



Sophia Antipolis, 13 February 2014

EUROPEAN COMMISSION
DG Enterprise and Industry
Unit A4 – Industrial Competitiveness Policy
for Growth
45 avenue d'Auderghem
1040 Brussels
BELGIUM

By email to ENTR-SEP@ec.europa.eu

Dear Sir/Madam,

I am pleased to submit our response to the questionnaire, dated 14 October 2014 of the European Commission, issued as part of its consultation on Patents and Standards 'A modern framework for standardisation involving intellectual property rights' ("Questionnaire"). I am also attaching, as an annex, a link to ETSI's relevant rules.

I would like to draw to your attention that ETSI is an association with more than 750 members from 64 countries, and that neither the ETSI General Assembly representing all ETSI Members, nor the ETSI Board have mandated me to submit an answer on behalf of ETSI Members. Therefore, this submission was authored solely by the ETSI Legal Director and Legal Advisor and approved by myself in my capacity of Director General, and has not been submitted to the ETSI members. Any views contained herein cannot therefore be taken to represent the views of any part of the ETSI membership.

Please do not hesitate to contact us, for any question or remark you may have.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'L' and 'R' intertwined, with a horizontal line crossing through the middle.

Luis Jorge Romero Saro
Director General

Respondent Profile

Please find hereafter the information requested in the consultation:

- Submitting organization: ETSI (European Telecommunications Standards Institute)
Disclaimer: As stated earlier, the responses provided hereinafter are provided by the ETSI Director General, based on ETSI's existing policy objectives and directives, and do not represent the views of the ETSI membership. Therefore, where an opinion is expressed, "ETSI" shall be understood as "ETSI Director General".
- Type of respondent: not-for-profit association "loi 1901", recognized by the European Union as a European Standards Organization (Annex 1, Regulation 1025/2012)
- Location of headquarters: 650 Route des Lucioles, 06921 Sophia Antipolis Cedex, FRANCE
- Contact details:
 - Luis Jorge Romero Saro, ETSI Director General
luis.romero@etsi.org
 - Christian Loyau, ETSI Legal Director
Christian.loyau@etsi.org
+33 4 92 94 42 60
 - Maïssa Bahsoun, ETSI Legal Advisor
maïssa.bahsoun@etsi.org
+33 4 92 94 42 47
- ETSI is not registered to the EU Transparency Register

Annexes:

- 1) ETSI's response to the Questionnaire
- 2) ETSI IPR Policy, ETSI Guide on IPRs, ETSI Guidelines for Antitrust Compliance and ETSI Directives

Annex 1
ETSI's response to the
Questionnaire

Key Issues 1 and 2: Scope of standardisation involving patents; best rules and practices	
Prevalence and effect of standardisation involving patents	
1.1.1 Fields of standardisation involving patents	<p>ETSI is a producer of globally applicable standard for ICT, including fixed, mobile, radio, converged, broadcast and internet technologies.</p> <p>ETSI believes that patents are likely to play an increasingly important role in all fields of standardisation in the future, examples of which include mobile and wireless technologies, all forms of connected devices (including vehicles), connected communities (including smart cities), electronic security identification and security mechanisms, etc.</p> <p>In ETSI's opinion, the main driver behind this increasing role of patents and of SEPs is the source of revenues. Indeed, patent holders' incentive to contribute to standardisation is to get an adequate and fair reward for the use of their SEPs in the implementation of ETSI standards (see ETSI IPR Policy, section 3.2).</p>
1.1.2 Trends and consequences	<p>There is an increase in the number (i) of patents involved in standards and (ii) of standards. There is therefore an increase in the number of standards involving patents.</p> <ul style="list-style-type: none"> ✓ The following figures reflect the increase in standards in ETSI: in 1990, 18 deliverables* were published; in 2013, 2031 deliverables were published. In aggregate, since 1988, 34601 ETSI deliverables have been published, including 4559 European Standards. (Note: deliverables* include Technical Specifications, Technical Reports, ETSI standards, European Standards, ETSI Guides, Special Reports, Group Specifications) ✓ The number of Essential Patents (including basis patents and other members of the patent families) declared to ETSI as of today is 215698.

