

Comments by George Willingmyre, President of GTW Associates on the EU

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Public Consultation on Patents and Standards

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GTW Associates is an International Standards and Trade Policy consultancy. See gtwassociates.com. Willingmyre is president of GTW Associates and was previously Vice President of the American National Standards Institute. The comments are solely the opinion of GTW Associates and are based upon a lifelong career experience in standards policy and active current participation in the committees of various standards developing organizations responsible for the organizations patent policy and procedures. Several recent publications by Willingmyre are also directly applicable: Patent Policies and Standards Setting: The Issues - What Is Going On? Why Should I Care? At http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2435313, and History of the Patent Policy of the American National Standards Institute at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2451165

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GTW Associates
1012 Parrs Ridge Drive
Spencerville, MD 20868

gtw@gtwassociates.com

The GTW comments below are inserted as "changes" to an original office document file of the original questions. Comments should appear in red text.

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The eight key issues for which we are seeking your feedback are:

1. Standardisation involving patents is common in the telecommunication industry and in the consumer electronics industry. Which **other fields of standardisation** comprise patent-protected technologies or are likely to do so in the future? One response to this question entails research of declarations made to standards development organizations that may be outside of the telecommunications and consumer electronics industry. GTW Associates is in process of researching and categorizing declarations made to the American National Standards Institute in this regard. A research paper categorizing declarations made to the American National Standards Institute will be public Spring 2015
2. A variety of **rules and practices** govern standardisation involving patents. Which elements of these rules and practices are working well and should be kept and/or expanded? Which elements on the other hand can be improved? SDO practices regarding patents optimally are responsive to the needs of the particular SDO and its members. One aspect of SDO procedures regarding patents that may become more utilized in the future due to recent legal advice is that dealing with complaints that SDO procedures were not followed.
3. **Patent transparency** seems particularly important to achieve efficient licensing and to prevent abusive behaviour. How can patent transparency in standardization be maintained/increased? What specific changes to the patent declaration systems of standard setting organizations would improve transparency regarding standard essential patents at a reasonable cost? There are many incentives outside the SDO procedures for owners of patents and patent applications to make this known during standards development processes. SDOs would do well to contemplate the disclosure elements in the current essential requirements for American National Standards. The

current procedures do not mandate disclosure rather describe what is to happen when disclosure occurs.

4. Patents on technologies that are comprised in a standard are sometimes **transferred** to new owners. What problems arise due to these transfers? What can be done to prevent that such transfers undermine the effectiveness of the rules and practices that govern standardisation involving patents? Major global standards organizations have procedures or are adding procedures addressing transfer of patents for which some declaration of license has been made. A key aspect of SDO procedures in this regard is NOT to create new liability for a party that has agreed to condition transfer of ownership of encumbered patents for the actions of subsequent owners who may not honor the commitments made by the first owner even when the transferred documents condition the transfer. SDO Procedures in this regard ought to have implications for participating parties that may be completed by some actions and not open ended. It would be helpful to have data on the scope of this matter so that answers to the question "What problems arise due to these transfers?" are not hypothetical answers rather the answers are data about current real problems.
5. Patent pools combine the complementary patents of several patent holders for licensing out under a combined licence. Where and how can **patent pools** play a positive role in ensuring transparency and an efficient licensing of patents on technologies comprised in standards? What can public authorities and standard setting organizations do to facilitate this role? The role of patent pools needs to be addressed separately from the matter of standards development.
6. Many standard setting organizations require that patents on technologies included in their standards are licensed on "**fair**", "**reasonable**" and "**non-discriminatory**" (FRAND) terms, without however defining these concepts in detail. What principles and methods do you find useful in order to apply these terms in practice? The ANSI criteria describe an additional option whose implications have not yet been subject of legal interpretation. The relevant ANSI text is **under reasonable terms and conditions that are demonstrably free of any unfair discrimination**. This construction has worked well in practice.
7. In some fields standard essential patents have spurred disputes and litigation. What are the causes and consequences of such disputes? What **dispute resolution mechanisms** could be used to resolve these patent disputes efficiently? See answer to question 2 above. GTW favors options where parties have many options to address disputes. Where there is contention that procedures of an SDO have not been followed the appeals processes of the SDO itself will take on greater significance.
8. How can holders of standard essential patents **effectively protect** themselves against implementers who refuse to pay royalties or unreasonably delay such payment? How can it be ensured that **injunctions** based on standard essential patents are not used to (a) either exclude companies from implementing a standard or (b) to extract unreasonable, unfair or discriminatory royalties? In the United States the right to petition government such as for example by a patent owner seeking some remedy such as an injunction alleging that some potential licensor has not accepted a proffered license is based on the Constitution of the United States. GTW believes this right to "seek" some government imposed remedy is an entirely separate matter than whatever may be the outcome of the legal or governmental process that applies to consideration of the overture. GTW believes that whatever processes apply to the legal or governmental consideration of specific facts should be allowed to work. SDOs may choose procedures

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containing requirements in this regard that will be responsive to members interests and will be considered by participants in the SDO activity. Also owners of patents or patent applications may freely state whatever they may want to state regarding their intentions about future license offers for standards essential patents. GTW believes that patent policies represent a balance of multiple interests. GTW is aware of anecdotes where potential licensees initiate legal proceedings against patent owners alleging patent invalidity or anticompetitive actions. These can be expensive undertaking. If an SDO establishes conditions applicable to patent holders then for the sake of balance there should be some counterpart an SDO also establishes applicable to potential licensees.

Q 1.1.1 Fields of standardisation involving patents: To your knowledge, in which technological areas and/or fields of on-going standardisation work are patents likely to play an increasingly important role in the near future? What are the drivers behind this increase in importance?

Q 1.1.2 Trends and consequences:

Do you see a general trend towards more/less standards involving patents? Are there any practical consequences of this trend? Are business models changing? Helpful would be verifiable data in this regard. GTW completed a study in 2014 (see Patent Policies and Standards Setting: The Issues - What Is Going On? Why Should I Care? At http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2435313, where the frequency of patent disputes is in the order of magnitude of one in 1000 to one in 10000 standards.

