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REPORT ON THE SHARING SESSIONS ON STANDARD ESSENTIAL PATENTS AND ISSUES RELATED TO FAIR, REASONABLE AND NON-DISCRIMINATORY LICENSING, HELD DURING SCP/35 AND SCP/36

Document prepared by the Secretariat

1. Pursuant to the decision of the Standing Committee on the Law of Patents (SCP) at its thirty-sixth session, held in Geneva on October 14 to 18, 2024, this document contains a report on the two sharing sessions on Standard Essential Patents (SEPs) and issues related to fair, reasonable and non-discriminatory (FRAND) licensing issues, held during the thirty-fifth and thirty-sixth sessions of the Committee on October 19, 2023, and October 16 and 17, 2024, respectively.[1]

[1] The agendas and the presentations delivered during the sharing sessions are available at: https://www.wipo.int/meetings/en/details.jsp?meeting_id=75414 and https://www.wipo.int/meetings/en/details.jsp?meeting_id=80917.
The videos on demand containing full presentations and deliberations are available at: https://webcast.wipo.int/video/SCP_35_2023-10-19_AM_120886 and https://webcast.wipo.int/video/SCP_36_2024-10-16_PM_123702.

SCP/35 – SHARING SESSION ON PRACTICAL EXPERIENCES RELATING TO SEPS AND ISSUES RELATED TO FRAND LICENSING

INTRODUCTION

2. The main objective of the session was to hear the experiences of SCP observers and other relevant stakeholders, including standard developing organizations (SDOs), implementers and SEP owners. In particular, observers, intergovernmental organizations and stakeholders were invited to share their experiences relating to:

(i) Emerging policies and practices on the incorporation of patented technologies into standards; and

(ii) The negotiation of licenses on FRAND terms.

Presentations

Panelist 1: Dr. Konstantinos Karachalios, Managing Director of the Institute of Electrical and Electronics Engineers Standards Association

3. The representative of the Institute of Electrical and Electronics Engineers Standards Association (IEEE SA), reflected on his extensive experience working at the interface between patents and standards, including past collaboration with the European Patent Office (EPO) and technical assistance in developing countries. He said that the lack of clear, enforceable rules governing that interface was a very serious matter, with potentially harmful consequences for both the patent and the standardization systems and their users.

4. He criticized the long-standing absence of practical progress on defining key principles, such as "reasonable and non-discriminatory" licensing, noting that, while many organizations referenced FRAND commitments, those terms often remained undefined and open to divergent interpretations. Such vagueness created legal and commercial uncertainty, a situation that he likened to a "Jurassic Park syndrome", in which perceived safety masked hidden risks.

5. To address those issues, IEEE SA undertook a decade-long reform process to clarify FRAND commitments. That process had resulted in a consensus-based definition of "reasonable" as being linked to the value of the invention prior to its incorporation into the standard. More importantly, IEEE SA had adopted a mathematically precise definition of "discrimination", namely, the refusal to license a SEP to implementers, regardless of price differences, which might reflect negotiation dynamics.

6. Other systemic issues, such as injunctive relief in SEP disputes, fell outside the scope of SDOs' mandate and should be addressed within the patent system. Such remedies should not be used in collaborative ecosystems, like information and communication technologies (ICTs). Rather, they were more appropriate in exclusive-use sectors, such as pharmaceuticals.

7. There was a need to improve patent quality, especially in the ICT sector, which was critically important, but often lacked rigorous standards. Drawing on his 25 years of experience within the patent system, Dr. Karachalios highlighted the value of deeper collaboration between SDOs and intellectual property (IP) offices. As a concrete example, he pointed to the existing EPO agreements for prior art search exchange and suggested that similar partnerships could be expanded to enhance examination quality and consistency.

8. Regulators should incentivize both SDOs and the patent system to fulfill their responsibilities, rather than attempting to solve problems on behalf of others. Lastly, candid discussions and constructive collaboration were needed, as a priority, among all stakeholders.

Panelist 2: Mr. Christian Loyau, Legal Affairs and Governance Director at the European Telecommunications Standard Institute, France

9. Mr. Loyau began his presentation by emphasizing the fundamental importance of standardization, particularly in the current geopolitical context, and provided an overview of the structure and mission of the European Telecommunications Standard Institute (ETSI).

10. ETSI was a French nonprofit SDO with over 900 members, 20 per cent of which were small and medium-sized enterprises (SMEs). It had developed hundreds of ICT standards and operated over 130 technical groups. The ETSI standards were publicly available and freely downloadable, and there was widespread global engagement across more than 60 countries in addition to numerous partnerships, including with IEEE SA and the International Telecommunication Union (ITU).

11. The primary mandate of ETSI was to develop high-quality technology standards. To that end, ETSI anticipated the inclusion of patented technologies, and had thus established a clear IP rights policy, which hinged on two principles: essentiality and FRAND licensing**.**

12. Essentiality, as defined in the policy of ETSI, referred to a patented invention being technically necessary for the implementation of a standard. If a company wished to use such a standard, it would require a license for the essential patent. Despite the vagueness of the FRAND concept, it generally worked in practice, as most patent holders and implementers had reached licensing agreements without any issues. The public perception of dysfunction was largely shaped by the relatively few high-profile disputes that made headlines.