	<p>Convergence of technologies has led to convergence of standards implemented in standards compliant products. Standardized products involve more and more standard essential patents.</p> <p>ETSI believes business models are changing but patent holders are better suited to answer this question.</p>
1.1.3 Standardisation prevalence / complexity	<p>Yes, ETSI does observe an increasing role of standardisation in the field of ICT.</p> <p>ETSI believes standards are becoming both more comprehensive and more complex.</p> <p>This trend impacts the functioning of the standardisation system in terms of support provided by the ETSI Secretariat, interplay between the different ETSI technical bodies and coordination with other SSOs or fora and consortia.</p>
1.1.4 Standardisation in support of innovation	<p>Yes, ETSI believes that standardisation involving patents contributes to innovation and to the uptake of new technologies, in particular in the ICT field, but not only.</p> <p>It is ETSI's objective to create standards that are based on solutions which best meet the technical objectives of the European telecommunications sector. To achieve this objective, ETSI does not favour any particular path (standards involving patents vs. technologically neutral standards).</p> <p>As to whether standardisation should be less specific so that it would more likely exclude elements that are covered by patents, ETSI believes it is not within its remit to take a decision on this, but it is rather up to its members to take this decision, when relevant, in the respective technical committees of ETSI.</p>
Decision to include patent technologies into a standard	
1.2.1 Issue of over-/under-inclusion	<p>While technical decisions are decided by members in the relevant technical committees, it is generally ETSI's approach to choose the best technical solutions available for its standards, whether or not such solutions are patented or not.</p>

1.2.2 Criteria for inclusion decision	<p>There is no criteria for including or not a patented technology into a standard. The inclusion of a patented technology into a standard, if any, is a consequence of the technological choice made by the relevant technical committee as a whole.</p> <p>In any case, ETSI's policy forbids discussions on IPR issues in Technical Bodies (see ETSI Guide on IPRs, section 4.1 §1 and ETSI Guidelines for Antitrust Compliance, Section D.2).</p> <p>However, disclosure of SEPs should be done in a 'timely fashion' (see ETSI IPR Policy, article 4.1). Members have to use reasonable endeavours to make disclosures of SEPs at the earliest possible time following their becoming aware of SEPs. For those members that participate at meetings, it is specified that they should respond at the earliest possible time to the 'Call for IPRs' performed by Technical Body Chairmen at the beginning of each meeting. At various points in time (submission of a proposal, first draft, approval of draft, formal approval) the participants are reminded of their obligation.</p>
1.2.3 Process for deciding on inclusion	<p>There is no such process in ETSI. The inclusion of a patented technology into a standard, if any, is a consequence of the technological choice made by the relevant technical committee as a whole.</p> <p>ETSI has no opinion on the second and third questions.</p>
1.2.4 Disputes over inclusion	<p>ETSI is aware of disputes over inclusion of technologies, which, in the majority of cases, contain underlying patents.</p> <p>E.g. TruePosition filed a lawsuit in the US, alleging that ETSI/3GPP and other corporate defendants violated U.S. antitrust laws by conspiring to restrain competition in the relevant markets for high accuracy cellular-based positioning technology and radio access network equipment, and in particular by preventing TruePosition's Uplink Time Difference of Arrival positioning technology from being included in 3GPP Technical Specifications relating to LTE. In that case, the technologies of both plaintiff and defendants were patented technologies. The litigation, at the end of the discovery phase, was closed by the signature of a confidential settlement agreement between ETSI and TruePosition.</p>