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Q 1.1.3 Standardisation prevalence/complexity: In general, do you observe an increasing role of (any type of) standardisation in your fields of activity/interest? Are standards becoming more, or less, detailed and comprehensive? How does this trend impact on the functioning of the standardization system? No answer

Q 1.1.4 Standardisation in support of innovation: Do you consider that standardisation involving patents contributes to innovation and to the uptake of new technologies? If so, in which areas? Would technologically neutral standardization promote innovation equally well in these areas? Should standardisation be less specific by excluding those elements that are covered by patents? GTW believes that the standards process can benefit from inclusion of essential patents. Thus GTW disfavors options where standards that include essential patents might not be created

Questions on the decision to include patented technologies into a standard

The next questions relate to cases where there is a choice on whether or not to base a standard on a patented technology. This can either be the choice to keep the respective standard free of any patented technologies or the choice to include an additional patent-protected technology into a standard that will in any case comprise patent-protected technologies. You can find information as regards the decision to include a patented technology into a standard in sub-section 5.7 of the Study.

Q 1.2.1 Issue of over-/under-inclusion: Are there fields of standardisation in which you consider that standards include too many patented technologies? Are there areas in which standards would benefit from including more patented technologies? Please explain. No answer

Q 1.2.2 Criteria for inclusion decision: What should be the criterion/criteria to use when deciding on whether or not to base a standard on a patented technology and/or to include a further patent-

protected technology into a standard? How can a possible cost and benefit analysis be done? What could be used as benchmarks? ANSI criteria for inclusion of patented technology in an American National Standards is "if it is considered that technical reasons justify this approach" SDOs may or may not choose to record such "technical reasons" however it is noteworthy this condition exists.

Q 1.2.3 Process for deciding on inclusion: Who should take the decision of including (or not) patented technologies into a standard? Should the entity suggesting the patented technology for inclusion be asked to justify the inclusion? If so, what elements should be covered, at minimum, in the justification? See answer to 1.2.2

Q 1.2.4 Disputes over inclusion: Are you aware of legal disputes over a decision to include (or not) a patented technology into a standard? What were the main facts and what was the outcome of the dispute? Some comprehensive data applicable to this question would be welcome.

Questions on other links between standards and patent-protected technologies

The main focus of this public consultation is on the situation where a standard directly and explicitly includes a patent-protected technology.

However, two other links between patents and standards are also frequently discussed in the standardization community:

First, the situation where a standard does not refer to any particular patented technology (in other words it is technologically neutral) but where the standard can in practice only be implemented by using one or more technologies that are patent-protected.

Second, the situation where a product implements a standard but also includes patent-protected technologies which cumulatively (1) cannot be designed around technically and (2) are so important to the customer that the product cannot be sold without the patent-protected technology.

The following questions aim at gathering your views on these two situations. It should be noted that both situations are structurally different from the situation otherwise covered in this public consultation. The patent holder will regularly not have consented to the link between the standard and its patented technology and will also not have given any licensing commitment. We therefore also ask on the patent holder's defences in this situation.

Q 1.3.1 Pertinence of these two situations: To your knowledge, has any of the two situations occurred? If yes, where and how often? In your answer, please explain in detail why the respective conditions specified above were fulfilled. What were the consequences? No answer

Q 1.3.2 Defences by the patent holder: Do you see a risk that a standard setting process could be abused to obtain (preferential) access to patent-protected technologies? Has this happened? Please explain. How can the patent holder defend his/her rights? Helpful would be actual data to elaborate the scope of the hypothetical situation

Questions on "best rules and practices"

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The following questions allow you to submit your views on rules and practices that you find particularly interesting or useful. If you intend to answer the more detailed questions below (Key issues 3-8), please use Questions 2.1.1-2.1.3 to submit observations that you don't cover when answering the more detailed questions. Question 2.1.3 is targeted at stakeholders who have experience with several standard setting organizations.

Q 2.1.1 Best rules and practices: A variety of rules and practices govern standardisation involving patents. Which elements of these rules and practices are working well and should be kept and/or expanded? Which elements on the other hand can be improved? Would you consider it helpful if standard setting organizations would be more explicit about the objectives of their patent policies?

[No answer](#)

Q 2.1.2 Trends and initiatives: The pertinent rules and practices are constantly evolving. Do you see any particular trends? What are recent improvement initiatives that you find promising or worthwhile of attention? Are there initiatives outside the SSO domain that you find helpful (e.g. patent quality initiatives by patent offices)?

[no answer](#)

Q 2.1.3 Differences in SSO rules and practices: Do you see significant differences between SSOs in terms of their patent policies and/or treatment of standard essential patents in practice? If so: What are the practical consequences of these differences? Which of these differences (if any) pose problems? Which of these differences are justified? [SDO patent policies are and should be directly responsive to the interests of the participants. Thus it is reasonable and understandable different SDOs have different patent policies. The patent policy of an organization is an element of its competitive position in the global market. Thus participants and members of an SDO may freely choose to participate in an activity or to not participate in an activity. However it is clear that many globally focused businesses might benefit from commonality among SDO patent policies. The common patent policy of ITU, IEC and ISO is a good example of commonality in this regard. GTW is aware of current efforts among the three to reach consensus on possible revisions to the current common policy and guidelines](#)

Key issue 3 – Patent transparency

Objective of this section and definitions

This section of the consultation relates to transparency regarding standard essential patents.

For the purpose of this consultation, **transparency** should be understood as relating to the ease with which interested parties can establish the patent situation relevant to an area of standardisation. This would cover the existence of particular patents, their scope, ownership, validity, enforceability, and essentiality for a standard. Transparency may be relevant during the discussions leading up to the formal decision on a standard (**ex ante**) but also afterwards when standard-compliant products are marketed (**ex post**).

The efforts of standard setting organizations to achieve patent transparency are based on obligations of their members to declare patents to the respective standard setting organization which then makes these declarations available to the other members or to the public. However, other types of stakeholders such as patent offices, also contribute to patent transparency.

Accordingly, we are particularly interested in:

- The relevance of patent transparency in practice and the different areas or aspects where more patent transparency would be beneficial;
- The different forms of patent declaration obligations and their respective costs and benefits;
- The various ways of handling patent declarations in practice by standard setting organizations;
- Measures to increase patent transparency beyond the system of patent declarations.

You can find background information on patent transparency in Chapters 4.2 and 5.2 of the Study.

Respondent profile with regard to this section

If you wish to reply to this section of the public consultation, please ensure that you mention in your submission any special type of experience you have regarding patent transparency and/or experience with the patent declaration system used in many standard setting organizations (e.g. if you declare numerous patents; if you are a provider of services to increase patent transparency).

If you are both a holder of standard essential patents as well as an implementer of standards including patented technologies, please specify, where pertinent, from which of those perspectives you are answering a particular question.

