



Intellectual property: harmonised EU patent rules boost innovation, investment and competitiveness in the Single Market

Brussels, 27 April 2023

Today, the Commission has proposed new rules to help companies, especially small and medium-sized companies (SMEs), make the most of their inventions, leverage new technologies and contribute to the EU's competitiveness and technological sovereignty.

The proposed Regulations on standard essential patents, compulsory licensing of patents in crisis situations, and the revision of the legislation on supplementary protection certificates will create a more transparent, effective and futureproof intellectual property rights framework.

Intangible assets like brands, designs, patents and data are increasingly important in today's knowledge economy. Intellectual property (IP) is a key driver for economic growth as it helps companies gain value from their intangible assets. IP-intensive industries account for almost half of all GDP and over 90% of all EU exports. In the period 2017–2019, nearly 76% of intra-EU trade was generated by patent-intensive industries.

Today's proposals will complement the Unitary Patent system, which will be operational as of 1 June. Their respective starting points are existing provisions and principles of international and EU IP law, but they each aim to make the patents system more effective by further eliminating Single Market fragmentation, reducing red tape, and enhancing efficiency. This solid patent framework will empower economic operators and competent authorities to better protect innovation while ensuring fair access, including during emergency situations.

These patent initiatives tackle the **following key areas**:

Standard Essential Patents

Standard essential patents (SEPs) are patents that protect technology that has been declared essential for the implementation of a technical standard adopted by a standard developing organisation (SDO). Such standards relate for instance to connectivity (e.g., 5G, Wi-Fi, Bluetooth, NFC) or audio/video compression and decompression standards.

To make a product that is standard-compliant, an implementer is obliged to use the relevant "essential" patents. The monopoly granted by such specific patents is balanced by SEP holders' commitment to license these patents on fair, reasonable and non-discriminatory (FRAND) terms, allowing access to market to implementers.

For many years, the current system has suffered from a lack of transparency, predictability, and lengthy disputes and litigation, as first recognised in the Commission's 2017 Communication on standard-essential patents. Previous measures to tackle these problems, such as self-regulation, have not proven effective. In its 2020 IP Action Plan, the Commission stressed the need for *"a much clearer and more predictable framework, incentivising good faith negotiations rather than recourse to litigations"*.

The applicability of SEPs (particularly for connectivity standards) is going to increase with the rise of the 'Internet of Things' (IoT). Accordingly, a well-functioning system that facilitates access to technologies, while rewarding innovation, is crucial for the EU's technological sovereignty.

The [proposed SEP licensing framework](#) aims to create a balanced system, setting a global benchmark for SEP transparency, reduction of conflicts and efficient negotiations. It has the following **two main objectives**:

- Ensuring that both EU SEP owners and implementers innovate in the EU, make and sell products in the EU and are competitive on global markets.
- Ensuring that end users, including SMEs and consumers, benefit from products based on the latest standardised technologies at fair and reasonable prices.

The proposed SEP licensing framework will provide additional transparency regarding SEP portfolios,

aggregate royalty (when patents of several holders are involved) and allow for more efficient means for parties to agree on FRAND terms of their licences. The proposal introduces measures on the following aspects: a SEP register, database and essentiality checks; expert opinions on SEP aggregate royalty; FRAND determination by means of conciliation in lieu of costly litigation; SME support measures; and the establishment of a 'Competence centre' at the European Union Intellectual Property Office (EUIPO).

The proposed Regulation will apply to all standards that will be published after its entry into force. However, the Commission will determine which of the standards, their implementations or use cases would be excluded from the aggregate royalty setting and FRAND conciliation process, in situations where the respective SEP licensing does not pose significant difficulties or inefficiencies affecting the functioning of the internal market. Conversely, standards published before the entry into force of the Regulation will not be subject to it, unless specific market distortions due to inefficiencies in the licensing of SEPs lead the Commission to include them within its scope of application.

Compulsory Licensing

Compulsory licensing of patents allows a government to authorise the use of a patented invention without the consent of the patent holder. Voluntary licensing agreements with manufacturers are generally the preferred tool to ramp up production, but should voluntary agreements not be available or adequate, compulsory licensing can help provide access to key crisis-relevant products and technologies as a last resort in times of crisis. Currently there is a patchwork of 27 national compulsory licensing regimes even though many value chains operate across the EU. This can be a source of legal uncertainty for both right holders and users of IP rights.

