the Working Party
Council of the European Union
Rue de la Loi/Wetstraat 175
1040 Brussels, Belgium

RE: The European Council deserves a fair chance to review the widely supported Proposed Regulation on standard-essential patents

ACT | The App Association writes on behalf of our European small and medium-sized enterprise (SME) members in response to the European Commission's ill-advised request to withdraw the Regulation on standard-essential patents (SEPs). The consistently high amount of SEP litigation across EU Member State courts, and already at the newly-created Unified Patent Court, further reinforces that the EU SEP landscape is not operating fairly or efficiently, which was also acknowledged in the Commission's rationale for proposing the SEP Regulation. Yet, the Commission wants to withdraw the Regulation it developed, and which the European Parliament then overwhelmingly passed, before the Council could even discuss it. The strength of the EU is predicated on the sincere cooperation between its institutions to set and implement policies that are responsive to identified problems. On behalf of European innovators that advance every critical market sector of the EU, we urge the Council to discuss the SEP Regulation and oppose its withdrawal.

The proposed SEP Regulation was drafted by the Commission to address (1) widely acknowledged ambiguities and information asymmetry/transparency issues plaguing the SEP licensing ecosystem, and (2) demonstrated and ongoing harms to countless European SMEs directly caused by abusive and anticompetitive SEP licensing practices that exploit those ambiguities and asymmetries. Those same harmful practices jeopardise the foundation of open standards the European Union otherwise broadly supports through its policies.

It is crucial that the Council safeguards its essential role in the EU legislative process as a co-legislator in order to protect EU innovators from being left behind in the growing ecosystem for standardised innovation. Standards, such as 5G and Wi-Fi, were developed to ensure that critical technology could support the way industries impact consumer welfare. SEP licensing abuse is the bottleneck that prevents these technologies from providing indispensable solutions to healthcare, sustainability, and safety efforts initiated by the EU.

The proposed SEP Regulation provides the EU with a range of policy changes and processes necessary to creating a more transparent and reliable SEP licensing framework by identifying universal principles that define a SEP holders' FRAND obligation; removing disproportionate barriers to innovation for SMEs; and adopting mechanisms to facilitate required yet non-binding procedures that encourage equitably concluded SEP licenses. In this case, the regulation itself would actually enhance simplification, transparency, and clarity in the SEP licensing landscape. The withdrawal of the EU SEP Regulation would be a significant policy misstep that would cause the EU to fall further behind the global innovation curve.

The Commission's stated intention to withdraw the SEP Regulation raises serious concerns about future of EU standardised innovation, particularly given the broad support the proposal has received from the European Parliament, the Commission itself, and a diverse range of stakeholders, including SMEs. The Council's engagement in discussions on this file remains vital to ensuring a balanced and well-informed outcome.

At this critical moment for both standards-based innovation and the Council's role in European legislative process, we urge the Council to actively engage in discussions on the SEP Regulation and push back against the Commission's attempt to withdraw a proposal that has made significant progress toward a more balanced framework for standardised innovation in the EU.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Sax", with a stylized flourish at the end.

Mike Sax

Founder and Chairperson