ACT Association for Competitive Technology

29 June 2026

Directorate-General for Trade
European Commission
Brussels, Belgium

Dear DG Trade,

RE: Standard-Essential Patent Licensing in Europe: Judicial Landscape

The Association for Competitive Technology (ACT) submits these views regarding a growing and troubling trend in the SEP licensing landscape. Certain German courts and the Unified Patent Court (UPC) have adopted practices that systematically undermine the voluntary fair, reasonable, and non-discriminatory (FRAND) commitments made by patent holders, distorting the market for standards-based technologies and creating significant barriers to legitimate trade within the European Union and beyond.

These courts leave EU companies that innovate and build products using standards, such as Wi-Fi, cellular, and audio/video compression, with no choice but to accept a global SEP licence on terms dictated by the SEP holder, without requiring those owners—who have voluntarily contributed their patents to standards—to satisfy their obligations to license on FRAND terms. By routinely granting injunctions against implementers without any meaningful inquiry into whether the SEP holder has fulfilled its FRAND obligations, these courts effectively exploit the threat of a sales ban to force acceptance of inflated licensing terms.

German courts and the UPC also frequently impose anti-suit injunctions (ASIs) that prohibit companies from pursuing judicial proceedings in other forums, including the United Kingdom, to determine FRAND royalty rates for SEPs. This judicial overreach threatens innovative product companies and manufacturers who are willing to pay royalties and are simply seeking a judicial determination of a fair rate. In contrast, the UK courts' approach has been largely consistent with TRIPS obligations and does not present the same concerns.

Background: The Importance of Standard-Essential Patents to Innovative Product Companies and Manufacturers

The German and UPC approach to SEPs is a growing problem for companies seeking to innovate in the EU and sell their products across Europe. An increasing share of our members' products depend on collaboratively developed technical standards for interoperability. Yet our members are increasingly unable to secure reasonable and predictable SEP licence rates without facing the threat of injunctive relief.

When standard-setting organisations develop technical standards, patent holders that voluntarily contribute their patented technologies to the standard commit to license those patents on FRAND terms. However, some SEP holders routinely disregard their FRAND promises. Whether explicitly or implicitly, a handful SEP owners frequently refuse to license their SEPs on FRAND terms, needlessly taxing investment and innovation. Alarmingly, this behaviour faces no consequences in certain German courts or in the UPC, where SEP holders are awarded injunctions without any meaningful inquiry into whether they have complied with their own obligations.

The licensing ecosystem suffers from a fundamental lack of transparency, depriving companies of basic information needed to identify what terms are genuinely FRAND. Also, small companies, like our members, often lack in-house expertise to determine SEP validity, essentiality, and FRAND rates, and cannot afford to litigate or risk being enjoined from selling their products in Germany or across Europe where a single injunction can effectively block access to the entire market.

This threat of SEP injunctions creates a 'hold-up' scenario where negotiations are driven not by the patents' value but by the coercive power of potential business disruption, forcing product companies to accept inflated rates that contradict the FRAND commitment. The consequences can be staggering: one study found that Ford faced a potential injunction that would have cost it 200 times the annual royalties sought by the patent holder, based on the projected revenue losses of €6.6 billion and supply chain disruption of up to €1.1 billion.[1] Accordingly, SEP holders are able to obtain rates that are often many times higher than the FRAND rates that are ultimately determined by courts that are willing to adjudicate them, such as those in the U.S. and UK. It is therefore critical that the European Commission take long-overdue steps to prevent SEP licensor overreach by advancing transparency, predictability, and fairness in SEP licensing frameworks.

How the Commission Should Address Diverging Approaches to Global SEP Disputes

As a threshold matter, we strongly encourage the Commission to evaluate the practices of German and UPC courts in light of well-settled EU policy (in particular the Commission's interpretation and application of Article 101 TFEU, and especially Articles 101(1) and 101(3), in the context of agreements between competitors) and of the relevant EU Member State laws under which standard-setting organisations' IPR policies operate (for example, French law as applied through the European Telecommunications Standards Institute's IPR Policy). On a plain reading of these authorities, the practice of awarding SEP injunctions without first assessing whether the SEP holder has honoured its FRAND commitment runs contrary to EU competition policy and to the Member State contract law that gives those FRAND commitments their force.

German and UPC courts and the UK courts have taken fundamentally different approaches to SEP disputes. Unlike the UK courts, which base their decisions on contract law and the SEP holder's voluntary FRAND commitment, the German and UPC courts award injunctions as a remedy for infringement of a SEP without due regard to whether a SEP owner has complied with its own obligations. In doing so, they effectively impose global licenses on potential licensees and improperly use anti-suit injunctions against UK proceedings to support their approach. Some instead seek to cast the UK courts' approach to adjudicating SEP disputes under existing UK law as IP-related barriers to trade and violations of the World Trade Organization's (WTO) Trade Related Aspects of Intellectual Property Rights (TRIPS) Article 28. These characterisations are unfounded.

We urge the European Commission to recognise the fundamental distinction between the approach taken by these German courts and the UPC, and the approach taken by the UK courts. Unlike their UK counterparts, the German and UPC courts do not determine whether SEP owners have met their obligations, nor do they consider whether an injunction is a proportionate remedy. Instead, they liberally grant injunctions that block innovators' access to German and European markets and

[1] Hendrik Fügemann et al, *Economic Impact Assessment of Automatic Injunctions, Microeconomic Study 1: Economic Impact of an Injunction on a Company's Financial Position* 2–3, COPENHAGEN ECON. (Dec. 17, 2024).

rely on overly broad cross-border injunctive orders (anti-suit injunctions and anti- anti-suit injunctions) that restrict parties' ability to enforce or defend TRIPS-protected rights abroad. These practices give rise to the same WTO liability findings that applied to China's anti-suit injunction policy.

By contrast, UK courts operate through contract law interpretation without proactively restricting foreign patent enforcement. The UK's approach, including the issuance of interim licence declarations that are designed to prevent rather than enable SEP hold-up, is consistent with the TRIPS Agreement and does not give rise to the concerns raised in the WTO's ruling against China. The Commission should recognise that UK courts have correctly regarded a SEP holder's FRAND commitment is a binding contractual obligation, and that implementers, as third-party beneficiaries, are entitled to enforce that commitment when SEP holders fail to offer a FRAND licence.

Finally, we encourage the Commission to reaffirm that SEP abuses are, at their core, competition concerns. Once a patented technology is written into a standard, the SEP holder becomes a gatekeeper to every market that depends on that standard, an inherently powerful position that frequently amounts to dominance under EU competition law. When that position is used to extract supra-FRAND terms under threat of injunction, the conduct is not merely a breach of a contractual commitment but an abuse of market power that contravenes the EU's own competition rules. Confronting such licensor abuses on competition grounds protects the European innovators that build on standards, safeguard the investment and innovation those standards exist to promote and reinforce the EU's global competitiveness.

We thank the European Commission for its consideration of our views.

Sincerely,

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