

## **European Patent Office**

This document comprises the official response of the European Patent Office (EPO) to the Public Consultation of the European Commission, entitled “Patents and Standards; A modern framework for standardisation involving intellectual property rights”, published 14 October 2014.

This consultation follows the publication of an EC report entitled “Patents and Standards; A modern framework for standardisation” published 25 March 2014, which will be referred to in this response as:

“EC Report Executive Summary” (Ref. Ares(2014)917891 - 25/03/2014) and “EC Report” (Ref. Ares(2014)917720 - 25/03/2014)

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**EPO response:** The EPO response to the public consultation is annexed to this letter.

### **Miscellaneous:**

The EPO agrees to the publication of its response after the consultation period. As the executive organ of the European Patent Organisation, an international intergovernmental organisation, the EPO is not required to register on the EC Transparency Register.

### **Information concerning the EPO:**

As the patent office for Europe, the EPO supports innovation, competitiveness and economic growth across Europe through a commitment to high quality and efficient services delivered under the European Patent Convention. The EPO provides a uniform application procedure for individual inventors and companies seeking patent protection in up to 40 European countries and one “Validation State” (Morocco). It is the executive arm of the European Patent Organisation. The Office's core activity is the examination of patent applications and the grant of European patents. Other activities include the provision of patent information and training services.

For more information, please visit: [www.epo.org](http://www.epo.org)

## General EPO response:

### Patents and standards The unique EPO approach

#### Synergy between patents and standards

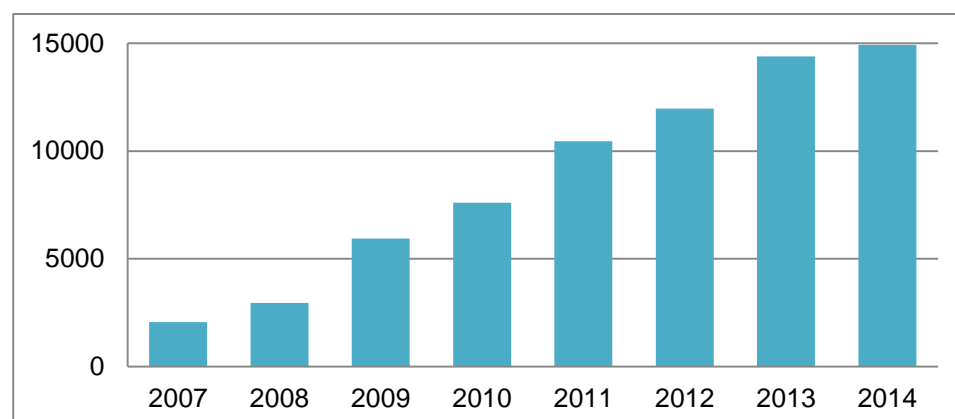
The EPO is committed to achieving the highest possible quality in the patent-granting process. Its prior art search, a key element in maintaining quality, seeks to find documents relevant for novelty and inventive step from all relevant sources. In the area of Information and Communication Technologies (ICT), one of the highest growth areas for European patent applications up, standards related documentation has proved essential. In fact, a very high proportion of prior art citations in some standards-intensive areas are standards related documents.

#### The EPO's unique approach

The EPO has developed a unique approach to maintaining a high patent quality in this fast-growing area. It has invested significantly in incorporating standards-related documentation into its internal databases and utilising it as an integral part of the patent-granting process. The EPO has a policy of co-operation with standards development organisations, such as ETSI, ITU, IEEE-SA, IEC and WorldDMB , and has collated documentation from these and many other available sources, including 3GPP, IETF, and audio/video standards.

The EPO's internal databases now contain some 1.6 million standards-related documents. The EPO cited nearly 15.000 standards related documents as key prior art in 2014, a further increase of 4% over 2013, after an already significant increase of 19% from 2012 to 2013. This prior art plays a critical role for several thousands of patent applications annually in fields such as telecommunications, audio and visual media, and computing.

**Graph:** No. of standards citations in EPO search reports



## **Use of standards documentation as prior art**

When new technology is disclosed in standards development processes that are not subject to a secrecy obligation, this is considered to be a public disclosure. Standards documentation arising from such processes is therefore considered to be state of the art under the European Patent Convention.<sup>1</sup>

With its unique collection of standards-related prior art, the EPO ensures that patents are only granted for inventions which are novel and involve an inventive step, and not for technology already openly disclosed in standards development proceedings or for minor further developments. Patent examiners are made aware of the importance of this prior art and its applicability.

