

Intellectual Property Package

Summary : The proposed regulations aim to create a more transparent and effective framework for intellectual property rights, including standard essential patents, compulsory licensing of patents during crises, and supplementary protection certificates. Intellectual property is crucial for economic growth, with IP-intensive industries accounting for nearly half of all GDP and over 90% of EU exports. The proposed regulations aim to complement the Unitary Patent system and eliminate Single Market fragmentation, reduce red tape, and enhance efficiency, while ensuring fair access during emergency situations.

Key Words: SEP Portfolios, Aggregate Royalty, FRAND, SEP Register, SME Support Measures,

Introduction

The EU's solution to protecting companies' inventions, enhance its competitiveness and technological sovereignty are the following set of proposed regulations:

- I. Proposal for a regulation of the European Parliament and of the Council on **standard essential patents** and amending Regulation (EU) 2017/1001
- II. Proposal for a regulation of the European Parliament and of the Council on **compulsory licensing for crisis management** and amending Regulation (EC) 816/2006
- III. Proposals for **regulations on supplementary protection certificates**

These regulations were proposed given that in the current knowledge-based economy, intangible assets such as patents, designs, brands, and data hold a greater significance. Intellectual property (IP) serves as a crucial catalyst for economic growth by enabling companies to derive value from their intangible assets.

The proposed regulations, which draw upon existing provisions and principles of international and EU IP law, will work in conjunction with the Unitary Patent system, scheduled to be operational on June 1st 2023. The regulations aim to streamline the patent system by removing Single Market fragmentation, reducing bureaucratic hurdles, and improving efficiency. This robust patent framework is also expected to empower economic actors and

competent authorities to safeguard innovation and ensure equitable access, particularly during crisis situations.



Standard Essential Patents

A Standard Essential Patent (SEP) is a patent that protects technology that has been declared essential for the implementation of a technical standard adopted by a standard developing organisation (SDO). Such standards include for example technology standards such as 5G and WiFi, audio and video compression and decompression (e.g., MPEG, HEVC), technologies for data storage and exchange (e.g., CD and DVD), photo formats (JPEG), and home audio and video interoperability (HAVi).

In 2017–2019, nearly 76% of intra-EU trade was generated by patent-intensive industries.

The users of these standards have traditionally been producers of telecommunication equipment, mobile phones, computers, tablets, TV sets, etc. With the recent rise of the Internet of Things (IoT), these standards are increasingly implemented by a growing number of stakeholders, including many SMEs, in connected cars, drones, payment terminals, tracking devices, smart meters, health monitors and other smart devices.¹

SEP is different than other patent licensing given that the holder of a patent is normally free to decide whether to license other economic actors the right to exploit its innovation. However, the inclusion of a patented technology in a standard gives the SEP holder certain market power over an implementer of the standard. The SEP holder therefore can use this market power to potentially charge higher royalties or impose unfavourable licensing terms on implementers, which can hinder competition and innovation in the market. To avoid such issues, standard-setting organizations often require SEP holders to license their patents under fair, reasonable, and non-discriminatory (FRAND) terms to ensure a level playing field for all implementers.

The initiative aims to incentivise participation by European firms in the standard development process and the broad implementation of such standardised technologies, particularly in IoT industries.

The **initiative** seeks to:

- A. make available detailed information on SEPs and existing FRAND terms and conditions to facilitate licensing negotiations;
- B. raise awareness of SEP licensing in the value chain and
- C. provide for an alternative dispute resolution mechanism for setting FRAND terms and conditions.

The new rules introduce:

¹ https://ec.europa.eu/commission/presscorner/detail/en/QANDA_23_2457

- ✓ A **centralised register** and electronic database with information on relevant standards, products and processes, SEPs in force in the EU, SEP licensing FRAND terms and conditions. Selected SEPs will be subject to essentiality checks.
- ✓ An **out-of-court** dispute resolution mechanism to determine Fair, Reasonable, and Non-Discriminatory (FRAND) licensing terms and conditions.
- ✓ An **SEP aggregate royalty determination process** i.e. recommended maximum license fee for using a standardised technology.
- ✓ The establishment of a '**Competence Centre**' at the European Union Intellectual Property Office to manage the process, gather information and support SMEs.



Compulsory Licensing for Crisis Management

The EU aims to establish an effective compulsory licensing system at EU level to address crises when voluntary licensing is not enough. The system will ensure adequate territorial reach and build on existing EU crisis mechanisms. Currently, national compulsory licensing schemes vary in scope and procedure and are designed to meet the interests of the issuing Member State only. This results in a fragmented and inadequate system to tackle EU crises. This initiative aims to establish a Union IP crisis tool, a compulsory licensing framework applicable to the entire EU, allowing for cross-border supply chains and efficient management of crises.

A compulsory licence is the possibility for a government to allow a third party to use a patent without the authorisation of the rights-holder, subject to certain conditions. Compulsory licensing can therefore complement current EU efforts to improve its resilience to crises. In the aftermath of the COVID-19 crisis, the EU has tabled several EU crises instruments, such as the Proposal for a Regulation establishing a Single Market Emergency Instrument (SMEI).



The initiative has therefore two **main objectives**:

- (1) it aims to enable the EU to rely on compulsory licensing in the context of the EU crisis instruments.
- (2) it introduces an efficient compulsory licensing scheme, with appropriate features, to allow a swift and appropriate response to crises, with a functioning Internal Market, guaranteeing the supply and the free movement of crisis-critical products subject to compulsory licencing in the internal market.



Supplementary Protection Certificates

At present, there is no centralized mechanism for applying for a Supplementary Protection Certificate (SPC) in the EU. Instead, individuals must apply for SPCs through national patent offices within the EU. This approach is expensive, inefficient, and results in inconsistent

decisions. It also creates difficulty for third parties to determine the extent of protection held by patent holders, as they must conduct searches of national patent offices to determine the presence of relevant SPCs in each jurisdiction. To address these issues, the proposed solution is to establish a centralized procedure for granting national SPCs and creating a single database for SPCs.

SPC is an IP right that extends a patent by up to five years for a pharmaceutical or plant protection product that has been authorised by regulatory authorities, thereby encouraging innovation and promoting growth and jobs in these sectors. The proposed SPC reform includes the creation of a unitary SPC, complementing the unitary patent that will enter into force on 1 June 2023. The unitary SPC will also incentivise innovators to use the unitary patent.

The proposals seek to simplify and harmonise the current framework around SPCs, making it easier for right-holders to obtain broad SPC protection and at the same time increasing transparency so that it is easier for third parties to understand the scope of the patentee's rights, and they address the omission of a Unitary SPC from the Unitary Patent system.

The SPC centralised procedure can be used by any company, start-up, research organisation, innovator, etc. that holds a valid patent on a medicinal product or a plant protection product, and a corresponding marketing authorisation in the EU. Applicants will be able to file a 'combined application' with a view to the grant of both a unitary SPC and national SPC for additional Member States not covered by the unitary patent.

The new rules introduce:

- ✓ a unitary SPC to complement the unitary patent
- ✓ a centralised procedure for the grant of national SPCs



Links to more information:

https://single-market-economy.ec.europa.eu/publications/com2023232-proposal-regulation-standard-essential-patents_en

https://single-market-economy.ec.europa.eu/publications/com2023224-proposal-regulation-compulsory-licensing-crisis-management_en

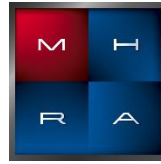
https://single-market-economy.ec.europa.eu/publications/proposals-regulations-supplementary-protection-certificates_en

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