The [new rules](#) foresee a new EU-wide compulsory licensing instrument that would complement EU crisis instruments, such as the Single Market Emergency Instrument, HERA regulations and the Chips Act. In the aftermath of the COVID-19 crisis, these new rules further enhance the Union's resilience to crises, by ensuring access to key patented products and technologies in crises, should voluntary agreements not be available or adequate.

Supplementary Protection Certificates

A Supplementary Protection Certificate (SPC) is an IP right that extends the term of a patent (by up to five years) for a human or veterinary pharmaceutical product, or a plant protection product, that has been authorised by regulatory authorities. It is meant to encourage innovation and promote growth and jobs in these sectors. However, SPC protection is only available at national level. As a result, the current system suffers from fragmentation, which leads to complex and costly procedures, as well as legal uncertainty.

This [initiative](#) introduces a **unitary SPC** to complement the Unitary Patent. The SPC reform also introduces a **centralised examination procedure**, implemented by EUIPO, in close cooperation with EU national IP offices. Under this regime a single application will be subjected to a single examination process that, if positive, will result in the granting of national SPCs for each of the Member States designated in the application. The same procedure may also result in the grant of a unitary SPC.

2023 EU SME Fund

To further support innovation, concurrently with today's proposals, the 2023 SME Fund will now also make available new vouchers services concerning, for the first time, European patents and new plant varieties. These new services will allow SMEs to save up to €1,500 on their patent registration costs and €225 on the registration of new plant varieties per application.

Next Steps

The proposed Regulations will still need to be discussed and agreed by the European Parliament and the Council of the European Union in view of their adoption and entry into force.

Background

The added value of IP is growing across most European industrial ecosystems. Intellectual property rights (IPR), and particularly patents that are a critical intangible asset, are called to play a crucial role in scaling up green innovation, while building a business case for clean tech, and fostering also a sustainable digital transformation. Patents also have the potential to de-risk investment, to function as a solid financing collateral and to build a platform for follow-on innovators, thus reinforcing EU's ability to attract and retain research, innovation and investment.

The new [EU Industrial Strategy](#) adopted on 10 March 2020 acknowledged the need for the EU

Intellectual Property policy to help uphold and strengthen Europe's tech sovereignty and promote a global level playing field. On 25 November 2020, the Commission published a new [Action Plan on Intellectual Property](#) to help companies, especially SMEs, to make the most of their inventions and creations and ensure they can benefit our economy and society. The current proposals are based on a robust stakeholder consultation process, involving numerous workshops, stakeholder meetings and public consultations.

As regards patent policy, one of the actions mentioned in the Action Plan relates to the launch of the **Unitary Patent System**. The Unitary Patent, together with the Unified Patent Court (UPC), **will enter into force on 1 June 2023**. This new powerful tool for European companies, and especially SMEs, will create a one-stop-shop for patent protection and enforcement in the EU. It will further boost the EU's competitiveness, and economic recovery efforts as well as the green and digital transformation.

For More Information

[Proposals](#) for a Regulation on Supplementary Protection Certificates

[Proposal](#) for a Regulation on Compulsory Licensing of Patents

[Proposal](#) for a Regulation on Standard Essential Patents

[Questions & Answers](#) on Supplementary Protection Certificates

[Questions & Answers](#) on Compulsory Licensing

[Questions & Answers](#) on Standard Essential Patents

[Factsheet](#) on Supplementary Protection Certificates

[Factsheet](#) on Compulsory Licensing

[Factsheet](#) on Standard Essential Patents

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Quotes:

Today, we propose fair rules to the benefit of patents holders and users, and give good IP tools to SMEs. We are enabling the European creative and innovative industry to remain a global leader and at speeding up Europe's green and digital transitions. Because balanced, transparent and unified rules on patents will better protect companies to excel in the Single Market and beyond.

Margrethe Vestager, Executive Vice-President for a Europe Fit for the Digital Age - 27/04/2023

IP stands for Europe's Industrial Power. With patented technologies, Europe's industries are at the forefront of innovation, from automotive to IoT. Today, we are modernising our framework for standard-essential patents, making it more transparent, SME-friendly and ready for the economy of tomorrow.

Thierry Breton, Commissioner for Internal Market - 27/04/2023

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 [Press conference by Thierry Breton, European Commissioner, on new rules to complete the Single Market for patents](#)