## **Basing strategic decisions on EPO patent quality**

The EPO's commitment to achieving the highest possible quality in its patent-granting process attempts to minimise uncertainty, thus to prevent costly litigations in patent courts. Use of standards-related documentation in the prior art search has proved an essential element in maintaining a high quality of patents.

Patent applicants can use the high quality of the EPO patent process as a basis for key strategic decisions. For direct European patent filings, the EPO will produce first search and examination results, on average, six months after filing, allowing important filing decisions under the Paris Convention to be made before the 12-month deadline.

The PCT is often favoured by applicants involved in standards development, where new standards typically take 24-36 months to finalise. The 30 month PCT deadline for filing in the regional phase is therefore more compatible with the standards development timeline, allowing patent filing decisions to be tied to acceptance of technologies as standards. An opinion on the patentability of standards-related inventions from the EPO as PCT International Search Authority can provide crucial information on which to base subsequent strategic patent-filing decisions.

The EPO will continue to expand its collection of standards-related documentation as new areas of technology develop, so as to maintain and enhance European patent quality. In this way, it will optimise its support for future innovation, competitiveness and economic growth, as its mission requires.

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<sup>1</sup> See for instance EPO Guidelines for Examination GL B-VI, 5.6, GL G-IV, 7.6, T 273/02, T 738/04 and T 202/97; publicly available at <http://www.epo.org/law-practice/legal-texts/guidelines.html>

## Annex 1: EPO response to Questionnaire

The EPO has only responded to questions where it has relevant experience and/or data. These questions, and the EPO response, are listed below. For a full list of the questions please consult the original EC Questionnaire.

**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?

### EPO response:

As well as new generations of technology and standards in Telecommunication Systems, Audio-Video Media and Computer systems, the convergence of ICT into all areas of technology, including smart grids, smart transport, smart buildings and automobiles are likely to be drivers for increasing interactions between patent rights and standards.

See also Q3.5.2. The EPO's PATSTAT services could be used to provide patent landscaping analyses in specific areas.

**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?

### EPO response:

Standards are often used to promote interoperability, and therefore support the dissemination of technology, also through positive networking effects. Standards including patented technologies likewise support the dissemination of these technologies.

In the expectation of economic return, when standardisation projects and patenting initiatives have prospects of success, companies make investments in R&D which would not otherwise be made. The Standardisation System and the Patent System provide incentives for R&D investment, and strengthen one another.

For instance, it can be noted that one of the key areas of growth over the last ten years has been in the field of telecommunications, culminating in the use of "smart phones". The ITU estimates that there are now some 7 billion mobile phone registrations worldwide. The growth of the telecommunications business has been strongly supported by the synergy between patents and standards. This synergy has allowed the latest (patented) technology, providing the performance and functionality expected by consumers, to be incorporated into global standards such as GSM, 3G, and 4G-LTE.

Other fields showing increasing activity are Audio-Video Media and Computing fields. The main standardisation organisations in these areas (ETSI/3GPP, ITU, IEEE, OMA, IETF, W3C, IEC etc.) have substantially increased their membership and working group activities and the EPO also observes that the numbers of applicants declaring SEPs at ETSI and ITU is also clearly increasing. The patent system promotes innovation by granting temporary exclusive rights to genuine inventions. On the other hand, the absence of prospects of such exclusive rights would not provide this motivation to invest in innovation. If patented technologies were excluded from standards, this would lower the incentive to innovate in certain standards-related fields.

**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.

The EPO considers that the users of the patent and standard development systems are best placed to respond to this question.

However, the EPO is committed to a high quality of search and examination during the patenting process, thereby only granting exclusive rights for genuine inventions. See Q 2.1.2.

**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?

**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?

The EPO considers that the users of the patent and standard development systems are best placed to respond to this question. However, the EPO notes the following: Standards development is a consensus-based process, and the participants in a standard development activity will compare different technical solutions to a problem (potentially both patented and not patented) to evaluate the advantages and disadvantages and agree on a particular solution. According to the IPR policies of most SSOs, any potential SEP holders should already at this stage make the other participants aware of any potential exclusive rights, or have agreed to a “blanket” declaration” to support the standard through FRAND licensing for any relevant patent rights (to be) held. See also Q 3.2.5)

**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?

The EPO considers that the users of the patent and standard development systems are best placed to respond to this question. However, the EPO notes the following: More specific nomination of SEPs, rather than blanket declarations, appears to allow a more specific assessment of the scope of an enterprise's SEPs. Also, the ETSI database of SEPs links from an SEP declaration to the EPO Espacenet database, showing the actual patent document when published, as well as links to family data, legal status data, citation data etc. in the EPO's patent information databases. This helps maximise transparency in this area, and is only possible when specific SEP publication numbers are declared. The EPO is conducting discussions with other SSOs who consider implementing a similar functionality as ETSI on their SEP databases.