Questions on the relevance of patent transparency

The first set of questions concerns your views on the relevance and level of patent transparency in the fields of standardisation of interest to you. The questions also aim at identifying the causes of a possible lack of transparency as well as the consequences thereof.

The matter of transparency is directly related to the aspect of SDO procedures applicable to patent disclosure. It would be most helpful in this regard to collect current data whether lack of disclosure is currently creating problems. GTW is aware of some historical anecdotes where lack of disclosure created specific problems. However GTW is not aware that non disclosure of patents during standards setting is resulting in current problems.

Q 3.1.1 Scope of transparency issue/Priority areas: Is there sufficient patent transparency in the fields of standardisation that are of interest to you? In which of these standardisation field(s) is patent transparency particularly good and in which field(s) is it insufficient? Please explain.

Q 3.1.2 Ex-ante transparency: In your experience, is there sufficient knowledge about the relevant patent situation during the discussions leading to the setting of standards? Have you experienced a situation where a standard was decided based on significantly incorrect assumptions about the relevant patent situation? What were the causes of such incorrect assumptions and what were the consequences? Could all relevant stakeholders participate in the discussions?

Q 3.1.3 Ex-post transparency: Either as licensor or as licensee, how do you initiate the licensing of the relevant patents? What are the means of identifying the relevant patents, the patent holders, the potential licensees, etc.? What are the respective costs of collecting information on the patent situation?

Q 3.1.4 Non-transparent aspects: In those areas where you deem patent transparency insufficient, what aspects of the patent situation are insufficiently transparent: (1) existence of patents, (2) validity of patents, (3) essentiality of the patents for the pertinent standard, (4) ownership of the

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patents, (5) enforceability of the patents, (6) coverage of patent by existing licences/pass through and (7) others? Please explain.

Q 3.1.5 Consequences/risks: What are the consequences of insufficient patent transparency? What risks occur, and what are the (financial) impacts if these risks materialize? If appropriate, distinguish between ex-ante/ex-post transparency and between the different aspects of patent transparency above.

Q 3.1.6 Cost of coping individually: How do you deal with situations where you perceive that patent transparency on one or several aspects of interest to you is insufficient? Do you gather information pro-actively or do you wait to be contacted (e.g. by patent holders requesting royalties, by implementers asking for licences)? What costs are involved in dealing with situations of low patent transparency?

Questions on the content of the declaration obligation

The second set of questions concerns the obligation imposed by many standard setting organizations on their members to formally declare the patents relevant for the respective standardisation work. We are interested in hearing your views on key aspects of such declaration obligations.

Q 3.2.1 Trigger of obligation: Patent declaration obligations could be triggered either by membership of a standard setting organization, or by participating in a specific standardisation project or by having directly suggested a (patented) technology for a draft standard. What are your views on the respective triggers (advantages, disadvantages)?

Q 3.2.2 Required effort: What effort should be required from a patent holder in identifying relevant patents in his portfolio? Should these efforts be contingent on the degree to which the patent holder participates in a specific standard setting process (for example whether or not he has actively contributed the technology in question)?

Q 3.2.3 Process of declaration: If you are a patent holder active in a standard setting body that requires patent declarations, how do you comply, in practice, with the obligation to declare specific patents? What are the concrete steps undertaken to identify such specific patents, and what parts of your organization are involved?

Q 3.2.4 Costs of declaration: What are the costs involved in complying with an obligation to declare specific patents? What are the respective costs of (1) identifying patents and (2) informing the standard setting organization? Would you search for patents in your own portfolio that relate to a standard, even when there is no obligation from the SSO patent policy? If yes, would your approach differ in process and thus in cost? Please be as specific as possible.

Q 3.2.5 Blanket declarations: Some standard setting organizations require their participants to declare that, in general, they hold essential patents over a standard without requiring that these participants identify each of these patents specifically. Do you believe that such declarations provide for enough transparency? Please justify your answer, where necessary distinguishing situations where you consider that this approach is sufficient from those where you do not. [Blanket disclosure of intention to license patents that may become essential to a standard on some pre agreed condition is positive. SDO procedures should not dissuade owners of patents or patent applications from making such blanket assurances.](#)

Q 3.2.6 Scope/detail: Where standard setting organizations require that patent holders identify the relevant patents individually, what information about the patent should be transmitted? Only the patent number or other aspects? What are the respective benefits and costs of requiring that the patent holder also (1) specifies to which part of the respective standard the declared patent belongs and/or (2) explains why the patent is relevant for the standard?

Q 3.2.7 Consequence of non-compliance: What should be the consequences if a patent holder has failed to comply with its declaration obligation (for the standard, for the patent holder, for licensing negotiations)? Should the respective standard setting organizations take action and what should this action be? Are the consequences of non-compliance sufficiently clear in your experience? [An SDO must provide for consequences on participants when its procedures are violated. In the case of the ANSI the consequence that some element of the ANSI essential requirement was not followed is that the subject standard would not be recognized as an American National Standard. That SDOs have some means to address assertions that their procedures were not followed is important and may become more important in the future due to legal decisions that faulted participants for not completing relevant procedures in an SDO](#)

Questions on the quality of patent declarations

The third set of questions concerns possible your experience with the patent declaration system. The transparency ensured by this declaration obligation depends on the accuracy of the information provided, both at the time of the declaration (initial accuracy) and subsequently over the lifetime of the standard.

As regards this second aspect, there are a number of events that can cause an initially correct patent declaration to become factually incorrect, such as (1) the final version of the standard is different from the draft version at the time of the declaration, (2) the patent is invalidated, (3) the scope of the granted patent differs from that of the declared patent application, (4) the ownership of patent changes.

Q 3.3.1 Initial accuracy: In your experience, what is the reliability of patent declarations at the time when they are made? In which fields of standardisation and on which aspects of the declaration would initial accuracy need to be improved? What causes of initial inaccuracy are particularly detrimental to the usefulness of patent declarations? [No answer](#)

Q 3.3.2 Updating requirement: Should declarants be asked to update their patent declarations at key events such as those mentioned above? What would be the respective advantages and disadvantages? [No answer](#)

Q 3.3.3 Check of declarations: Should the quality of patent declarations be submitted to a check by someone other than the declarant? Who should perform this check (peer review by members of the standard setting organization; standard setting organizations themselves; third parties on behalf of the standard setting organizations; patent offices; etc.)? What should be the scope of the check (essentiality for the standard; validity; enforceability; other)? Who should bear the cost of such a check? If you think the declarant should bear (part of) the cost, how can it be prevented that this creates an incentive to disrespect the declaration obligation? [No. SDOs typically avoid evaluation of patent validity else they take on legal liability for such action](#)

Q 3.3.4 Essentiality check (in particular): Depending on your answer to the above question, how can the essentiality check be performed in practice? What are the average cost of checking essentiality (for third parties) and what could be done to minimize these costs? Do you see a set-up of such a check that is particularly cost and time efficient? How can it be avoided that this check creates incentives for not respecting the declaration obligation?