13. Mr. Loyau identified two common sources of dispute in SEP licensing: first, the validity or quality of the patent itself, which could be challenged before the courts; and second, essentiality, i.e. whether a patent was technically required in order to implement a standard. To resolve essentiality disagreements, he cited expert determination mechanisms such as those offered by the World Intellectual Property Organization (WIPO), which could provide binding or non-binding assessments. Disputes over FRAND licensing terms could also be addressed through the courts, which were increasingly aligned in their interpretations.

14. ETSI itself did not participate in commercial negotiations, nor did it assess the essentiality of declared patents. Those responsibilities lay instead with the patent owners, who declared whether their patents were essential to a standard. Moreover, ETSI maintained a widely used public database of such declarations. However, that database served as an informational tool only, not as a licensing platform.

15. In conclusion, Mr. Loyau reaffirmed the neutral role of ETSI: it did not determine patent value or interfere in licensing, but rather focused solely on developing world-class standards that remained accessible to all.

Delegation of Samoa

16. The Delegation of Samoa thanked the panelists for their presentations and asked whether any work had begun on formulation of standards that referred to the use of artificial intelligence (AI), referencing earlier sessions that had addressed the topic of AI.

17. Mr. Loyau replied that ETSI was observing the potential for standardizing aspects of AI. Standardization within ETSI typically proceeded via one of two paths: either member organizations proposed new work related to their expertise and interests, particularly where connectivity was involved, or ETSI responded to specific requests from the European Commission, in its capacity as one of the three official European Standardization Organizations (ESOs). The ETSI Secretariat, along with some Members, was currently reflecting on whether

there was scope to pursue standardization in the field of AI. However, the ETSI Secretariat itself could not initiate such work independently; formal proposals must come from Members.

18. Dr. Karachalios noted that, indeed, there was an ecosystem developing around the standardization of AI systems. That work covered both technical dimensions, such as algorithms, learning processes, and data handling, and contextual concerns, including transparency and accountability.

Panelist 3: Mr. Luke McLeroy, Senior Vice President of Avanci, United States of America

19. Mr. McLeroy introduced himself as a patent attorney based in Dallas, Texas, with nearly 20 years of experience in licensing SEPs, including roles in private practice, in-house at technology companies, and currently at the licensing platform Avanci. He expressed appreciation for the opportunity to present a positive perspective on standardization and FRAND licensing, emphasizing their contribution to technological progress and global innovation.

20. Mr. McLeroy recounted a historical anecdote involving Lars Magnus Ericsson, founder of the Swedish telecommunications company Ericsson, who had written a letter in 1885 on the difficulties in accessing and sharing telecommunication innovations in the United States due to restrictive patent practices by the Bell companies. The letter, sent to Ericsson's wife from New York, described how United States companies discouraged collaboration and blocked the spread of new ideas, highlighting the detrimental effects of proprietary approaches in the absence of open standards. That situation illustrated how, historically, a lack of standardized, shared innovation had limited technological development.

21. He contrasted that situation with the impact of modern open and global standards, particularly in mobile technology, noting that 5G and 4G technologies, developed collaboratively through organizations such as 3GPP and ETSI, enabled seamless, global mobile connectivity that would not be possible without standardization. In contrast, 1G mobile networks developed without such standards were fragmented, often incompatible across countries, and offered poorer performance. Open standards enabled companies worldwide to contribute to and build superior technologies together.

22. SDOs defined performance and technical goals for a new standard. Participating companies and research institutions then independently innovated and brought forward technical solutions, which were evaluated in a competitive selection process. The best technologies were chosen, ensuring that the resulting standard was based on state-of-the-art innovation. Later, in order to protect their contributions, companies often filed patent applications before proposing their technologies to the SDOs.

23. Patent holders who contributed to a standard committed themselves to licensing their SEPs on FRAND terms through contractual declarations, such as those made to ETSI. Those commitments ensured access to the standard for all implementers and served to balance the interests of innovators and manufacturers. While courts might be called upon to resolve disputes over whether licensing offers met FRAND obligations, Mr. McLeroy argued that such mechanisms did not signal the failure of the system, rather, they preserved its functionality. The FRAND-based system also incentivized companies to invest in research and development (R&D) without guaranteeing success or market adoption. However, if their technology were selected and the standard became commercially viable, they would receive fair compensation via licensing revenues. Meanwhile, implementers were assured access to essential technologies under reasonable terms, fostering widespread adoption and societal benefits.

24. In conclusion, Mr. McLeroy highlighted Avanci's role in streamlining SEP licensing, using the example of its connected vehicle licensing platform. Avanci aggregated SEPs from more than 60 licensors and provided a single license to car manufacturers, covering technologies like 4G and 5G used in connected vehicles. The license fee was paid once at the point of manufacture, and Avanci distributed royalties among the patent holders. Licensors then used the resulting income to reinvest in future innovation, continuing the cycle of technological advancement. Mr. McLeroy concluded by reiterating his belief in the effectiveness and positive impact of standards and FRAND licensing.

Delegation of Nigeria

25. The Delegation of Nigeria, referring to earlier remarks, asked about the role and inclusion of latecomer developers and innovators, particularly those from the Global South. There was a need for clarity on how developing countries could be accommodated within standardization frameworks and what exceptions, if any, existed to ensure that they were not left behind. There was a need to bridge the digital gap and the question arose as to how stringent regulatory approaches could be reconciled with inclusivity.