The specific nomination / identification of SEPs are also useful for EPO prior art searches, as it immediately indicates to patent examiners to search carefully the standard development documentation in the relevant standardisation area.

See also EPO response in Q 1.2.3 and Q 3.2.6

**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)?

**EPO response:**

1) The EPO uses standards documentation in its prior art searches. This includes all non-confidential documentation generated during the standards development process, as well as the final published standards documents. This helps maximise the quality of the patent search and examination process in related areas, and limits the grant of temporary exclusive rights relating to a standard to genuine inventions only. Other IPOs are believed to be following the EPO approach.

The EPO has concluded a number of agreements with SSOs, including ETSI, ITU, IEEE-SA, IEC, WorldDMB and BSI, to i) ensure access to the standards development documentation, and ii) clarify the status of SSO documentation as non-confidential, and its status as valid prior art; and has collated documentation from these and many other available sources, including 3GPP, 3GPP2, IETF, W3C, and audio/video standards. The EPO holds over 1.6 million standards related documents in its internal databases, which are readily searchable by examiners; and the

EPO cited nearly 15.000 standards related documents as key prior art in 2014, a further increase of 4% over 2013, after an already significant increase of 19% from 2012 to 2013. This prior art plays a critical role for several thousand patent applications annually in fields such as telecommunications, computing and audio and visual media, and accounts for a very significant proportion of citations in fields such as wireless technology.

2) The EPO is monitoring developments in various technical areas, and expanding its cooperation to include SSOs in newly developing technical areas. This will help maintain a high patent quality also in these areas.

3) The EPO's use of standards related documentation in the search and examination process could be greatly facilitated by:

i) More uniform formats for the documentation produced by SSOs, including the technical contributions.

ii) In particular, a clear date of availability of the information and/or publication dates. This could include the standard, the part of the standard, the version, the date of any relevant meeting, the author/contributor and date of any submission etc.

iii) The documentation should be available in digital, indexed form, to enable its incorporation into EPO's search databases. In particular, the bibliographic data should be indexed.

Ideally, a minimum and common standardised format for the bibliographic data should be agreed between the SSOs and the EPO for the relevant documentation.

iv) The data should be available in a "drop box" or other machine-readable form similar to allow automatic updating of EPO's search databases.

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**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?

The EPO has noted different approaches as to whether SSOs consider, and effectively treat, their documentation (including submissions and preparatory documents of all kinds) as confidential. Where documents are subject to a confidentiality obligation (by virtue of non-disclosure agreements or similar) and this confidentiality obligation is observed in practice, they would not be considered to constitute prior art. On the contrary, if there is no such obligation, the document would be treated as publicly available from the recognised date of availability and/or publication. The lack of clarity about the status of documents as public may give rise to uncertainty and, as a consequence, to extended litigation.



The EPO strives to clarify this issue, and has managed to reach a common understanding with several SSOs [(ITU, ETSI, IEEE, IEC, WorldDMB, BSI)] on the generally public character of their documentation.

**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?

**EPO response:**

1) The EPO's patent information services, including Espacenet and other Patent Information services, are important in supporting stakeholders in finding relevant patent rights. (See [www.epo.org/espacenet](http://www.epo.org/espacenet)). A further important element in finding relevant patents is the Cooperative Patent Classification (CPC), a joint EPO-USPTO initiative, which is an important tool for finding relevant patent documents and is also now being used by SIPO, KIPO, INPI Brazil and Rospatent (RU), and 12 of the EPO's member states (including the UKIPO). The EPO's Patent Information services enable stakeholders to identify the patent family members (and therefore the geographical scope of protection), and through "patent registers" the legal status of each family member. The legal status includes the status of the search and examination procedure, whether a patent application has been granted, withdrawn or refused, whether the fees have been paid and whether it is still upheld etc.

2) The European Patent Register (also available online) of the EPO contains information on ownership and change of ownership of a European patent until grant of the patent (see Article 127 of the European Patent Convention). Once a European patent has been granted, it becomes the responsibility of the national patent offices to maintain the national patent registers with ownership and changes in ownership.