Questions on the handling of declared information

The fourth set of questions concerns the practical aspects of the patent declaration system. This includes the ways that the declared information is made available to interested parties.

Q 3.4.1 Publication: Should standard setting organizations make the declared patent information publicly available? Do you see any impacts on the protection of personal data? Under what conditions would it be justifiable to restrict access or to charge for access? [Yes, GTW is completing an analysis of the patent declarations made to the American National Standards Institute. GTW is aware of several other comprehensive databases of patent declarations and license assurances.](#)

Q 3.4.2 Ease of access: What are your views about the various methods used by standard setting organizations to make the declared information available? Which methods do you find particularly useful and why? [No answer](#)

Q 3.4.3 Combining information: Some standard setting organizations combine declared information with information drawn from other sources, such as patent offices. What are your views on this? In what forms and to what fields of standardization could this be expanded? What sources of information (in addition to patent offices) could be used and what types of information could be added? [No answer](#)

Questions on transparency improvements beyond the system of declarations

The fifth set of questions relates to possible tools to increase patent transparency other than the system of patent declarations used by standard setting organizations.

Q 3.5.1 General question: What can be done to increase standardisation-related patent transparency other than to strengthen the system of patent declarations used by standard setting organizations? [Important to collect data indicating the scope of problem that would be addressed by increased transparency](#)

Q 3.5.2 Public patent landscaping: Public patent landscaping in the context of standardisation would be an exercise where (1) patents that are relevant to the particular technological/product area to which the standard relates are identified and (2) this information is then shared with all interested parties. Do you see benefits of such public patent landscaping and in which areas would this be particularly useful? Who should perform this exercise (e.g. patent offices, commercial service providers, public authorities) and how could this exercise be financed? [No answer](#)

Key issue 4 – Transfer of standard essential patents (SEPs)

Objective of this section and definitions

This section of the consultation addresses issues related to the transfer of standard essential patents.

Particular focus will be on situations where after such a transfer, the patent is no longer owned by the entity that is a member of the SSO. In such situations, the acquiring entity will not necessarily have subscribed to the rules of the SSO such as the commitment to licence the respective patent on FRAND terms.

The Horizontal Antitrust Guidelines¹ specify that, in order to ensure the effectiveness of the FRAND commitment, there needs to be a requirement on all participating IPR holders who provide such a commitment to ensure that any company to which they transfer their IPR is also bound by this commitment. This could be, for example, implemented through a contractual clause between buyer and seller.

Please note that some questions in Section 2 of this consultation concern transparency as regards patent ownership transfers. Please feel free to cross-reference, in case you reply to both sections.

You can find background information on the transfer of standard essential patents in chapter 5.6 of the Study.

Respondent profile with regard to this section

If you wish to reply to this section of the public consultation, please ensure that you explain in your submission the type of experience you have/had with SEP transfers and, in particular, whether this experience was gained as a buyer or seller of SEPs. Where appropriate, please specify to which business activity, product group, standardization field etc. your respective observations apply.

Questions on the prevalence of transfers and their causes and consequences

The first set of questions aims at gathering your views on the prevalence, causes and consequences of SEP transfers.

Q 4.1.1 Prevalence: How common is it, in your area of activity or interest, that standard essential patents are transferred? Are standard essential patents transferred more, or less, often than other patents? Do you see any trend in the transfer rate? Do transfers usually concern individual patents or larger patent portfolios? See answer provided above. GTW believes that most SDOs are taking steps to address the potentiality of transfers of ownership of patents where previous license assurances were made. Important here is NOT to create additional liability for a participant for the actions of some later party if the first participant has completed whatever procedures the SDO has in this regard

Q 4.1.2 Issues and consequences: In your experience, what are the typical issues that arise in the context of transfers of standard essential patents? Are such transfers leading to more or less fragmentation of SEP ownership? Are these transfers leading to more or less disputes/litigation? What is their impact on royalty rates for the transferred patents and on the total royalty rate for all patents essential for a standard? Actual data would be helpful

¹ Communication from the Commission "[Guidelines on the applicability of Article 101 of the TFEU to horizontal co-operation agreements](#)".

Q 4.1.3 Non-practising entities: Have you encountered transfers of standard essential patents to entities that do not produce or market products including the technologies covered by these standard essential patents? What particular consequences have you observed? [Actual data would be helpful](#)

Questions on the effectiveness of the current rules

The following questions ask for your experience with the effectiveness of the current rules and practices when standard essential patents are transferred.

Question 4.2.4 specifically concerns the "license of right" concept existing in some Member States. Under this concept a commitment to licence SEPs on reasonable and non-exclusive terms can be tied to the patent itself.

Q 4.2.1 Impact on effectiveness: Is there a risk that SEP transfers circumvent existing patent policy rules of standard setting organizations or render them less effective? Please explain and if possible cite specific examples. [GTW not aware that transfers of SEPs is a current problem. Data would be helpful](#)

Q 4.2.2 Specific rules: In your area of interest, are there specific rules governing SEP transfers and what is your experience with them? Where there are no specific rules, would you see a need for such rules? What should be their objectives (achieving transparency about ownership, providing legal/business certainty, reducing litigation risks, facilitating smooth licensing process, fostering research and innovation activity, etc.)? [ANSI has recently revised its procedures to include transfers of patents.](#)

Q 4.2.3 Transfer of FRAND commitment: How can it be ensured that the new owner of the transferred SEP is bound by the FRAND licencing commitment given by the initial owner? What can standard setting organizations do in this regard? What do the sellers of the SEPs need to do? Should the licencing terms (including royalty rates) practiced by the initial owner influence the interpretation of the concept of "FRAND" for the new owner? [No answer](#)

Q 4.2.4 License of right: Have you been involved in the use of a License-of-Right system? What benefits and risks are, in your opinion and experience, linked with this? Are there important differences across national jurisdictions that reduce the reliability of License-of-Right provisions? [No](#)

Key issue 5 – Patent pools related to standardisation

Objective of this section and definitions

This section of the consultation concerns the role that **patent pools** play or could play in standardisation. We especially are interested in knowing your views on:

- Possible benefits of standard-related patent pools and difficulties in setting them up;
- Organizational links between standardisation and patent pool creation;

- Incentives for voluntary participation in patent pools.

