

# **SOME COMMENTS ON THE EUROPEAN COMMISSION REGULATION ON SEPS**

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# THE TARGETS

- Transparency of the SEP landscape and FRAND conditions
- SEP Registration
- Essentiality Assessment
- Aggregated Royalty Determination
- FRAND determination

While the targets are well accepted, the question remains: can they be achieved

# THE SEP DATABASE

Issues to be considered:

- Is a new database needed which will be „competing“ with the EPO database and SDO-hosted declaration databases?
- Will users understand why the databases are very different?
- What is the incentive for SEP owners to register a SEP, or more importantly to register all their SEPs?
- Is Article 24 sufficient to nudge SEP owners to register ALL their SEPs?
- Will there be unintended consequences of the obligation to register SEPs?
- Why do we have to educate a new player?

# THE ESSENTIALITY ASSESSMENT

- Does the legislator really understand the required workload for the requested assessments?
- Why are SEPs owned by small enterprises or individuals exempted from the annual selection?

# AGGREGATE ROYALTY ASSESSMENT AND NOTIFICATION

- Again a laudable target!
- But this assessment should not be based on the contents of the SEP database!
- ART should be related to „the value the standardized technology adds to the value of the licensed product“, not to the number of SEPs related to the standard.
- Would an „agency model“ like the German copyright levy system be more appropriate?

# FRAND DETERMINATION

- Interesting concept!
- But why European-centered?
- SEP licenses are usually global, therefore the determination should be performed by a global organization.
- Complex interplay between licensed products, number of SEPs
- Again, the contents of the SEP database cannot be the basis for a determination.

## WHAT ARE THE (UN-)INTENDED CONSEQUENCES OF THE SEP REGULATION BEING IMPLEMENTED?

- Weakening of the role of the UPC – litigation might move to other legislations?
- Weakening of the European Standardization?
- Pools might be created exclusively outside of Europe!
- The input received from EUIPO might be of very limited value in (non-litigation) licensing situations.