Links between standards and patent-protected technologies	
1.3.1 Pertinence of these two situations	ETSI does not take position on the two situations described.
1.3.2 Defences by the patent holder	ETSI does not take position on the question asked.
“Best rules and practices”	
2.1.1 Best rules and practices	<p>ETSI's rules and practices have worked well so far, including:</p> <ul style="list-style-type: none"> the ETSI IPR Policy, in particular <ul style="list-style-type: none"> ✓ ex-ante disclosure of SEPs ✓ Transfer of FRAND undertaking in case of transfer of ownership of SEPs (See answers to Key issue 4 below) the ETSI Technical Working Procedures.
2.1.2 Trends and initiatives	<p>Yes, ETSI sees two major trends:</p> <ul style="list-style-type: none"> adoption of rules governing transfer of FRAND undertaking in case of transfer of ownership of SEPs (see Key issue 4 below) increased cooperation with patent offices in order to facilitate prior art search and consequently improve patent quality. <p>ETSI is playing a leading and active role in sharing prior art in his possession for search examination purposes of patent offices. For example, ETSI/3GPP standards & technical specifications are all directly available to the EPO and ETSI provides the EPO with all necessary information to improve their prior art search tools.</p>
2.1.3 Differences in SSO rules and practices	<p>Yes, the main differences with IPR regimes like ETSI's one, are:</p> <ul style="list-style-type: none"> royalty-free regimes (e.g. W3C) or combination of different IPR regimes (royalty-free or FRAND regime, depending on the technical committee) (e.g. OASIS, IEEE) negative disclosure (e.g. DVB Project) mandatory arbitration (e.g. DVB Project)

Key Issue 3 – Patent transparency		
Relevance of patent transparency		
<i>Note: Discussions on this topic have recently started in the ETSI IPR Special Committee, where a certain number of topics of enhancement have been suggested. Work on the topic of patent transparency is expected to continue in the upcoming meetings of the ETSI IPR Special Committee.</i>		
3.1.1 transparency Priority areas	Scope of issue /	The more standards and products are complex, the more the need for patent transparency is important.
3.1.2 transparency	Ex-ante	Yes, today, in principle there is sufficient knowledge, however in some cases a lack of transparency was noted and therefore the concept of 'Patent Family' was added to the ETSI IPR Policy for improving the patent transparency. (See ETSI IPR Policy, sections 4.3, 6.2 and 15.13).
3.1.3 transparency	Ex-post	ETSI cannot comment on this as ETSI is neither licensor nor licensee.
3.1.4 aspects	Non-transparent	Transparency could be improved with respect to existence, validity, and essentiality of patents.
3.1.5 risks	Consequences /	Insufficient patent transparency with respect to essentiality related to the standard, may cause infringement issues. Insufficient patent transparency may cause anticompetitive issues (e.g. abuse of dominant position) and royalty stacking problems as well.
3.1.6 individually	Cost of coping	ETSI cannot comment on this as ETSI is neither licensor nor licensee.
Content of the declaration obligation		
3.2.1	Trigger of obligation	ETSI's IPR Policy imposes on its members an obligation to use reasonable endeavours to inform ETSI in a timely fashion of their own SEPs or of SEPs owned by third parties (members or non-members) (see ETSI IPR Policy, section 4.1). Members submitting a proposal have an obligation, on a bona fide basis, to draw the attention of ETSI to any of that member's IPR which might be essential if that proposal is adopted. Such an obligation is triggered by membership in ETSI and stressed by participation in an ETSI Technical Body. (see ETSI IPR Policy, section 4.1) It should also be noted that any non-member can disclose its