For the purpose of this public consultation the term "patent pool" is defined as an arrangement by which two or more holders of patents agree to licence these patents under a joint licence to each other and/or third parties.

You can find background information on standard-related patent pools in chapter 5.3 of the Study.

Respondent profile with regard to this section

If you wish to reply to this section of the public consultation, please ensure that you explain in your submission the type of experience you have with patent pools and whether this experience is as a patent pool contributor, as a patent pool administrator/facilitator and/or as a licensee of a patent pool. Your answer can cover on-going or failed attempts at patent pool creation.

Questions on benefits and costs of patent pools

The first set of questions aims at obtaining your views on the possible benefits of patent pools and on difficulties in realizing these benefits.

Q 5.1.1 Target areas: What are the situations/external factors which render a patent pool useful? Are you aware of specific standards for which a patent pool would be useful but where there has been a failure to create one? [No answer however see general response above that patent pools are a separate topic from standards setting](#)

Q 5.1.2 Benefits of patent pools: What are the benefits of patent pools in the above situations (Q 5.1.1) respectively for patent holders and/or patent users? What aspects in patent pool governance are particularly relevant in practice to ensure the realization of these benefits? [No answer](#)

Q 5.1.3 Alternatives to patent pools: What alternatives to patent pools do you see to achieve efficient licensing in situations where ownership of patents which are essential to a standard is widely dispersed? [No answer](#)

Q 5.1.4 Difficulties of pool creation: What are the main difficulties in setting up a patent pool and how can they be addressed? Are there differences in national law or its application across countries of the EU/EEA or worldwide that make patent pool creation more difficult? [No answer](#)

Q 5.1.5 Costs of pool creation: What are the costs involved (do you have estimates)? What do these costs depend on? How are they usually (pre-)financed? [No answer](#)

Questions on the incentive for patent pool participation

The second set of questions concerns the incentive for patent holders to license their patents via a patent pool. Please note that Question 5.2.2 applies to situations where patent pool creation would be beneficial but where it has failed (follow-up to Question 5.1.1).

Q 5.2.1 Decision to participate in pool: What factors influence a patent holder's decision to participate in a pool or not? [No answer](#)

Q 5.2.2 Incentives for pool participation: How can this balance be influenced positively? What incentives can be provided by public authorities and/or standard setting organizations to increase patent pool participation? [Why should public authorities strive to increase patent pool participation? Participation or not in a patent pool seems a private matter. If there is a legitimate government stake such as a procurer of products meeting some standards it could be meaningful for the government to state its requirements in a procurement specification.](#)

Questions on the organizational links

The third set of questions concerns the organizational links between standardisation and patent pool creation.

Q 5.3.1 Right moment for pool creation: What is the right moment in the standard setting process to start the process of creating a patent pool? What part of work on setting up a patent pool start could/should be done in parallel to the standard setting discussions? [No answer](#)

Q 5.3.2 Role of SSOs: What contribution can standard setting organizations make with regard to patent pools? Should they provide guidance patent pools? Should they provide and/or select patent pool administration services? [Just to observe there are costs and benefits associated with patent pool administration that any SDO must contemplate](#)

Q 5.3.3 Role of public authorities: What contribution can public authorities make to facilitate patent pool creation? [Repeat question why should government facilitate patent pool creation?](#) What role could publicly owned patents play? Are there specific features of non-EU legal systems that could be useful also in the EU? Under what conditions and to what purpose would public financial support be beneficial?

Key issue 6 – Notions of "fair", "reasonable" and "non-discriminatory"

Objective of this section and definitions

The present section of the consultation concerns the commitment to licence standard essential patents on "fair, reasonable and non-discriminatory" (FRAND) terms.

Many standard setting organizations require that their members give such commitments. The FRAND concept is also used in other contexts. In general, the meaning of "fair and reasonable" and of "non-discriminatory" is not explained in detail in the patent policies of standard setting organizations.

We are particularly interested in your views on:

- The definition of the terms "fair" and "reasonable";
- The guidance available on this topic and the so-called ex ante mechanisms in SSOs;
- Specific issues with "fair" and "reasonable" in portfolio licenses and cross-licenses;
- The application of "reasonable" on the overall, cumulative royalties;
- The royalty base and the level in the value chain where licensing takes places;
- The concept of non-discrimination.

You can find background information on FRAND aspects in chapter 5.5 and parts of 5.1 of the Study.

Respondent profile with regard to this section

If you wish to reply to this section of the public consultation, please ensure that you mention in your submission any type of experience you have regarding FRAND licensing.

If you are both a holder of standard essential patent as well as an implementer of standards involving patents, please specify, whenever pertinent, from which of those perspectives you answer a particular question.

Questions on the understanding of and experience with "fair" and "reasonable"

The first set of questions relates to your understanding of the terms "fair" and "reasonable" and your practical experience with these concepts. Methodologies for defining FRAND discussed in the literature are for example:

- definition by reference to the incremental value of the technologies adopted in the standard in comparison to alternative technologies that were rejected;
- definition focusing on the value of the technology before the standard was adopted;
- definition by reference to the market value of similar transactions outside of the standardization context;
- definition by reference to the actual transactions relevant to a given standard (if possible) or similar standards.