26. In response, Mr. McLeroy emphasized that one of the greatest advantages of global standards was their open accessibility. Technical specifications developed by SDOs, such as ETSI and IEEE SA, were freely available online, allowing any company to review and implement them. Moreover, the standardized nature of modern technology had enabled companies to create modular, turnkey components that packaged that connectivity, making it easy to integrate into various products, including agricultural sensors or Internet of Things (IoT) devices. That modularization leveled the playing field by reducing the technical burden for smaller developers or companies without significant R&D capacities. Lastly, standardization democratized access to cutting-edge technology, a trend that was expected to continue benefiting emerging and developed markets.

27. Dr. Karachalios agreed with Mr. McLeroy's assessment and acknowledged the transformative potential of standardized technology platforms for all, particularly for developing countries seeking to leapfrog legacy systems. However, there was a precondition in terms of clarity on patent rules in standardization. To ensure that standards worked inclusively and effectively, the legal and financial frameworks, including the details on who owned the patents and how royalties were determined, must be transparent and agreed by consensus. Citing a past instance, he warned that even highly successful standards had failed due to ambiguity with regard to IP and licensing. Multiple actors across the ecosystem shared the responsibility for addressing that issue and, unless action were taken to clarify and enforce the rules in place, the inclusive promise of standardization could be undermined.

Delegation of Samoa

28. The Delegation of Samoa thanked the panelists for their presentations, highlighted the role of standardization in making innovation more affordable and accessible, and referred to the European Union (EU)-led adoption of the USB-C charger as an example of practical innovation through standards. The Delegation asked the panel how the balance between standard-setting and innovation could be managed to avoid stifling inventors, and how improving the quality of granted patents supported better standard-setting processes.

29. In response, Mr. McLeroy highlighted the importance of legal certainty in the patent landscape. From a United States perspective, stronger, more reliable patents made the overall system more predictable and facilitated smoother commercial licensing agreements. Such certainty was particularly important when integrating patented technologies into standardized products. Standardization also represented a distinct form of innovation. Companies might choose to innovate by contributing to standards development, while others might focus on

creating competitive products that implemented those standards. Both paths were valuable and did not inhibit one another. Rather, they created strategic choices for companies, ultimately driving technological progress and product diversity.

30. Dr. Karachalios concurred with Mr. McLeroy's remarks and expanded on a systemic issue affecting patent quality in the context of standard-setting. Standardization working groups were collaborative spaces in which competitors openly exchanged technical ideas. If the records of those meetings were not being made publicly accessible, multiple patent applications could end up being filed on the same concept. Such a practice could result in poor patent quality, as patent offices might be unaware of duplicative claims. The patent system itself could only be blamed if it lacked access to the necessary background documentation. While some standardization bodies were addressing that issue by sharing their documents, others had yet to follow suit, leaving a critical gap in the quality assurance process for high-value patents.

31. With regard to the sharing of meeting records, Mr. Loyau said that ETSI addressed the information gap by ensuring full transparency with the EPO. All minutes and documents from their working groups were made available to the EPO, allowing examiners better insight into the novelty and relevance of patent applications.

32. Mr. Loyau also noted that some studies have shown that a significant proportion of patents granted are later found to be invalid or partially invalid by the Courts. He further pointed to the difficulty that arises when a patent deemed partially invalid has been previously assessed as essential. Particularly, when trying to determine which claims remained valid and whether they aligned with the standard in question. Despite those challenges, ETSI remained committed to transparency with EPO.

33. Dr. Karachalios expressed appreciation for Mr. Loyau's cooperation, recalling their shared efforts in enhancing documentation flow to the EPO. However, a broader concern was that the EPO remained the only major patent office to utilize such information systematically. WIPO should therefore take a leadership role in encouraging collaboration among the world's top five patent offices. He proposed the creation of a common international depository of standardization documentation, built on contributions already made by SDOs, in order to ensure the consistent improvement of global patent quality. Further, WIPO should initiate cooperative efforts that would allow such data to serve the broader international patent system, and not just a single regional office.

Innovation Council

34. The representative of the Innovation Council asked Mr. McLeroy for details of the cost associated with connectivity per connected vehicle on the Avanci licensing platform.

35. Mr. McLeroy said that the most popular program offered by Avanci was for 4G-connected vehicles. The cost was US$20 per vehicle, a one-time payment made when the vehicle left the factory. That fee was then distributed among 62 licensors. For 3G vehicles, the cost had previously been US$9. The pricing for 5G was yet to be announced.

Panelist 4: Mr. David Muus, Head of Legal Operations of Sisvel, Spain

36. Mr. Muus began his presentation by noting that Avanci and Sisvel operated in similar business areas. Sisvel had been active in the licensing business for over 40 years, beginning with television technologies such as on-screen display and teletext. The company had expanded into MP3 in 1998 and currently focused on digital video broadcasting (DVB) standards for digital television, as well as more recent programs like Wi-Fi 6, cellular IoT (narrowband IoT and LTE-M), and 5G licensing for consumer electronics.

37. Patent pools provided safer and more structured licensing paths by uniting multiple parties holding patents that were relevant to a standard, which in turn created a simplified and transparent licensing environment. He described the wide variety of stakeholders in the patent pool ecosystem, which included not only manufacturers, but also network infrastructure providers, universities and research and development institutes, all of which invested in research and development that contributed to standardization and the creation of SEPs that sought returns from implementers that commercialized those technologies.