	<p>SEPs to ETSI.</p> <p>The disclosure obligation set forth in the ETSI IPR policy is usually fulfilled by ETSI members and therefore works well.</p>
3.2.2 Required effort	<p>Required effort is based on reasonable endeavours. Members submitting a proposal have to disclose SEPs on a bona fide basis, regardless of whether or not they are included into a patent portfolio. (see ETSI IPR Policy, section 4.1)</p> <p>There is no requirement to do an IPR search (see ETSI IPR Policy, section 4.2).</p> <p>Disclosure is required for granted patents and patent applications.</p> <p>ETSI Guide on IPRs, section 2.1.1 §3, provides recommendations regarding disclosure of SEPs within a patent portfolio.</p>
3.2.3 Process of declaration	ETSI cannot respond as ETSI is not a patent holder.
3.2.4 Costs of declaration	ETSI cannot respond as ETSI is not a patent holder.
3.2.5 Blanket declarations	<p>In ETSI, a declarant can make a 'General Declaration' by which it either anticipates that it might own SEPs in the future, or simply indicates that should it ever have such SEPs, it is willing to give a FRAND undertaking with respect to these SEPs.</p> <p>In principle, a General Declaration should be followed by a more comprehensive declaration, called 'IPR information statement and licensing declaration' (ISLD) which contains an annex containing details about SEPs, as the submission of a General Declaration does not take away the obligation for members to disclose SEPs. The ISLD should be submitted to ETSI as soon as the declarant is in a position to provide further information about its SEPs. (See ETSI Guide on IPRs, sections 2.1.1 and 2.1.3)</p> <p>Members are encouraged to make such General Declaration, because the submission of a General Declaration reduces the risk of the standards making process being blocked due to IPR constraints. (See ETSI Guide on IPRs, section 2.1.1)</p>

3.2.6 Scope/detail	<p>Members are required to use specific templates for their IPR disclosures and FRAND undertakings (see ETSI IPR Policy, section 6bis and ETSI Guide on IPRs, section 2.1.3).</p> <p>ETSI will therefore systematically request SEP holders to provide two elements in order to reflect an IPR declaration in the ETSI IPR database: (i) the application and/or publication number of the declared SEP and (ii) the ETSI standard to which the SEP is essential.</p>
3.2.7 Consequence of non-compliance	<p>ETSI Directives provide expulsion of a member in case of substantial breach. (see Rules of Procedure, Section 1.4.2)</p> <p>Other alternatives could be considered but have not been discussed/agreed in ETSI. One could for example think of compelling the patent holder to grant a royalty-free licence with respect to its non-declared SEPs, where the patent holder has deliberately hidden its SEPs.</p>
Quality of patent declarations	
3.3.1 Initial accuracy	ETSI has no elements in its possession to assess the reliability of the IPR declarations made to ETSI.
3.3.2 Updating requirement	<p>There is no obligation on ETSI members to update their IPR disclosures. Nevertheless, members are encouraged to update and complete their IPR disclosures (see ETSI Guide on IPRs, Section 2.1.4).</p> <p>Other alternatives could be considered but have not been agreed in ETSI. SEP holders could be asked to update their IPR declarations at the following stages:</p> <ul style="list-style-type: none"> - granting of the patent, where the patent application has been declared as essential to ETSI; - publication of the ETSI standard, where the patent has been declared as essential to an ETSI draft standard; - decision of invalidity and/or non-essentiality of a patent declared as being essential to an ETSI standard/ETSI draft standard.
3.3.3 Check of declarations	<p>ETSI believes that the checking of patent validity is not within its remit and that this is the responsibility of national patent offices and courts. (see ETSI Guide on IPRs, sections 3.2 and 3.2.1)</p> <p>ETSI believes that the checking of patent essentiality, if needed, should be done by a third party, in order to be</p>

	neutral. ETSI does not take a position on who should bear the costs associated with the checking of patent essentiality.
3.3.4 Essentiality check	In order to minimize such costs, SEP holders could provide sufficient information with respect to the essentiality of their patents.
Handling of declared information	
3.4.1 Publication	Yes. ETSI Rules of Procedure mandate the making available to the public of IPR declarations made to ETSI.
3.4.2 Ease of access	ETSI took the decision to make all information regarding SEPs declared to them, available to the public in an online database.
3.4.3 Combining information	<p>ETSI is of the opinion that cooperation with patent offices such as the EPO, USPTO, JPO, KIPO - is highly beneficial. For example, if SEPs declared to ETSI are 'recognised' by the patent database to which ETSI IPR online database is linked (Espacenet), the user of the ETSI IPR online database will be able to click on a link to Espacenet to get further information with respect to the patent in question.</p> <p>Among other sources of information, decisions of patent invalidity rendered by courts, could be better reported to patent offices and SSOs in order for them to update their patent databases.</p>
Transparency improvements beyond the system of declarations	
3.5.1 General question	Patent transparency could be improved by (i) improvement of patents quality and by (ii) a better visibility and understanding of companies' licensing policies.
3.5.2 Public patent landscaping	ETSI believes that information available from patent offices, SSOs' IPR databases and publicly available reports on patent landscape is sufficient.
Key Issue 4: Transfer of standard essential patents (SEPs)	
Prevalence of transfers and their causes and consequences	

