

STANDARD-ESSENTIAL PATENTS

Technical standards establish guidelines, specifications, or characteristics for products, services, and processes. They provide common protocols that serve as a baseline for products to interoperate. It is critical that patents voluntarily contributed to a standard – referred to as standard-essential patents (SEPs) – are truly essential to use the standard and are available to any willing licensee on fair, reasonable and non-discriminatory (FRAND) terms.

IMPORTANCE OF SEPS FOR SMALL TECH COMPANIES

Small and medium-sized enterprises (SMEs) drive European innovation and are key to the EU's global competitiveness. The app ecosystem's success, reliant on continued innovation and investment in connected devices and interfaces, benefits from a healthy standards, and SEP, framework. SMEs innovate on top of existing standards and need to license the intellectual property (IP) required to implement standards from the relevant SEP holder. On top of these standards, SME innovators are incented by the standards

system to make significant research and development investments in creating new patentable devices that attract venture capital and establish and maintain their competitive position in the marketplace. SMEs are widely known to be the most innovative creators of new technology and solutions, and they are creating tomorrow's technologies on top of today's standards. Many members of the App Association create smart devices that are connected to other devices and the cloud. This is often referred to as the internet of things (IoT). But smart

devices that cannot communicate with others are not particularly useful. In order to achieve interoperability, SMEs depend on their ability to license SEPs on FRAND terms.



IMPACT OF RECENT REGULATORY ACTIONS

The ability for SMEs to license and implement standards is currently under attack by a handful of SEP abusers and their lack of transparency. This is why the App Association views the proposed EU SEP Regulation as a crucial step towards establishing a transparent and fair SEP licensing framework within the EU. The Regulation aims to address concerns raised by the European Commission in 2017 regarding the SEP licensing landscape and its impact on innovation and competition. The App Association believes that clear guidance and measures to mitigate anticompetitive SEP licensing

practices are essential to foster innovation and support SMEs.

To support innovation and competition, EU policy must reflect key SEP licensing consensus principles, including that SEP licences are made available to all willing stakeholders; that injunctions are awarded only in exceptional circumstances, such as when monetary remedies are not available; that the tying of non-essential patents in with SEP licensing requirements is prohibited; and that SEP royalties are based on the value of the patented technology itself. Where standards

development organisation (SDO) patent policies are insufficient to guide a clear and predictable understanding of FRAND, the European Commission (EC) should provide guidance to its stakeholders.

We recognise the significance of SMEs in the EU economy and their challenges in SEP negotiations due to limited resources. We support the proposed mechanisms under the EU SEP Regulation, to remove significant barriers to competition. We also support a non-binding FRAND conciliation process, aggregate royalty rate determination, and essentiality assessment process performed under the auspices of the EU Intellectual Property Office (EUIPO) and independent expert conciliators and evaluators. EUIPO competence centre procedures proposed in the EU SEP Regulation will allow SEP licensing parties to amicably conclude fair SEP licences and avoid expensive litigation.



The App Association strongly believes that the implementation of a robust EU SEP Regulation is necessary to allow SMEs to thrive and create the next generation of European champions.