38. Licensing without patent pools was particularly complex and led to the need for multiple bilateral agreements between licensors and licensees. A scenario in which bilateral licensing was predominant could result in a tangled web of transactions. By contrast, a patent pool could enable patent owners to create a single, uniform set of license terms administered by an agent or licensing platform. Such a pool offered licenses to implementers on equal and transparent terms, significantly reducing transaction volume and legal uncertainty. He presented a graphic to show how patent pools streamlined the licensing process by dramatically cutting down on the number of transactions between patent holders and licensees. A real-world example involved Sisvel and a membership-based licensing organization called RPX, which had collaborated to license previous-generation Wi-Fi technology. The two parties had negotiated internal compensation structures and had later engaged with potential licensees on behalf of the pool. The turning point had come when RPX had initiated discussions with Sisvel. RPX had received feedback from its members that licensing was needed, and Sisvel had begun negotiating licensing terms that RPX could then offer to its members individually. In 2018, negotiations had culminated in a single licensing agreement, in lieu of approximately 1,000 individual transactions. That outcome was a major success and offered a model for how pools could bring order to a potentially chaotic licensing landscape.

39. Mr. Muus highlighted how patent pools could be especially effective, including in the smartphone and automotive markets, where a relatively small number of manufacturers served a vast number of consumers. Patent pools ensured that all parties received uniform terms, simplifying market dynamics and expanding access. Next, he shifted to the emerging challenges in the IoT sector. Unlike smartphones or cars, IoT devices were expected to be cheap, scalable and widespread. As more companies entered that space, the volume of potential licensing transactions grew exponentially, posing a logistical challenge that pools could help to solve. Sisvel had responded by signing up 25 patent holders to its IoT cellular program within the previous year, including companies that were crucial innovators in the 4G IoT standard space. Collectively they covered a significant portion of the relevant patents.

40. The role of Sisvel was not just to represent patent owners, but also to serve as an intermediary that balanced the interests of licensors and licensees. That included negotiating rates that were informed by both patent owners' expectations and feedback from the companies that would implement the technologies. He pointed out that Sisvel's pool included a wide variety of stakeholders: device manufacturers, component suppliers, infrastructure companies, non-practicing entities, research and development centers, and operators. Such diversity strengthened the fairness and utility of the licensing terms they had established. Crucially, the licensing terms offered by Sisvel were not dictated solely by the pool. They resulted from extensive dialogue with both patent owners and market participants to ensure that the licensing structure was commercially viable and widely acceptable. The ultimate goal of Sisvel was not to maximize license revenue, but rather to create a sustainable and successful licensing framework. By facilitating market access to key technologies at fair, reasonable, and non-discriminatory rates, pools helped the entire ecosystem to flourish.

41. In conclusion, Mr. Muus said that he had emphasized the IoT and RPX agreement with a view to challenging the misconception that the licensing world was defined by conflict. While litigation occurred, it was often a last resort. Most agreements were reached through negotiation, either bilaterally or through intermediaries such as Sisvel and Avanci. Sisvel was

committed to transparency, fair licensing and collaboration. Patent pools represented a practical and effective solution to complex licensing needs, benefiting both innovators and implementers and keeping disputes out of the courtroom.

Panelist 5: Ms. Gabriele Mohsler, Vice President of the Licensing Executives Society International, Germany

42. Ms. Mohsler said that the Licensing Executives Society International (LESI) focused on advancing IP business practices and professional standards. The European Commission's April 2023 regulatory proposal on SEPs could have global influence. Its key elements included an SEP register at the European Union Intellectual Property Office, mandatory essentiality checks, a global aggregate royalty framework and a pre-litigation conciliation mechanism. LESI had a vested interest in that regulatory proposal and was actively examining SEP licensing through its ongoing Thought Leadership Program. While recognizing the intent behind the proposal to increase transparency and innovation uptake, especially in the IoT, Ms. Mohsler cautioned against rushed implementation and stressed the importance of market-informed, balanced solutions. LESI encouraged the integration of practical expertise from licensing professionals and the use of the existing experience of WIPO in alternative dispute resolution to avoid duplicative efforts. LESI remained committed to engaging in the reform process and welcomed the role of WIPO in facilitating dialogue.

Panelist 6: Dr. Lea Tochtermann, Junior Professor of Private Law and European Patent Law, University of Mannheim, Germany

43. Dr. Tochtermann said that the discussion on SEPs touched upon three areas of law: patent law, contract law, and competition law. SEP issues were primarily contractual and dealt with matters of competition rather than patent law. Licensing agreements were negotiated under national contract law and subject to competition law scrutiny, particularly in the EU.

44. While transparency was essential in FRAND negotiations, full disclosure of all licensing terms was neither practical nor legally mandated due to business confidentiality. The Court of Justice of the European Union allowed flexibility in FRAND rates within a range, rather than fixed figures, to preserve contractual freedom. Moreover, dispute resolution mechanisms, such as mediation at WIPO and adjudication by national courts or by the Unified Patent Court, provided effective frameworks without mandating specific royalty rates.

45. Dr. Tochtermann expressed reservations about recent EU legislative proposals, including mandatory essentiality checks and FRAND rate determinations, citing concerns over access to justice, administrative burden and institutional expertise.

Panelist 7: Mr. Daniel Grajales, Global Policy Manager, International Chamber of Commerce, France

46. Mr. Grajales said that his statement was based on extensive consultation between the International Chamber of Commerce and its members, as well as experts. While the International Chamber of Commerce had not yet taken definitive positions on all issues, it aimed to help policymakers to ask the right questions and make informed decisions.