Q 6.1.1 Notions "fair" and "reasonable": How, in your view, should the terms "fair" and "reasonable" be understood? Which of the above methodologies do you consider particularly appropriate, which other methodologies do you find important and what could be an appropriate mix of references? [See above answer that the ANSI Essential requirements uses the construction, "under reasonable terms and conditions that are demonstrably free of any unfair discrimination"](#)

Q 6.1.2 Examples of non-FRAND licences: Are you aware of cases of licenses of standard essential patents that, according to you, do not fulfil the FRAND terms and conditions? Please be as specific as possible. [The answers to this question would be improved if there was some qualification by the maker more than "according to you,"](#)

Q 6.1.3 Time required for negotiations: In your experience, how long does it take, on average, to negotiate FRAND terms? What does the length of negotiations depend on? Is it more or less difficult/fast to reach an agreement on FRAND terms and conditions for standard essential patents licenses compared to other similar patent licensing deals? [No answer](#)

Q 6.1.4 Initial offer or outcome: Do the terms "fair" and "reasonable" relate to the initial offer of the patent holder or to the actual outcome of negotiations? Are you aware of FRAND adjudication cases where there was a large difference of terms and conditions between the last offers of the licensor on the one hand and the last offer of the licensee on the other? [No answer](#)

Q 6.1.5 Other methods of ensuring reasonableness of licensing terms and conditions: Can patent pool prices for a given standard be a proxy for FRAND terms and conditions? What are the limits of the use of patent pools as a proxy? How can bias coming from such a method be avoided? [GTW is aware that some owners of standards essential patent pools do not participate in applicable patent pools.](#)

Questions on guidance and mechanisms

This set of questions explores your views on the existing guidance and mechanisms on how FRAND could be better defined.

Q 6.2.1 Existing guidance: To your knowledge, what guidance on FRAND definition already exists (regulators, standard setting organizations, courts)? Which of this guidance do you consider as particularly useful? Would you welcome additional guidance? If so, on what specific aspects of FRAND? Most relevant is the specific assurance that an owner makes, It could be that SDOs use forms that contain specific language. There are many anecdotes what might be consistent with a RAND assurance. It could be helpful to assemble the text of some of these in one place

Q 6.2.2 Unilateral ex-ante disclosure: Would you welcome a larger role for unilateral ex-ante disclosure of licensing terms in order to facilitate the licensing of SEPs? What form could it take? How should SSO mechanisms be shaped to facilitate this instrument? Should they be mandatory or voluntary? Should the disclosure only concern the most restrictive terms? SDO procedures should provide for the voluntary Ex ante disclosure of specific terms and conditions. GTW is aware of 2 examples at IEEE-SA subsequent to the 2007 revision of the IEEE-SA patent policy that made such ex ante voluntary disclosure a part of the IEEE-SA process.

Q 6.2.3 Ex-ante setting of parameters: Alternatively, would it be efficient to set FRAND parameters - within the limits of competition law - at the beginning of discussions of a technical committee within or outside an SSO in order to facilitate the future FRAND licensing? Such parameters could be: the royalty base (at end product or component level, if component what component (s)), royalty type (lump sum, per unit price, percent value of a product/component). What other parameters could be discussed upfront to make licensing more practical, without violation of competition rules? The answer depends upon identification of the specific problem that would be solved by such.

Portfolio licencing, cross licencing and "freedom to operate"

This set of questions explores issues of FRAND in the case of portfolio licencing and comprehensive licences that are constructed to ensure "freedom to operate" or "patent peace".

Q 6.3.1 Advantages of portfolio licencing: What are the advantages of portfolio licences respectively for the patent holder and for the implementer? How important is the so-called "freedom to operate" or "patent peace" between companies? Please cover in your answer also issues of scope (e.g. geographic scope, product scope, inclusion of future patents). No answer

Q 6.3.2 Determination of portfolio license value: How can the value of licences over large portfolios be determined if there is disagreement over the validity, essentiality/infringement or enforceability of (some) patents included in the portfolio? Is sampling (i.e. the review of a representative set of patents) a good approach for the evaluation of a patent portfolio? If so, how should sampling be done? No answer

Q 6.3.3 Cross-licenses: What are the advantages of cross-licensing? What problems arise? How do the concepts "fair" and "reasonable" apply to cross-licensing? GTW is aware that cross licensing

occurs and so long as there is no violation of antitrust or competition law cross licensing is an approach SDOs or government would be wise not to discourage or disallow. One unhelpful approach in this regard would be to require some monetary license assurance in all instances of a license assurance

Overall/cumulative royalty requests

This set of questions concerns situations where a multitude of patents held by different entities are bearing on a specific product so that the licensee needs (royalty-bearing) licences from a multitude of patent holders. For the purpose of this consultation, this situation is called "royalty stacking". This set of questions explores the pertinence of the issue as well as solutions other than patent pools (for patent pools see Section 5).

Q 6.4.1 Pertinence and impacts: In your experience how common is royalty stacking and in which areas of past, ongoing, or planned standardization does it exist or will it likely occur? What problems arise in such situations? How do individual companies deal with such situations and what are the (financial) costs? No answer but data would be helpful

Q 6.4.2 Co-ordination mechanisms: What forms of voluntary co-ordination mechanisms are, or could be, efficient for situations of royalty stacking? Should they be limited to a single standard, or cover families of standards, or cover all standards related to a type of product? How can the abuse of such mechanisms, for example by a group of dominant license-takers, be avoided? No answer

Q 6.4.3 Method for allocating value: In order to improve methods to deal with royalty stacking and for adjudicators to find proportionate FRAND value, what are best ways to allocate value between patent holders of a given standard? How can the proliferation of patent applications in case of simple patent counting be avoided? No answer

Questions on the royalty base and the value chain level

This set of questions concerns the level in the value chain on which SEP licensing takes place. This is linked to the "base" on which royalties are calculated.

Q 6.5.1 Current business practices: On what level of the value chain (e.g. component, bundle of components, final product) does SEP licensing currently take place in the fields of standardization in which you are active/interested? Is this business practice applied by all patent holders/implementers or are there different business practices? No answer

Q 6.5.2 Royalty base: How should the royalty base be selected to allow licensing for different types of products (products that rely entirely on a given standard or set of standards, or rely mostly on a set of standards or on multiple technologies)? For a given implementation of a standards in a product, to what extent would it be desirable or feasible that the royalty type be streamlined, e.g. in a percentage of the product value, royalty per unit sold, or lump sum? No answer

Q 6.5.3 Need for clarity: Is this issue, in your opinion, currently addressed in the patent policies of the standard setting organizations in your area of activity/interest? Is there a need for more explicit rules or should this be left open? SDOs may choose procedures in this regard but a consideration is that this specific criteria may have implications for the competitive global position of the SDO

Q 6.5.4 Impacts of changes: What are the advantages of giving or denying the patent holder the right to licence only on one level in the value chain and thus of allowing or prohibiting that he refuses licences to implementers on other levels? Please distinguish between impacts on patent holders, on component makers, on end product makers and on the standardization system itself. Important that whatever procedures SDOs apply are voluntarily accepted by participants, and that any procedures in this regard apply from some point forward and not retroactively

Questions on the "non-discrimination" principle

This set of questions concerns your views and your experience with the "non-discrimination" element of the FRAND commitment. Please note that the issue of where in the value chain licensing happens - which is sometimes discussed under this heading - is already covered in questions Q 6.5.1-6.5.4 (above).

