

STANDARD-ESSENTIAL PATENTS (SEPS) AND THE FUTURE OF SME INNOVATION

The UK is home to a huge array of talented and innovative small and medium-sized enterprises (SME) that build on technical standards. But abusive SEP licensing practices are a barrier to innovation and economic growth.

UK companies are creating incredible and connected technologies that are addressing many of society's key issues, including manufacturing, healthcare, and sustainability. Technical standards are an important component of this innovation.

WHAT ARE TECHNICAL STANDARDS?

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.

WHY ARE SEPS IMPORTANT FOR SMALL TECH COMPANIES?

SMEs drive UK innovation and are key to the UK's global competitiveness. The app ecosystem's success, reliant on continued innovation and investment in connected devices and interfaces, benefits from a healthy standards system. SMEs that innovate on top of existing standards need to license the intellectual property (IP) required to implement standards from the relevant SEP holder. 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 our most innovative businesses and 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. To achieve interoperability, SMEs depend on their ability to license SEPs on FRAND terms.



WHY DOES SEP LICENSING ABUSE HARM INNOVATION?

The SEP licensing regime in the UK places far too much power in the hands of large SEP holders who frequently use the threat of costly court actions and injunctions to force potential licensees to accept excessive royalty demands or to leave the market.

This misuse of SEP holders' dominant market power disproportionately impacts SME tech companies like our members.

SMEs typically lack resources to negotiate at length or deal with costly legal implications that arise from disputes with big SEP holders. Even worse, many SMEs are often subject to overbroad non-disclosure agreements that prevent them from assessing comparable licenses.



The UK's SEP licensing regime is in urgent need of reform and does not protect the tech SMEs that need it most. It is stymying potential innovation and economic growth.

HOW TO FIX SEP LICENSING IN THE UK

SEP licensing in the UK can be improved with regulatory reform that creates an environment where SMEs can flourish, innovate, and grow, and SEP holders can make fair profits.

This reform must be built upon three central pillars:

1 Any Willing Licensee

Ensuring that a SEP holder upholds their commitment to licensing their SEP on FRAND terms. This commitment means that the SEP holder must negotiate a license in good faith with a willing licensee.

2 Transparency

Delivering a system that ensures SMEs can access basic information on pricing and essentiality to assess if the deal is priced fairly and in line with market rates, and only paying for SEPs that are truly essential to the standard.

3 Protection from Injunctions

Injunctions should only be awarded in exceptional circumstances. Armed with injunctions, SEP holders will have dominant market power in standards, forcing potential licensees into supra-FRAND terms. Injunctions must be limited from breaking the standards system.

The UK Intellectual Property Office (IPO) is responsible for reviewing the SEP licensing regime and has been considering reform for some time. To date, they have created a SEPs Resource Hub for SMEs but made little meaningful progress on reforming the system itself.

Implementing effective reforms will unleash the potential of thousands of tech SMEs in constituencies up and down the UK.