47. Widely adopted technical standards played a critical role in driving innovation, interoperability and competition. Without such standards, markets could become fragmented and dominated by proprietary "walled garden" technologies, which would reduce consumer choice and technological advancement. Standards often incorporated patented technologies, making FRAND licensing essential to balance the rights of innovators with the needs of implementers.

48. Members of the International Chamber of Commerce had highlighted two key challenges: first, the exponential increase in patent declarations, particularly for 5G, which raised concerns about over-declaration and the quality of claimed SEPs; and second, the lack of transparency in licensing practices, particularly in how FRAND commitments were implemented. Mr. Grajales also raised concerns about recent judicial and policy developments, including national courts setting global licensing rates and the proposal by the European Commission for “competence centers” to determine aggregate FRAND rates. Such initiatives required careful scrutiny, with key questions remaining about rate-setting standards, transparency, binding effect, and their impact on transaction costs, especially for SMEs.

49. The International Chamber of Commerce remained strongly committed to studying those proposals further and advocating a SEP licensing system that remained voluntary, transparent and pro-competitive, and which supported innovation and served the broader interests of economies and societies.

Delegation of Canada

50. The Delegation of Canada thanked all the panelists for their valuable insights and expressed appreciation to the Secretariat for organizing the session. The diversity of perspectives from SEP owners, implementers, and SDOs was crucial to the international dialogue on SEPs and FRAND licensing, and the interplay among those stakeholders significantly affected the accessibility and dissemination of standardized technologies.

51. While FRAND licensing helped to ensure both technology diffusion and fair returns for innovators, Member States also brought meaningful experiences shaped by different legal systems, economic priorities, and policy approaches. Referring to its proposal contained in document SCP/34/7/ Rev, the Delegation suggested holding a future sharing session at SCP/36 focused on the policy experiences of SCP members in managing SEPs and FRAND-related challenges. To that end, it proposed exploring issues such as transparency, negotiation efficiency, dispute resolution, and support for SMEs. Canada remained willing to present on its recent legislative developments and expressed openness to discussing the proposal with any interested delegation.

Delegation of France

52. The Delegation of France thanked both the Delegation of Canada for its proposal and the Secretariat for organizing what it described as a highly engaging sharing session. Referring to Dr. Karachalios’ mention of a “Jurassic Park” scenario, the Delegation suggested that the SDOs themselves might have inadvertently created such an environment. They questioned the role of standard-setting bodies in defining what constituted an “essential” patent, especially given the lack of harmonization across jurisdictions. Noting the diversity of those bodies globally, particularly in countries like the United States, Japan and Korea, they pointed out that Europe had fewer such entities, particularly in the telecommunication sector.

53. Inconsistent definitions and roles across different SDOs complicated global alignment, and, without clearly defining the “F” in FRAND, namely “fair”, additional work on harmonization was needed. SDOs must play a central role in that endeavor.

54. Dr. Karachalios agreed that SDOs bore the primary responsibility for defining and implementing clearer policies. While harmonization across all sectors might not be feasible due to differing industrial and technological ecosystems, minimum policy clarity was essential. What was considered “reasonable” or “discriminatory” could vary by field, but the current lack of basic definitional guidance was a failure on the part of SDOs and regulators. Regulators should indicate what minimal requirements they needed from SDOs. He also encouraged the continued engagement of Member States.

55. Dr. Tochtermann concurred with Dr. Karachalios and supported the idea that, while standard-setting must remain with SDOs due to the technical complexity involved, more regulatory guardrails were necessary. She proposed increased transparency in the standard-setting process, including sharing SDO minutes with national patent offices, a practice already adopted by the EPO. She also recommended requiring SDOs to collect aggregated data on FRAND licensing terms, which, while not disclosing full contractual details, would offer valuable insight into prevailing licensing conditions.

56. Mr. McLeroy offered a cautionary perspective, expressing concern over forced harmonization or over-regulation. A single approach would not suit the diversity of standards and technologies in use. Some standards, such as physical interface definitions, differed greatly in terms of complexity from those in fields such as cellular communications. Accordingly, he supported a differentiated, sector-specific approach and endorsed flexibility within and among SDOs to tailor IP policies appropriately to their domains.

Innovation Council

57. The Representative of the Innovation Council provided a brief overview of the role of the organization, explaining that it brought together perspectives from entities engaged in developing and deploying connectivity technologies. The Innovation Council recently published two question-and-answer documents on cellular technology innovation, standardization, SEPs and licensing, aimed at informing the broader policy discourse, particularly in Europe. They emphasized the efficiency and inclusiveness of the current SEP licensing system, which supported widespread access to standardized technologies, especially for SMEs. Recent developments, such as expansion by Avanci to 5G with licensing fees under $30 per vehicle, demonstrated the affordability and scalability of the current model.

58. The Representative went on to challenge the notion that SEP holders hoarded technologies or overcharged licensees. Instead, a “virtuous cycle” of innovation was enabled by standardized technologies, driving massive research and development investments and enabling wide connectivity. While acknowledging that improvements were possible, the Representative argued that the system had proven effective and supported healthy ecosystems of innovation. In that regard, strong IP systems, patent quality, legal certainty, and injunctive relief were also important.

Health and Environment Program

59. The Representative of the Health and Environment Program raised two key concerns. First was the challenge posed by multiple overlapping standards; how could stakeholders effectively navigate that complexity? Second, some public and non-governmental organization circles, especially in Europe, were concerned about 5G technologies, including potential environmental and health impacts from electromagnetic emissions. The Representative also asked about patent quality, the ongoing lack of consensus on how to define essentiality, and how the latter could be reliably verified.

