



**Answer to the Public Consultation on patents and standards: A modern framework for
standardisation involving intellectual property rights**

Dear Madam/Sir,

Enclosed you will find the contribution of Airbus Group

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- type of respondent : Enterprise
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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?

Aerospace and Defence industry, where many standards are in place, partly issued by public authorities/standardization bodies. Fields of 'electromobility' (e.g. electric vehicles, energy flows, bio-energy, batteries).

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?

On the positive side

- a) The process of standard setting under the various national and international standardization concepts: Members of the standard process disclose in good faith potentially standard-essential patents before the final standard is agreed. They demand their potential IPR claims in the beginning of the standard process.
- b) Participants are allowed to exclude specific patents from standard-setting, when they claim the exclusion in the beginning of the process.
- c) The rules take into account the different types of standard (performance, test, interface, product standards).
- d) Usually, SSOs respect IPR of non-participants.

On the negative side

The degree and extent of access and usage of IPR is often dependent on the governing regime of the resp. standardization body/SSO i.e. the form of decision-making: informal, (limited)full consensus-based, consortia. The SSO define the IPR policy and refer to FRAND. However it is still unclear what "FRAND" means. Sometimes, there are no provisions as to the legal consequences if individual participants in a standard-setting fail to license standard essential patents on FRAND terms or ignore the ex ante disclosure rules.

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?

SSO is to carefully examine and disclose the underlying patent-situation of a standard to its users. Commitment by each participant of standard setting, that he has disclosed all and any standard-relevant patents.

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?

Participants must bind their respective contractual partner in case of transferring IPRs in relation to the irrevocable commitment given by them in respect of the transferred patents.

Alternatively: Standard organizations/legal entities shall be granted a license to use patents for standard.

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?

Patent pools are often active in the same field of technology and control the patents in this field. They grant cross-licenses and allow patentees to receive licensing revenue for their patents, usually without the need for time-consuming licensing negotiations or administration of the royalty collection process. The patent pool's licensing administrator can relieve the patent owner of the burden of signing up licensees, negotiating license terms with each licensee, monitoring royalty reporting, investigating payment cheating, and collecting royalties.

In order to ensure IPR compliant standard setting, the patent pool should disclose standard-relevant patents to SSO. In addition, public authorities (e.g. Patent Offices) may be consulted to determine whether a patent is essential to an industry standard and therefore may be included in a corresponding standard I.

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?

See above under 2. It is advisable to legally clarify or to await judicial rulings as regards the meaning of "FRAND". The term is used everywhere but (nearly) no one knows what it practically means. SSO shall explain or define criteria what is FRAND for a specific standard. SSO should assess the importance of a standard-essential patent, gather and analyse available license fees schemes and seek for proposals of their members.

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?

-Proprietors of patented technology in standards have not approved/granted a license.

Legal framework is unclear, and unclear frameworks cause disputes.

- Establishment of ADR or mediation proceedings may be helpful, ideally on a cost-efficient basis.

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 **injunctive** 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?

Establish effective and fast legal proceedings (incl. out-of court proceedings) led by judges specialized in standardisation matters.