Q 6.6.1 Definition in practice: In your opinion, what is the best definition of the non-discrimination principle? What aspects of non-discrimination do you find important? Is there sufficient clarity on what non-discrimination means and how it is to be applied in practice? Does the non-discrimination principle relate to the initial offer of the patent holder or the actual outcome of negotiations? Does it relate to an offer isolated to a single standard or to multiple standards? Do you consider that the non-discrimination principle creates obligations on the (potential) licensee? The ANSI construction "under reasonable terms and conditions that are demonstrably free of any unfair discrimination" provides in practice for "reasonable discrimination"

Q 6.6.2 Pertinence: In your experience, is the non-discrimination commitment sometimes/often broken? In what ways is it broken? Please provide examples. Is there sufficient transparency about licensing terms to allow participants to assess whether they are discriminated against? No answer

Q 6.6.3 Justification for discriminations: Are there any reasons why individual implementers could be excluded from the obligation to license to (reciprocity)? What would justify different terms and conditions for FRAND licenses? It seems to me that reasonable discrimination would include the holder of an essential patent withholding a license from a potential licensee that also controls an essential patent to the same or related set of standards and who refuses to license that patent under assurances it has made.

Q 6.6.4 Cash-only/cash-equivalent: One idea discussed in the standardization community in order to make licensing terms comparable in cases, where non-cash elements such as cross-licenses are used with some implementers, is to foresee that a cash-only offer is made. What is your opinion on this? Should this idea apply only in some instances and, if so, in which? Should this be a genuine self-binding offer or would a cash equivalent estimation of non-cash components be preferable? Not helpful as mandatory but SDOs should not discourage any such voluntary statement

Q 6.6.5 Other mechanisms/differences in national jurisdictions: What other mechanisms for ensuring non-discrimination are you aware of? What are their respective costs and benefits? Where and how should they be implemented (at standard setting organisations or in regulations)? Are there differences across national jurisdictions in the EU/EFTA or worldwide that negatively impact on these solutions? No answer

Key issue 7 – Patent dispute resolution

Objective of this section and definitions

This section of the consultation concerns the role that **alternative dispute resolution (ADR)** plays or could play in resolving disputes over standard essential patents.

For the purpose of this section, the term "disputes" refers to disagreements that are not resolved in the process of negotiation. The term "alternative dispute resolution" includes dispute resolution mechanisms other than one party to the dispute litigating against the other.

We are especially interested in your views on:

- The prevalence, causes and impacts of disputes over standard essential patents;
- The benefits and costs of providing alternative dispute resolution mechanisms;
- The integration of dispute resolution mechanisms into the standardisation process and the incentives for participants to use them;
- The substantive and procedural aspect of setting up such dispute resolution mechanisms.

You can find background information on standard-related patent pools in chapter 5.4 of the Study.

Respondent profile with regard to this section

If you wish to reply to this section of the public consultation, please ensure that you explain in your submission the type of experience you have had with dispute resolution mechanisms and, in particular, whether this experience was gathered as an adjudicator/judge, representative of a party or other (patent holder, potential licensee or other).

Questions on the prevalence and impacts of SEP disputes

This set of questions concerns the prevalence and impact of disputes concerning standard essential patents.

Q 7.1.1 Pertinence of the issue: In your experience how often do disputes over SEPs arise, notably in comparison to patents that are not standard essential but comparable? Are there typical circumstances that make disputes particularly likely to arise? What role do business models or product life-time cycles have in this regard? [GTW is conducting research on this regard to patent assurances at ANSI. Helpful would be specific data. GTW published an estimate cited above of the frequency of patent disputes to be one in one thousand to one in ten thousand standards.](#)

Q 7.1.2 Main areas of disputes: What are the main areas of disputes over SEPs (infringement/essentiality, validity, value, etc.)? How are these areas related in the practice of negotiations and litigation? [No answer](#)

Q 7.1.3 Cost of disputes: What are the typical costs of settling SEP disputes? What factors drive these costs in practice and to what extent? How do firms try to minimize costs? [No answer](#)

Q 7.1.4 Impact of disputes on standardization: Do you perceive an impact of disputes on the standardization work itself? Do standardization participants foresee future disputes and adapt their behaviour during the standardization process accordingly? [No answer](#)

Questions on benefits and costs of dispute resolution mechanisms

This set of questions aims at determining your views on the possible benefits and costs of alternative dispute resolution mechanisms for SEP disputes.

Q 7.2.1 Usefulness of alternative dispute resolution: In your experience, does ADR currently play an important role in resolving SEP disputes? Is it regularly considered/discussed when SEP disputes arise? Do you see any trend in its prevalence? GTW is not aware that ADR has played any role resolving SEP disputes. In this regard GTW point of view is that ADR is one of many options that parties to disputes might contemplate. If a government or SDO specifically mandates use of ADR then there must be some rationale to support the mandate for ADR over other possibilities

Q 7.2.2 Target areas: Which situations/external factors render an alternative dispute resolution mechanism particularly useful? In what areas of patent based standardisation would ADR be particularly useful? No answer

Q 7.2.3 Suitable forms of ADR: What form of ADR (mediation, arbitration, other) do you consider suitable for what type of conflict? No answer

Q 7.2.4 Benefits of ADR: What are the benefits of alternative dispute mechanisms applied to SEP disputes respectively for patent holders and/or patent users? What are the most important conditions to ensure that these benefits materialize?

Q 7.2.5 Difficulties and costs: What are the main difficulties and costs for parties in agreeing to and setting up a given dispute resolution mechanism? What do the costs depend on? Do rules on ADR differ between jurisdictions and does this create problems? No answer

Questions on the integration of dispute resolution mechanisms into the standardisation process

This set of questions aims at obtaining your views on how to integrate dispute resolution mechanisms into the standardisation process. We are also interested in learning your views on whether and how to create incentives for SEP holders and standard implementers to use such ADR mechanisms for their SEP disputes.