60. Dr. Tochtermann addressed the question on patent quality and essentiality, saying that the quality of patents was primarily determined during the granting process by national patent offices, whose approach varied significantly in terms of rigor. Some jurisdictions granted patents more liberally, potentially contributing to the creation of “patent thickets” that could impact transparency and burden implementers.

61. On the issue of essentiality, SDOs did not assess whether declared patents were truly essential; that issue was usually subject to negotiations between licensing parties or determined by courts. While an automated system would be ideal, essentiality assessments were highly technical and required specialized expertise, which was limited. In Dr. Tochtermann’s view,

addressing essentiality case-by-case in licensing discussions was currently the most feasible option.

62. Dr. Karachalios agreed that improvements in patent examination standards were urgently needed and also possible. He supported the idea, previously suggested in study commissioned by the European Commission, that patent offices were well-positioned to carry out essentiality assessments, given their technical expertise and resources. Although such opinions would not be legally binding, they could serve as authoritative, preliminary assessments to improve clarity. He also pointed out the reluctance of some patent offices to engage in such tasks and encouraged regulators to empower them to take on that role.

63. Mr. McLeroy noted that patent pools, such as Avanci and Sisvel, already played a critical role in determining essentiality, offering efficient, market-based solutions that prevented individual companies, especially SMEs, from bearing the burden of complex legal and technical evaluations.

64. Ms. Mohsler emphasized the importance of distinguishing between patentability and essentiality. While patent quality should indeed be ensured at the granting stage, essentiality checks did not assess validity or prior art. In her view, proposed essentiality checks, such as those in the European Commission regulation, would be unlikely to benefit SMEs.

65. Mr. Muus warned against broad regulatory intervention, cautioning that it could disrupt a generally functional licensing ecosystem. Problematic behavior was an exception rather than the norm. Overreaching regulations could undermine the balance currently achieved through voluntary agreements and market mechanisms. Instead, he recommended the use of precision tools to target specific issues without jeopardizing the system as a whole.

Delegation of Singapore

66. The Delegation of Singapore expressed gratitude to the panelists for their insightful contributions on the topic of SEPs and FRAND licensing. Recognizing the growing importance of standards across diverse industries, particularly with the proliferation of IoT technologies, it noted that licensing dynamics had become increasingly complex. While SEP licensing had previously been confined to traditional sectors such as telecommunications, licensing-related challenges had since arisen for new players from unrelated industries, especially in cases where technical knowledge gaps existed. One example was that of automotive engineers, who might struggle to interpret the technical relevance of telecommunications patents, complicating the assessment of whether a given patent was indeed essential. Moreover, in emerging sectors, the absence of pre-established licensing benchmarks further added to that complexity.

67. IP offices held dual responsibility to ensure that patent holders could obtain a fair return on R&D investments while also enabling implementers to access technologies efficiently and bring their innovations to the market. For its part, the Intellectual Property Office of Singapore (IPOS) played a significant role in providing examiners with access to comprehensive databases to conduct robust patentability assessments. For standard-related patents, IPOS examiners accessed documentation through SDO websites and File Transfer Protocol (FTP) servers, though that process could be labor-intensive. Further international efforts should be made to improve accessibility to standard-related documentation for patent examiners globally.

68. On the policy front, the Delegation highlighted the 2022 update to the Competition and Consumer Commission of Singapore guidelines, which clarified the interplay between IP rights, including SEPs, and competition law. Those updated guidelines offered more precise definitions and provided directions on SEP and FRAND licensing under the Competition Act. Singapore also played an active role in promoting alternative dispute resolution (ADR) for IP disputes. IPOS and the WIPO Arbitration and Mediation Center (WIPO AMC) had collaborated

since 2011 to provide joint dispute resolution procedures. Moreover, in 2021, WIPO AMC issued guidance specifically for FRAND-related ADR, aiming to facilitate resolution of cross-border SEP disputes by indicating the procedural tools available at various stages. Singapore positioned itself as a neutral and capable venue for resolving international IP disputes, offering a wide range of ADR options and legal certainty. The Delegation expressed interest in learning from the national experiences of other Member States in that evolving and important area.

69. In closing, the Chair thanked the esteemed panelists for their contributions, acknowledging the value of their diverse perspectives and insights. He noted that the discussion had been both interesting and informative, and expressed appreciation on behalf of the Member States and observers for the enriching exchange.

SCP/36 – SHARING SESSION FOR MEMBER STATES ON POLICY EXPERIENCES ON SEPS AND FRAND LICENSING-RELATED ISSUES

INTRODUCTION

70. The main objective of the sharing session was to better understand the different approaches and experiences of Member States on SEP-related issues. Particularly, it was proposed that Member States share their experiences related to:

(i) Transparency and predictability in FRAND licensing arrangements;

(ii) Efficiency of FRAND negotiations;

(iii) Balancing the interests of SEP owners and SDO implementers;

(iv) Providing balanced, predictable, and efficient enforcement and dispute resolution frameworks; and

(v) Encouraging the development of FRAND expertise, including for SMEs and startups.

Presentations

Delegation of Canada

71. The Delegation of Canada presented a detailed overview of recent experiences and developments in Canada relating to SEPs and FRAND licensing, and reiterated its long-standing interest in discussions on that topic, referencing its proposal set out in document SCP/34/7 Rev. It said that it appreciated the Secretariat's efforts and the contributions of stakeholders during previous sessions.