4.1.1 Prevalence	ETSI has noticed an increase in transfer of patents, regardless of whether or not they are SEPs.
4.1.2 Issues and consequences	ETSI has adopted a new provision in its IPR Policy (article 6.1bis) on transfer of FRAND undertakings in case of transfer of ownership of SEPs. ETSI believes that issues that might arise in the context of transfer of SEPs, are properly covered by such provision.
4.1.3 Non-practising entities	Yes, ETSI has encountered several transfers of SEPs to entities that do not produce or market products including technologies covered by the SEPs.
Effectiveness of the current rules	
4.2.1 Impact on effectiveness	Yes, such a risk exists unless a specific provision in the SSO IPR Policy governs such transfer. (see our answer to Q4.1.2)
4.2.2 Specific rules	Please see our answer to Q4.1.2 above.
4.2.3 Transfer of FRAND commitment	ETSI believes article 6.1bis of its IPR Policy is a good example of what could be done by SSOs to explicitly require SEP holders to have the future owner(s) of the transferred SEP bound by the FRAND licencing undertaking given by the initial owner.
4.2.4 License of right	ETSI is not aware of "License-of-Right" issues related to ETSI standards.
Key Issue 5 – Patent pools related to standardisation	
Benefits and costs of patent pools	
5.1.1 Target areas	ETSI's policy is outside the scope of interest of this section 5.
5.1.2 Benefits of patent pools	Ditto
5.1.3 Alternatives to patent pools	Ditto
5.1.4 Difficulties of pool creation	Ditto

5.1.5 Costs of pool creation	Ditto
Incentive for patent pool participation	
5.2.1 Decision to participate in pool	Ditto
5.2.2 Incentives for pool participation	Ditto
Organisational links	
5.3.1 Right moment for pool creation	Ditto
5.3.2 Role of SSOs	Ditto
5.3.3 Role of public authorities	Ditto
Key Issue 6 – Notions of “fair”, “reasonable” and “non-discriminatory” <i>Note: The topics of “fair” and “reasonable” are currently under discussion in the ETSI committee dedicated to IPR issues (ETSI IPR Special Committee) and as of today no consensus has been reached by ETSI members on how to define “fair” and “reasonable”.</i>	
Understanding of and experience with “fair” and “reasonable”	
6.1.1 Notions of “fair” and “reasonable”	<p>In 2003 and 2006, discussions about what FRAND could mean took place in ETSI but no consensus was reached and the topic was closed.</p> <p>The meaning of “fair” and “reasonable” could be inspired by guidance already provided by several sources:</p> <ul style="list-style-type: none"> • The European Commission, in its Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (§289-291 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011XC0114%2804%29&from=EN) • Court decisions

6.1.2 Examples of non-FRAND licences	ETSI has not been a party to any confirmed case of unfair and/or unreasonable commitment and cannot therefore comment on this.
6.1.3 Time required for negotiations	The present question relates to bilateral licensing negotiation between patent holders and implementers, on which ETSI has no views.
6.1.4 Initial offer or outcome	<p>The ETSI IPR Policy refers to the undertaking that the SEP holder is prepared to give an irrevocable licence on FRAND T&Cs, which consequently reflects the outcome of a negotiation.</p> <p>Yes, ETSI is aware of a legal dispute where FRAND adjudication was far from the offer made by the patent holder.</p>
6.1.5 Other methods of ensuring reasonableness of licensing terms and conditions	ETSI's policy is outside the scope of interest of this question.
Guidance and mechanisms	
6.2.1 Existing guidance	See our answer to Q 6.1.1 above.
6.2.2 Unilateral ex-ante disclosure	<p>In ETSI, SEP holders have no obligation to disclose any licensing terms with respect to their SEPs. However, a SEP holder (member or non-member) may disclose ex-ante its licensing terms, using a link to its licensing terms.</p> <p>ETSI is simply acting as a depository, where SEP holders can make available information on how and where to access licensing terms relating to these SEPs, and provide links to URLs, which contain the details of licensing terms and conditions, so that information about the availability of licenses can be disseminated to all users of ETSI standards. This option has never been used so far. (see ETSI Guide on IPRs, section 4.1 and http://www.etsi.org/about/iprs-in-etsi/ex-ante-disclosures)</p>
6.2.3 Ex-ante setting of parameters	ETSI does not know if the setting of ex-ante parameters would be efficient as the option described under Q6.2.2 above has never been used.