3) Currently the EPO is developing the so-called "Federated Register", which is being incorporated into the European Patent Register and will provide data on the legal status of European patents after grant in the designated member states. Once the Federated Register is fully operational, the information on patent ownership registered by national patent offices will be available from a central source, i.e. the EPO's Federated Register.

4) Regulation (EU) 1257/2012 on the unitary patent protection foresees a "Register for unitary patent protection", which is "the register constituting part of the European Patent Register in which the unitary effect and any limitation, licence, transfer, revocation or lapse of a European patent with unitary effect are registered" (Article 2, lit. (e), and Article 3). Article 9, lit. (c), mentions the possibility to receive and register licensing commitments undertaken in international SSOs. For



future unitary patents there will thus be a central register with post-grant information, including ownership information and possibly an indication on standards essentiality, which will be maintained by the EPO.

5) The EPO makes patent information readily available via the internet through its Espacenet search database, and includes information on 90 million documents for up to 80 countries, further including information on patent families, the geographical coverage, legal status data etc. The EPO's services further includes PatentTranslate, a joint initiative between EPO and Google, enabling online translation of patent documents between English and 27 European languages, Chinese, Japanese, Korean and Russian. Using Espacenet and its related services, patent system users can assess disclosed technologies, their owners, the scope of protection etc.

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

The EPO considers that the users of the patent and standard development systems are best placed to respond to this question. However, the EPO notes the following:

1) The patentee could be required to declare a specific patent number, so that the SEP database can link directly into e.g. the EPO's Espacenet for users to view the document, file, family data, legal status data etc.

2) If a patent number is declared before publication, the patent application document remains undisclosed. In accordance with Article 93 of the European Patent Convention (EPC), the patent application is only published "as soon as possible (a) after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, from the date of priority, or (b) at the request of the applicant, before the expiry of that period."

3) Updating of a declaration of an SEP in the SSO database could be required if the patent is withdrawn, rejected, or reduced in scope of claims.

4) A timely search and substantive examination of a relevant patent application, to give an early indication of the potential scope of patent protection, might also improve transparency in certain areas.

The EPO is already able to provide search reports within 6 months for its first filings (20% of the total), but the objective now is to apply tight timelines to all the second filings as well. The EPO's program "Early Certainty from Search" will improve legal certainty for pending patent applications in Europe.

Patent applicants may request fast-track procedure known as PACE to shorten the time to grant, but this is so far being used by a small proportion of applicants only (about 7 % of the total). In addition, the EPO is seeking to prioritise processing of those cases where substantiated observations are filed by third parties who identify themselves.

For PCT applications, the use of a high quality PCT International Search Authority will help ensure an early indication of the potential scope of patent rights. It is also possible, through the “Supplementary International Search Authority” (SISA) possibility, to use a second IPO (such as the EPO) as a second International Search Authority, therefore furthering ensuring clarity on the potential final scope of patent protection. This could support patent transparency, especially before the important decision phase before 12 months after filing the priority (for the Paris route 2<sup>nd</sup> applications), or before the 30/31 month limit for PCT applications before filing in the national/regional phase.

**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.

The EPO considers that the users of the patent and standard development systems are best placed to respond to this question.

**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)?

The EPO considers that the users of the patent and standard development systems are best placed to respond to this question.

**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.

The EPO considers that the users of the patent and standard development systems are best placed to respond to this question.

**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.

See EPO comments above concerning linking SSO SEP declaration databases into Espacenet, and enhanced patent transparency.

**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?

**EPO response:**

The EPO considers that the users of the patent and standard development systems are best placed to respond to this question. However, the EPO notes the following:

A patent holder could be required to declare which patent application claims refer to which part of the standard (and which version), which might increase help increase SEP transparency.

The patent holder could be required to declare all countries in which a SEP patent application has been filed. Although international databases such as Espacenet contain data from many countries (Espacenet: up to 80), some country information may be missing or not be up to date.

Moreover, patent holders could be required to request registration of their SSO licensing commitments in the patent register where possible (for an example, see Article 9. lit. (c) of Regulation (EU) No. 1257/2012 of 17 December 2012 on unitary patent protection).

**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?

The EPO considers that the users of the patent and standard development systems are best placed to respond to this question. However, the EPO notes the following:

See the EPO response to Q 3.1.4 above. The scope of the claimed invention could change during proceedings. The declaration could be updated e.g. on grant, on refusal, withdrawal etc. However, if a specific patent (application) number is declared, and the SEP database links directly into the EPO's Patent Information services, then the EPO's services provides information relating to the patent family, legal status etc. which is updated automatically and relieves the patent applicant or proprietor of this burden.