72. The significance of SEPs was growing in the light of increasing global interconnectivity, particularly in sectors such as mobile communications and the IoT. The Canadian Intellectual Property Office (CIPO) had conducted economic research and patent analysis on SEPs using the Patent Vector database, identifying global trends and mapping patent activity in key technological fields.

73. While Canadian institutions held a modest share of SEP inventions globally, they remained comparable to peers in France, Germany and the United Kingdom. Canadian patent legislation included specific provisions addressing SEP licensing commitments, particularly under Section 52.1 of the Patent Act. Moreover, Canadian national courts had begun to consider SEP-related issues, including a 2020 federal case and a certified class action in British Columbia concerning alleged anti-competitive behavior.

74. Continued international experience-sharing on the abovementioned emerging legal and policy issues remained key, including ongoing dialogue within the Committee.

Delegation of the United Kingdom

75. The Delegation of the United Kingdom presented an overview of recent national work and policy developments related to SEPs and underlined the strategic importance of SEPs in promoting innovation and economic growth. The United Kingdom Intellectual Property Office (UK IPO) considered SEPs to be central to its mission of supporting SMEs and fostering an innovation-friendly IP system.

76. UK IPO maintained extensive stakeholder engagement, which had begun with a 2021 call for views and had continued through targeted consultations, including a 2023 questionnaire focused on SME experiences. Those efforts had informed the UK IPO 2024 SEPs Forward Look, which set out a non-regulatory path forward, emphasizing transparency, accessibility and dispute resolution. No legislative changes to limit injunctions were currently planned.

77. Key policy objectives included enhancing SME access to SEP-related information, increasing transparency in pricing and patent essentiality, and promoting efficient dispute resolution mechanisms. As a practical step, the UK IPO launched the SEPs Resource Hub in July 2024, developed collaboratively with industry experts to address knowledge gaps and to support SMEs in navigating the SEP ecosystem.

78. International coordination and dialogue were also key, including increased engagement with other patent offices, governments and standards development organizations to align on global SEP challenges and to improve SME participation in standardization processes. Further discussions would be welcome, and the Delegation of the United Kingdom stood ready to share additional information bilaterally.

Delegation of the United States of America

79. The Delegation of the United States of America shared an overview of the evolving policy approach of the United States Patent and Trademark Office (USPTO) to SEPs. It noted that, over the previous decade, the USPTO, often in collaboration with the Department of Justice and the National Institute of Standards and Technology, had issued and reassessed several policy statements concerning SEPs, particularly focusing on the appropriateness of injunctive relief.

80. While a 2013 joint policy statement had advocated equitable evaluation of injunctions, a 2019 revision reflected evolving case law, including Apple v. Motorola, emphasizing the absence of a categorical bar on SEP injunctions.

81. In response to a 2021 executive order and international concerns, the USPTO and its partner agencies had ultimately chosen to withdraw the 2019 policy statement and to avoid issuing a replacement, concluding that refraining from prescriptive statements was the best way to support innovation and competition. As per the delegation, despite withdrawing from formal statements, the USPTO remained active in SEP-related work.

82. In 2022, a memorandum of understanding (MoU) was signed with the WIPO AMC, and multiple training webinars had been delivered to support SMEs in SEP licensing. The USPTO had also contributed to the United States Government's national standard strategy for critical and emerging technologies, with a licensing roadmap published in May 2023. Most recently, in June 2024, the USPTO signed a bilateral MoU with UK IPO to enhance cooperation on SEP-related policy, marking the first agreement of its kind.

83. The Delegation remained committed to advancing fair and balanced standards ecosystems through ongoing international collaboration and case-by-case enforcement of competition principles.

Delegation of Japan

84. The Delegation of Japan said that the Japan Patent Office (JPO) was working to facilitate transparency and fairness in SEP licensing. In June 2018, the JPO had published a guide to licensing negotiations involving standard patents. A revised English version had been issued in July 2022, incorporating recent court decisions and international trends. The Delegation expressed its appreciation for the opportunity to share its work with other Member States.

Delegation of China

85. The Delegation of China described recent efforts by the China National Intellectual Property Administration (CNIPA), undertaken in collaboration with the Standardization Administration of China, to enhance the governance of SEPs. Drawing from international frameworks such as those of the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC) and the ITU, China had issued national provisions and special procedures that clarified the principles and processes for implementing SEPs under FRAND terms. The complexity of SEP licensing was evident, particularly when it involved legal disputes, and global consensus was lacking. WIPO should help to foster inclusive international rules to ensure that innovation benefits are shared worldwide.

Delegation of the Republic of Korea

86. The Delegation of the Republic of Korea shared strategic initiatives related to SEPs and said that the Korean Intellectual Property Office (KIPO) had selected two priority sectors for in-depth patent and standardization analysis on an annual basis. In 2023, KIPO had focused on 6G and urban air mobility, culminating in a strategy map published in early 2024 to guide SEP acquisition in those fields. For 2024, KIPO had selected cybersecurity and spatial media computing. The Republic of Korea remained committed to supporting R&D and to ensuring fair SEP licensing to maintain global competitiveness.

Delegation of Poland

87. The Delegation of Poland emphasized the role of Polish entrepreneurs as implementers of SEPs, noting that approximately 5 per cent of all identified potential SEP implementers in the EU originated from Poland. However, despite their active participation in the use of standardized technologies, Polish entities were almost exclusively royalty payers, not recipients.