Portfolio licensing, cross licensing and “freedom to operate”	
6.3.1 Advantages of portfolio licensing	Having in mind that ETSI is neither a patent holder nor an implementer, ETSI cannot respond to this question.
6.3.2 Determination of portfolio license value	Ditto
6.3.3 Cross-licenses	Ditto
Overall / cumulative royalty requests	
6.4.1 Pertinence and impacts	Ditto
6.4.2 Co-ordination mechanisms	Ditto
6.4.3 Method for allocating value	Ditto
Royalty base and value chain level	
6.5.1 Current business practices	Ditto
6.5.2 Royalty base	Ditto
6.5.3 Need for clarity	Ditto
6.5.4 Impacts of changes	Ditto
“Non-discrimination” principle <i><u>Note:</u> This topic is not currently discussed in the ETSI IPR Special Committee.</i>	
6.6.1 Definition in practice	In 2003 and 2006, discussions about what FRAND could mean took place in ETSI but no consensus was reached and the topic was closed.
6.6.2. Pertinence	ETSI has no comment on this.
6.6.3 Justification for discriminations	In ETSI, the undertaking that a SEP holder is prepared to grant irrevocable licence on FRAND T&Cs may be made subject to the condition that those who seek licences agree to reciprocate. (see ETSI IPR Policy, section 6.1)

6.6.4	Cash-only/cash-equivalent	ETSI has no comment on this.
6.6.5	Other mechanisms/differences in national jurisdictions	ETSI is not aware of any such mechanisms.
Key Issue 7 – Patent dispute resolution		
Prevalence and impacts of SEP disputes		
7.1.1	Pertinence of the issue	ETSI has no experience on how often disputes over SEPs arise.
7.1.2	Main areas of disputes	ETSI has no comprehensive picture of the main areas of disputes over SEPs.
7.1.3	Cost of disputes	ETSI is not involved in SEP disputes and cannot therefore elaborate on this.
7.1.4	Impact of disputes on standardization	ETSI has no comment on this.
Benefits and costs of dispute resolution mechanisms		
7.2.1	Usefulness of alternative dispute resolution	<p>Due to its confidential nature, it is difficult to assess the role of ADR in the resolution of SEP disputes. However, discussions which have taken place in ETSI have shown that some ETSI members see voluntary and mutually agreed ADR mechanisms as a useful tool to resolve SEP disputes.</p> <p>ETSI has cooperated with WIPO to tailor model submission agreements that parties may use to refer a dispute concerning the adjudication of FRAND terms to WIPO arbitration. (http://www.wipo.int/amc/en/center/specific-sectors/ict/frand/)</p>
7.2.2	Target areas	ETSI believes that voluntary and mutually agreed arbitration is an alternative solution for dispute resolution concerning (i) patent validity if <i>inter partes</i> decided, (ii) patent essentiality, (iii) portfolio licensing and (iii) FRAND T&Cs.