Q 7.3.1 Your experience: Are you participating in SSOs that have ADR mechanisms? To your knowledge are they being used? If so, what are the experiences? If they are not used, why not? No

Q 7.3.2 Role of SSOs: To what extent and how should SSOs be involved in the creation and provision of alternative dispute resolution mechanism? Should procedural aspects be further defined in SSOs in order to facilitate the use of ADR? SDOs ought to have some process to address assertions their procedures were not followed. SDO involment in resolution of disputes over whether any specific statement such as a letter of assurance has been or not been followed carries potential liability that an SDO must evaluate

Q 7.3.3 Incentives to use ADR: What incentives are necessary for parties to use ADR? Please explain those incentives depending on the type of ADR mechanism and/or type of dispute concerned. No answer

Q 7.3.4 Voluntary/mandatory: What are the benefits and risks of making ADR mandatory for the resolution of SEP disputes? What consequences would this have for participation in standardisation, for licensing negotiations and for the implementation of a standard? If ADR would be made mandatory: Should it be linked to membership in SSOs, or to the fact of contributing a patented

technology to a standardisation process, or other? Should there be an opt-in/opt-out possibility at the declaration stage? Should ADR replace litigation completely or should it be a mandatory step (e.g. mediation) before litigation? [GTW favors SDO encourage of voluntary resolution of disputes that might include ADR and others. SDOs should however remain free to choose whatever procedures that might address ADR that SDOs believe is in their and their members interests](#)

Questions on setting up such dispute resolution mechanisms

This set of questions aims at obtaining your views on the substantive and procedural aspects of tailoring alternative dispute resolution mechanisms to the specificities of SEP disputes.

Q 7.4.1 Specificities of ADR for SEP disputes: Which particular features should ADR mechanisms have in order to be (more) suitable for SEP disputes? What would constitute a ADR mechanism "tailor-made for SEP disputes"? [No answer](#)

Q 7.4.2 Scope of ADR: Which issues such as rate, validity, essentiality and infringement should be addressed by ADR in SEP disputes? Which territory should be covered? When is the adjudication of a global license suitable and when not? Should ancillary claims also be addressed and if so, how? [No answer](#)

Q 7.4.3 Procedure: What procedural issues have you experienced in relation to ADR for SEP disputes? What procedural features are particularly important for resolving SEP disputes? What degree of procedural discretion should be left to the arbitrator? Should there be an appeals procedure and if so, in what form? [GTW is not aware there has been any use of ADR to date resolving a standards and patent related dispute. There could be helpful data collected in this regard.](#)

Q 7.4.4 Timeframe: What would be a reasonable timeframe for dispute resolution mechanisms? In which cases is an accelerated procedure suitable? In what procedural and/or substantive ways should this accelerated procedure differ from the regular one? [No answer](#)

Q 7.4.5 Transparency: Should the outcomes of ADR be made public in order to achieve transparency? If only partially, which part? And in what form? [No answer](#)

Q 7.4.6 Forms of ADR: Are there forms of decision making by the arbitrator that you consider particularly suitable for SEP disputes? If so, in what situations and why? Is the concept of baseball arbitration, where the arbitrator resolves the dispute by choosing either the offer of the patent holder or the offer of the implementer, a practical form to settle SEP disputes? [No answer](#)

Key issue 8 – Unwilling implementers and injunctions

Objective of this section and definitions

This set of questions aims at gathering your views on **efficient protections** for holders of standard essential patents against implementers who are unwilling to take licenses for these patents as well as on the use of injunctions for infringement of a standard essential patent.

For the purpose of this section, **injunctions** are defined as lawsuits against implementers of technologies covered by standard essential patents based on an alleged infringement of these patents and seeking to have the products of such implementers banned from specific markets in a particular jurisdiction.

The Commission has recently adopted **two antitrust decisions** in this area². These decisions state that a patent holder, including a holder of SEPs, is generally entitled to seek and enforce injunctions as part of the exercise of its IP rights. However it can, under specific circumstances, be a violation of EU antitrust law to seek or enforce an injunction against a willing licensee after having given a FRAND licencing commitment. In the context of these decisions, the notion of willingness is referred to as the willingness to enter into a license agreement on FRAND terms and, in case of dispute, to submit to third party adjudication.

Q 8.1 Defences for patent holder: What needs to be done to ensure that holders of standard essential patents have effective means of obtaining appropriate remuneration for their patents and to defend themselves against implementers who are unwilling to pay royalties or who delay payment of such royalties? What can standard setting organizations do in this regard? SDOs must assure that their patent policies are “balanced” in this regard. So if there is some new requirement applicable to owners of essential patents whatever obligation is created for the patent holder ought to be “balanced” by some obligation on the part of implementers.

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Q 8.2 Protection against abuses: How can it be ensured (at the same time) that injunctions based on standard essential patents are not abused to either exclude companies from implementing a standard or to extract unfair, unreasonable or discriminatory royalties from them? GTW is unaware that existing legal processes applicable to granting injunctions are not working as they should work. This underpins the GTW contribution above that unless patent holders made some voluntary statement of intentions with respect to injunctions, or for example that some SDO has applicable procedures that apply to injunction seeking behaviour and that membership in such SDO is a voluntary act that a participant elects, the seeking of an injunction is a matter in the US of a Constitutional right to petition government. If there is some flaw in the process that applies to the consideration of some legal allegation then that procedural flaw should be addressed.

Q 8.3 Prevalence of injunctions: According to your experience, in which fields of standardization and in which situations are/were injunctions based on standard essential patents threatened and/or actually sought? What are/were the consequences? Please be as specific as possible. No answer

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Q 8.4 Consequences of banning injunctions: Are you aware of national jurisdictions that have banned injunctions based on standard essential patents or that have restricted injunctions even against unwilling implementers (court cases or legislative changes)? Did this impact on the licensing negotiations, on the royalty rates and/or on the risk of getting no remuneration at all? How did patent holders reacted in these jurisdictions? No answer

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Q 8.5 Awareness among stakeholders: In your experience, is there sufficient awareness among standardization participants of the recent EC antitrust decisions cited above? What role can standard setting organizations play in ensuring awareness of these antitrust decisions? On what aspects of the issue as such would you welcome additional guidance, if any? It is important for the global consideration of patent policies in standards setting for there to be broad awareness of legal interpretations such as the reference above to EC antitrust decisions. But also for balance important that any organization make clear its mandate. It is a danger that positions of one part of an

² http://ec.europa.eu/competition/antitrust/cases/dec_docs/39985/39985_928_16.pdf and http://ec.europa.eu/competition/antitrust/cases/dec_docs/39939/39939_1502_5.pdf

organizations such as the EU will be promoted but that relevant positions by other parts of the same organization may not be promoted.