



POSITION PAPER

ANEC reply to EC consultation on patents and standards

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1. Introduction

From a consumer point of view, the issue of patents in standards is closely linked to the issue of interoperability of products and services. Software, in particular, is dependent on its capacity to communicate with other programs and applications in order to benefit consumers. Lack of software interoperability can have negative impacts on consumers such as high costs, inability to switch devices, “lock-in” effects, etc.

The abuse of Intellectual Property Rights (IPRs) in the standards process, especially where software standards are concerned, can lead to a company controlling a market; to end-user costs increasing, and to limiting interoperability for consumers. However, these problems are also and foremost caused by vertical business models and anticompetitive behaviour, to the detriment of consumer interests.

With the widespread use of digital technologies in many consumer products such as household appliances, cars and energy provision systems, it can be expected that interoperability issues will happen in other sectors than the telecommunications and ICT sectors.

Up to the present - with very few exceptions - the existing IPR policies of the ESOs and their international counterparts - requiring licences for essential IPRs in standards to be issued on (F)RAND terms and conditions - have worked well, although not all ICT companies actually participate in the standards processes concerned. However, an efficient licencing system of IPRs in standards needs to be accompanied by robust enforcement of competition rules across the board: both are essential to ensure consumers benefit.

ANEC welcomes the opportunity to contribute to the public consultation of the on “Patents and Standards: A modern framework for standardisation involving intellectual property rights”¹. We answer only those questions we consider relevant from a consumer perspective.

¹ http://ec.europa.eu/enterprise/policies/industrial-competitiveness/industrial-policy/intellectual-property-rights/patents-standards/public-consultation/index_en.htm

2. ANEC replies

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?

With the widespread use of digital technologies in many consumer products such as household appliances, cars and energy provision systems (e.g. smart meters/grids), it might be expected that interoperability issues will happen in other sectors than the telecommunications and ICT sectors.

However, it is difficult to predict whether the technologies and software used will be proprietary, and thus lead to the inclusion of essential patents in standards. The success of digital products and systems is based on a high degree of interoperability. Although it is important to ensure that patents in standards do not constitute an obstacle to interoperability, it is equally important for policymakers to enforce competition rules.

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?

The early/ex-ante declaration of essential patents in standards according to the ESOs' (and their international counterparts') policies on IPRs is an effective way to avoid problems and disputes in the standardisation process.

Changes to the IPR policies and rules of the standards bodies should be undertaken only where there is full justification: additional requirements placed on IPR- holders may delay valuable standardisation with little benefit, or may even deter future participation in standards processes to the detriment of interoperability.

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?

Transparency can be increased by the regular updating of databases of disclosed patents. In addition, better collaboration between the ESOs and the national and European Patent Offices could improve the quality of information in the databases.

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?

Defining what FRAND means requires achieving a fair balance among different stakeholders, so promoting innovation and technological diversity. Patent policies in standardisation must balance the incentive to develop standards for new products and services with the incentive to invest in Research and Development (R&D).

From the consumer point of view, a clear definition of FRAND - based on the present practice and jurisprudence - might help in reaching a common understanding of the rights and obligations of patent owners in the standardisation process.

ENDS.

3. Acknowledgements

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About ANEC

ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and conformity assessment, as well as related legislation and public policies.

ANEC was established in 1995 as an international non-profit association under Belgian law and is open to the representation of national consumer organisations in 33 countries.

ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.



Raising standards for consumers

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