**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?

**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?

**EPO response:**

The EPO considers that the users of the patent and standard development systems are best placed to respond to this question.

### 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?

**EPO response:**

The EPO considers that the users of the patent and standard development systems are best placed to respond to this question. However, the EPO notes the following:

Once a patent application is published, it seems most appropriate that the SEP database is also open to the members of the standardisation organisation, but also to the public, who may wish to use the relevant standards and should be aware of any related patent rights. A link into the EPO's patent information systems is also useful, as it provides a direct link to patent information and related information such as legal status. This information is available free of charge, and is automatically updated. Relevant personal data are available on the published patent specification according to applicable patent law.

**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?

**EPO response:** See above concerning ETSI SEP database linking directly to EPO's Espacenet.

**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?

**EPO response:** See above concerning ETSI SEP database linking directly to EPO's Espacenet.

### **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?

**EPO response:**

Relevant patent applications (potential SEPs) may also be filed by patent applicants who are not involved in the standards development process. High quality patent information services are essential to ensure that patent rights are not infringed. Reference is again made to the EPO's Patent Information services, including Espacenet, CPC, Patent Translate, patent registers etc. Information on relevant citations found by many IPOs is also available via the IP5 Common Citation Document (CCD).

For new, fast moving technological areas, the EPO has in the past initiated dedicated classification schemes within the CPC to further support patent transparency in these fields. In the first of several initiatives, the EPO developed a cross-sector classification scheme for Nanotechnology (the Y01 scheme); this has now been discontinued and incorporated into the main body of the CPC.

A similar initiative is the Y04S, a dedicated classification scheme for Smart Grids developed in cooperation with the IEEE-SA. Smart Grids is also a technical field in which standards play an important role and therefore might also increase patent transparency around developing standards in this area, and reduce the risk / increase the transparency of undeclared SEPs.

**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?

**EPO response:**

The main advantage of such landscaping would be to give a more complete picture of patent rights around a standard. A typical landscape study is however a one-off snapshot of the patent landscape at a particular moment; to see how patent filings develop during development of a standard, it would be necessary to update this at key events during a longer standard development process. However, once database queries are available for PATSTAT, these could be re-used on one or more occasions to update the landscape. New versions of PATSTAT are released twice per year.

PATSTAT, also known as the EPO Worldwide Patent Statistical Database, is a snapshot of the EPO master documentation database (DOCDB) with worldwide coverage. It contains more than 20 tables with bibliographic data, citations and family links of about 70 million applications of more than 80 countries. PATSTAT is specifically designed for statistical analysis of this patent data, to allow stakeholders and policy makers to identify patent landscapes around certain technical areas, and to perform analyses revealing legal, technical and business information. PATSTAT may be purchased from the EPO, and is available with or without legal status data. See [www.epo.org](http://www.epo.org) for more details.

**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?

**EPO response:**

Relevant data on patent ownership may be obtained from the EPO's patent information databases (see earlier). EPO's PATSTAT service including legal status data could potentially be used to analyse patent transfers for EP and some other patent applications over a period of time.

#### **Key issue 5 – Patent pools related to standardisation**

**EPO:** Key Issue 5 is considered outside the scope of the EPO's core competences and areas of responsibility.

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

**EPO:** Key Issue 6 is considered outside the scope of the EPO's core competences and areas of responsibility.

#### **Key issue 7 – Patent dispute resolution**



EPO: Key Issue 7 is considered outside the scope of the EPO's core competences and areas of responsibility.

The EPO wishes to draw attention to the fact that third parties are entitled to submit observations in pending patent grant proceedings (Article 115 European Patent Convention). This, as well as the opposition procedure (cf. Articles 99 et seq. European Patent Convention), may result in limiting the scope of the granted patent and thus avoid disputes at a later stage. The limitation procedure (Articles 105a et seq. European Patent Convention) allows for a restriction of the scope of the patent after grant and can thus be useful to avoid invalidation proceedings.

Additionally, the EPO wishes to draw attention to Article 25 EPC, stipulating that at the request of a competent national court hearing an infringement or revocation action concerning a European patent, the EPO is obliged to give a technical opinion concerning the European patent which is the subject of the action.

#### **Key issue 8 – Unwilling implementers and injunctions**

EPO: Key Issue 8 is considered outside the scope of the EPO's core competences and areas of responsibility.