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## **Webinar**

*Standards Essential Patents Regulation*

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27 June 2024



## **Webinar «Standard Essential Patents Regulation»**

### **Agenda, 27 June 2024**

- 15:00 - Welcome and Introduction by Nikolaus Thumm, TU Berlin
- 15:10 - Introduction of StandICT by Emilio Davila-Gonzalez, DG Connect, and StandICT Academy by Knut Blind, Fraunhofer ISI
- 15:25 - Presentation of the SEP regulation by Anne von Zukowski, DG GROW
- 15:45 - Intervention by stakeholders:
  - Agnieszka Kupzok, NOKIA
  - Patrick Hofkens, ERICSSON
  - Roderick Allen McConnell, CONTINENTAL
  - Matthias Schneider, Former AUDI
  - Mirko Böhm, LINUX Europe
- 16:35 - Discussion
- 16:55 - Conclusion and next steps

# Standard Essential Patents

*-SEP COM (2023)  
232 definition-*

- (1) 'standard essential patent' or 'SEP' means any patent that is essential to a standard;
- (2) 'essential to a standard' means that the patent contains **at least one claim** for which it is not possible on technical grounds to make or use an implementation or method which complies with a standard, including options therein, **without infringing** the patent under the current state of the art and normal technical practice;
- (3) 'standard' means a technical specification, adopted by a standard development organisation, for repeated or continuous application, with which compliance is not compulsory;

# New SEPs landscape



**April 2023:** European Commission COM(2023) 232 Final, Proposal for a regulation of the European Parliament and of the Council on Standard Essential Patents

Brussels, 27.4.2023  
COM(2023) 232 final

2023/0133 (COD)

**Feb. 2024:** European Parliament has voted by 454 to 83 in favour of the European Commission's proposal for a new regulation for SEPs.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on standard essential patents and amending Regulation (EU)2017/1001**

# New 'Competence Center'

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- European Union Agency (est. 1994)
- Registration European Union trademark
- Registration Community design
- European Observatory on Infringements of Intellectual Property Rights
- Article 3 'Tasks of the competence centre'



# 1. SEPs Register

(COM (2023) 232)

- Register of standard essential patents (Art. 4)
  - Access for free by any third party
  - SEP holder data
  - FRAND terms
  - Availability through patent pools ...
  - Updates
- Electronic database (Art.5)
  - Patent data
  - Standard terms and conditions
  - Product information
  - Essentiality information
  - Aggregate royalty information
  - Expert opinion



## 2. Essentiality checks (COM (2023) 232, Title V, Art 28-33)

- By independent evaluators
- Reasoned opinion, not legally binding (within 6 months)
- One SEP per patent family only
- Checks
  - Annual sample of registered SEPs by competence centre
  - Proposal by SEPs holder (up to 100)
  - Proposal by implementers (up to 100)
- Appeal with EUIPO Board of Appeal (within 2 months)
- SEP holder may request peer evaluation
- Results of the essentiality checks published in database



### 3. Detailed FRAND determination procedure

9 months maximum  
duration

Shall be initiated by:

- SEP holder
- or implementer (prior to any national court proceedings)

SEP holder request  
should include:

- claim charts
- proof of essentiality

FRAND determination  
shall concern a global  
SEP license (unless  
otherwise specified)

Selection of conciliators  
(Art 39)

Conciliator should  
submit latest 45 days  
before end of time limit  
a reasoned proposal

Competence centre  
shall keep confidential  
the determination of  
FRAND terms and  
conditions (report)



# 4. Small and Medium Enterprise (SME) support measures

- SEP holders shall consider offering more favourable FRAND terms and conditions
- SME FRAND terms can only be a reference with other SMEs
- SEP holders shall consider discounts or royalty-free licensing for low sales volume
- Level of office fees should consider SME situation

# EU Draft Regulations Are A Nightmare For Intellectual Property—And Innovation

Proposed EU regulation on standard-essential patents comes under fire

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05 Jun 2023 | Sponsored Report

The Proposed EU SEP Regulations: A Quiet Move Toward a Top-Down World?

WEDNESDAY, JUNE 21, 2023

Proposed EU SEP Regulation is explicitly not based on any evidence of patent hold-up or hold-out, apart from unverifiable anecdotes

**EU SEP reform gambles Europe's long-term future**

The Commission's proposed overhaul of standard essential patent (SEP) rules puts the EU's leadership in global tech standards at risk.



Thank you!

If you have any questions please contact:

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