88. According to available data, royalty outflows from Poland to foreign SEP holders in 2022 had ranged between 34 million euros and 91 million euros, underscoring the net payer status of the country in the global SEP ecosystem. That economic dynamic was largely due to foreign SEP holders, such as global smartphone manufacturers, passing licensing fees onto Polish consumers, which resulted in higher product prices in the Polish market. No Polish companies currently acted as SEP licensors, and thus no corresponding royalty inflows occurred. That imbalance reinforced the need to support and protect the interests of SEP implementers in countries like Poland. In that context, stronger legal certainty in the SEP licensing environment was key, as was greater transparency in the licensing process and improved balance in the negotiating power between SEP holders and implementers. Such measures would be highly beneficial and desirable, particularly for implementer-heavy economies like Poland, and would help to foster a fairer, more equitable SEP framework.

Innovation Council

89. The Representative of the Innovation Council said that it was important to take a step back and consider the broader perspective, emphasizing that SEPs, and in particular their licensing within the framework of commitments made to SDOs, represented a major global success story from a technology transfer standpoint. That dynamic had enabled the widespread global dissemination of cellular technology in recent decades. Accessible, affordable, and connected devices and services had come to be available virtually everywhere, and connectivity was being leveraged to address global challenges and support the achievement of the Sustainable Development Goals (SDGs).

90. Turning to recent policy discussions, the Representative noted that considerable attention had been given to helping SMEs to better understand SEPs, standardization and licensing. SMEs were rarely approached for licensing when using standardized technologies, as such

negotiations typically occurred among larger industry players. Nonetheless, the provision of relevant information and evidence was seen as valuable in enabling SMEs and other stakeholders to make informed decisions regarding research, development, commercialization and related activities.

91. Offering alternative dispute resolution mechanisms in addition to litigation was important. In that context, the work of the WIPO Secretariat on SEPs was commendable, particularly its valuable arbitration and mediation services, as well as the broader range of initiatives carried out by the team.

Japan Patent Attorneys Association

92. The Representative of the Japan Patent Attorneys Association (JPAA) expressed appreciation to the WIPO Secretariat for preparing the document under discussion. In order to promote effective technology transfer, disseminating knowledge related to IP and increasing the number of both prospective licensors and licensees were essential. In that regard, the Representative expressed support for the initiatives of JPO, including the dispatch of experts and the provision of training programs to universities and foreign countries. Those efforts were complemented by the activities of JPAA, including the organization of seminars on IP practice and the dispatching of patent attorneys to various countries across Asia.

93. JPAA believed that sharing IP knowledge also facilitated the transfer of environmental technologies. In that connection, the WIPO GREEN platform played a key role in advancing such efforts and contributing to the achievement of the SDGs.

94. On the subject of licensing SEPs, there was an ongoing need for clear criteria regarding the calculation of royalty rates. Automobile industry associations from six countries, including Japan, had jointly submitted a letter to a patent pool operator, raising four key questions. They included inquiries about the specific patents included in the pool, the basis on which those patents were determined to be standard essential, and the rationale behind the royalty rate calculations.

95. JPAA was of the view that ensuring transparency in the identification of standard essential patents and in the methodology used for calculating royalties was critical to facilitating effective technology transfer.

Delegation of Canada

96. The Delegation of Canada introduced its proposal contained in document SCP/36/11. It thanked the Secretariat for circulating the proposal and for organizing the informative sharing session, held the previous day, on experiences related to SEPs and FRAND licensing.

97. Recalling its earlier proposal at SCP/34 (document SCP/34/7 Rev.), it noted that the original suggestion had encouraged an exchange among Member States, SCP observers and stakeholders on a broad range of SEP-related issues, including FRAND licensing.

98. The discussions held during SCP/35, as well as the previous day's session, were highly informative and reflected the important roles played by patent owners, SDOs and implementers in facilitating global technology diffusion.

99. In its proposal (document SCP/36/11), the Delegation suggested that the Secretariat should:

(i) Prepare a report summarizing the SEP and FRAND licensing discussions from SCP/35 and SCP/36, based on contributions from Member States, observers and relevant stakeholders; and

(ii) Compile a list of fully enacted and in-force SEP-related legislative and policy measures undertaken by Member States. That compilation, to be presented as a dedicated page on the SCP website and linked from the WIPO SEP webpage, could also include references to notable case law.

100. The intention was not to duplicate existing WIPO work, particularly the WIPO Lex Database SEP Case Law Collection, but rather to allow Member States to identify relevant case law and policy measures that they deemed notable for inclusion. The Delegation remained available to further discuss the proposal with any other interested delegation.

Delegation of Hungary

101. The Delegation of Hungary, speaking on behalf of the European Union and its member States, welcomed and expressed support for the proposal put forward by the Delegation of Canada. However, while it supported increased transparency in the SEP ecosystem, such work should not serve to duplicate existing efforts. SEPs were essential to foster standardization and innovation, technology transfer, and the adoption of advanced technologies across sectors.

Delegation of the Republic of Moldova

102. The Delegation of the Republic of Moldova, speaking on behalf of the Central European and Baltic States (CEBS), expressed the Group's support for the proposal put forward by the Delegation of Canada. Although the Group had not submitted its position in writing as requested, it aligned itself with the proposal and supported its objectives.

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