7.2.3 Suitable forms of ADR	The relevant form of ADR might vary depending on the nature of the conflict.
7.2.4 Benefits of ADR	ETSI believes that benefits of voluntary and mutually-agreed ADR mechanisms include: <ul style="list-style-type: none"> • comparative speed and low cost; • the ability to resolve a dispute on a world-wide basis (and not solely within a single territory); • enforceability of the award; • knowledgeable arbitrators; • (for some) confidentiality.
7.2.5 Difficulties and costs	ETSI has no particular knowledge of difficulties and costs relating to dispute resolution mechanisms.
Integration of dispute resolution mechanisms into the standardisation process	
7.3.1 Your experience	See our answer to Q7.2.1 above. ETSI has been informed of FRAND disputes submitted to ADR centers.
7.3.2 Role of SSOs	SSOs should not be directly involved but rather cooperate with ADR centers for providing explanation on the standardisation process. Therefore, ETSI believes that there is no need to define procedural aspects in SSOs' rules.
7.3.3 Incentives to use ADR	See our answer to Q7.2.4 above.
7.3.4 Voluntary / mandatory	As there is no consensus in ETSI on mandatory ADR mechanism, mandatory ADR mechanisms will not be adopted in ETSI as part of the ETSI IPR Policy, however it does not prevent ETSI members to use ADR mechanism on a voluntary basis.
Setting up such dispute resolution mechanisms	
7.4.1 Specificities of ADR for SEP disputes	See our answer to Q7.2.1 above.
7.4.2 Scope of ADR	See our answer to Q 7.2.2 above.
7.4.3 Procedure	ETSI has no experience in this area.

7.4.4 Timeframe	<p>ETSI's view is that speed, completeness and accuracy are important for solving such disputes.</p> <p>WIPO has two different procedures in place regarding FRAND disputes: the normal one and the expedited procedure. There are other ADR dispute resolution mechanisms in place (e.g. ICC).</p>
7.4.5 Transparency	If the parties agree, explanation on the granting of the award could be made publicly available, without the disclosure of any figures.
7.4.6 Forms of ADR	ETSI believes it is up to the arbitral tribunal to decide about that.
<p>Key Issue 8 – Unwilling implementers and injunctions</p> <p><i>Note: This topic is currently under discussion in the ETSI committee dedicated to IPR issues (ETSI IPR Special Committee).</i></p>	
8.1 Defences for the patent holder	<p>As to what “needs be done to ensure that holders of SEPs 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”, ETSI notes that</p> <p>(i) in most jurisdictions, the right of injunction is already available to any patent holder, regardless of whether such patent is essential or not.</p> <p>(ii) further guidance will be provided by the Court of Justice of the European Union (CJEU) in the near future, as well as national courts' decisions and European Commission's views.</p>
8.2 Protection against abuses	ETSI believes that further guidance will be provided by the CJEU in the near future, as well as national courts' decisions and European Commission's views.
8.3 Prevalence of injunctions	<p>To our knowledge, injunctions have been sought in various fields of standardisation, including but not limited to in the mobile field (e.g. http://ec.europa.eu/competition/antitrust/cases/dec_docs/39985/39985_928_16.pdf http://ec.europa.eu/competition/antitrust/cases/dec_docs/39939/39939_1502_5.pdf).</p>

8.4 Consequences of banning injunctions	ETSI is not aware of bans on injunctions regarding SEPs. ETSI cannot comment on the impact of restrictions to injunctions on licensing negotiations as ETSI is not involved in licensing negotiations.
8.5 Awareness among stakeholders	ETSI's policy is to welcome any ETSI member, as well as other relevant stakeholders (including but not limited to partner organisations, patent offices, regulators, judges) to take part to the discussions of the ETSI IPR Special Committee, where these decisions have been addressed.

Annex 2



ETSI IPR Policy

<http://www.etsi.org/images/files/IPR/etsi-ipr-policy.pdf>



ETSI Guide on IPRs

<http://www.etsi.org/images/files/IPR/etsi-guide-on-ipr.pdf>



ETSI Guidelines for Antitrust Compliance

<http://www.etsi.org/images/files/IPR/etsi%20guidelines%20for%20antitrust%20compliance.pdf>



ETSI Directives, including the ETSI Technical Working Procedures

http://docbox.etsi.org/Board/ETSI_Directives/34_directives_dec_2014.pdf