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BUSINESSEUROPE COMMENTS TO COMMISSION CONSULTATION ON PATENTS AND STANDARDS

BUSINESSEUROPE welcomes the opportunity to provide feedback on this Consultation which is important not only in the telecoms sector, but more and more in many other fields where devices are increasingly able to talk to each other and hence interoperability and standardisation are important considerations. Telecommunication technologies will soon be added to a wide range of products and devices outside core information and communication technologies (ICT) as the "Internet of Things" becomes a reality. Standardised telecommunications technologies are therefore of increasing significance to a wider spectrum of manufacturers and service providers outside the immediate field of telecommunications.

This is a complex topic and this consultation is an important opportunity to gather data and empirical evidence from the real world of standardisation, also outside telecoms.

It is noted that, as part of the ongoing European Commission re-organisation, the industrial property unit of former DG MARKT - whose competence includes patents is merging into DG GROWTH, formerly known as DG ENTERPRISE, whose competence covers standards. With patents and standards now under one roof, the Commission has a unique opportunity for the Commission to leverage this new internal synergy on this dossier going forward.

Intellectual property is key to drive innovation, support open innovation and boost growth and job creation in Europe. Patents are an important stimulus to innovation. They enable licensing and technology transfer. They incentivise investment in R&D. It is paramount that Europe's innovative industries can remain competitive on the global stage.

BUSINESSEUROPE supports the development of open standards which enable new interoperable technologies to be developed in an open and inclusive manner. Mobile telecoms is an outstanding example of seamless global interoperability: anyone with a mobile phone can call virtually anyone else in the world easily and seamlessly, regardless of the country they are in, and regardless of the brand of phone they are using. No other technology has attained such a high degree of interoperability.

Patents play an important part in open standards. They allow participating companies to collaborate, disclose and share their new technology openly and early, knowing their inventions will be protected.

EU policy should generally encourage and stimulate continued investment in open standards. Otherwise the long term viability of European standardisation will be at risk.

Licensing is at the heart of standardisation. Many different groups of companies, each with different interests and working at different levels of the value chain, are normally



involved in the standard-setting process. Successful standardisation is premised on a FRAND (fair, reasonable and non-discriminatory) licensing model based on which companies can get access to standard essential patents (SEPs) on FRAND terms while providing FRAND compensation for the use of patented technology to SEP owners. Commercial licences can be structured in many different ways to suit the business circumstances and needs of the parties. It is essential for the success of open standards to have a fully functioning, efficient FRAND licensing system, as seen both from the perspective of the SEP owner and equally from the perspective of the licensee.

On the use of patent pools we would like to point out that patent pools may be an effective tool to organize the licensing of SEPs in certain cases. In general, patent pools may work for standards that are not complex and have a rather homogeneous group of patent holders and licensees. In contrast, patent pools may prove less efficient in dealing with complex standards that have many different contributors at different levels of the value chain.

Patent quality is an emerging topic in the debate about patents and standards that is currently playing out in various standards setting organisations (SSOs). BUSINESSEUROPE strongly supports initiatives of Patent offices to improve the quality of patents they grant. It is important that granted patents are as robust as possible from every angle. This is no less true for standards-related patents as for patents generally.

Concerning the issue of transparency, we are of the opinion that the European Telecommunications Standards Institute (ETSI) database provides valuable information on SEPs and we are aware that discussions have now started in ETSI to explore if further enhancements are possible.

In cases of negotiations whether patents are indeed SEP and what conditions should be accepted as FRAND by both SEP owners and implementers of the standard, access to mediation/arbitration to the extent both parties agree to this dispute resolution mechanism, or to a court should be viable and effective options.

Standardization is very broad and can cover many different areas; telecom, energy, automotive, consumer electronic etc. In these different markets, there are many different products used in different ways. As a result there are many different ways that standardization can bring value to a particular market and/or product.
