

Brussels, February 14, 2024

Dear Member of the European Parliament,

We represent European organizations (companies and research institutions), small and large, that invest heavily in cutting edge R&D. The innovative technologies that we develop are critical to European technological sovereignty and strategic autonomy.

You will shortly be asked to vote on the JURI report on the European Commission's proposal for a regulation on standard essential patents. The report was put to vote without allowing the Parliament the time needed to engage in a thorough and fair assessment of this file.

Adopted by a small majority (13 votes for, 10 abstentions), the report failed to address the many concerns raised by European technology leaders. These include the red tape and administrative burdens placed upon both SEP holders and SEP implementers, and the delay and effective denial of access to Unified Patent Court and national courts. The net effect of these procedures will be to disenfranchise European courts and divert SEP disputes to non-EU courts.

We urge you to reject the report and take the time to understand, measure and act on a solution that truly protects European interests.

- 1. Concerns raised by European patent and legal experts:** European and impartial experts from both the European Patent Office (EPO)ⁱ and the Unified Patent Court (UPC)ⁱⁱ have raised serious concerns that warrant careful reflection and further engagement. Similar concerns have been raised by European Standards Developing Organizations (SDOs)^{iii, iv, v} The European Association of Research and Technology Organizations (EARTO)^{vi} and Europe's Intellectual Property Judges Association (IPJA)^{vii} have also expressed profound reservations. The European Parliament should consult with these European experts before acting.
- 2. Concerns raised by the European Council:** Several Member States, including the Netherlands, Finland, and Sweden have expressed serious concerns regarding the proposed regulation. Moreover, the European Council has presented the European Commission with approx. 250 written questions regarding the proposal. Many of these raise important practical, legal and competitiveness issues such as: compliance with the WTO TRIPS Agreement, violation of fundamental rights such as access to justice and the right to (intellectual property), proportionality, and the impact upon European R&D. Addressing these significant issues is likely to require the Commission to rethink its proposal or necessitate substantial fundamental amendments.
- 3. Special interests:** The pressure to take an early vote reflects the political dimensions of this file. Although the Commission's own study revealed no need for regulatory intervention^{viii}, this file has nevertheless been pushed ahead. MEPs should consider whether the rush to approve this file truly reflects core European interests.

European organisations invest tens of billions of euros annually into R&D, including for standardized technologies such as 5G/6G, WiFi, and audio/video codecs. The current proposal, as

amended in the JURI report, will diminish Europe's role as a leader in the development of these technologies. Instead of a standard setter, Europe will become a standard taker. Equally, the vast costs, administrative burdens and inefficiencies in licensing resulting from the draft regulation will harm rather than help EU innovators, including SMEs.^{ix}

There is no compelling reason for an early vote on this important and complex file. **We urge you to vote against the JURI report to give the Parliament time to further scrutinize the file and reflect carefully on the views of the EPO, UPC, other European institutions and European innovators.**

Yours sincerely,

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On behalf of Nokia, Ericsson, Philips, Fractus, IQM, Tactotek, and EARTO – the European Association of Research and Technology Organisations

ⁱ <https://files.lbr.cloud/public/2023-10/EPO%20Letter%20IAM.pdf?VersionId=Xk2GKKPZ.qRisb5bU4BFaeiLe44oJuGB>

ⁱⁱ <https://www.managingip.com/article/2bqbfr0uyrki1fnuy9ou8/breaking-upc-chief-urges-eu-to-rethink-sep-plan>

ⁱⁱⁱ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13109-Intellectual-property-new-framework-for-standard-essential-patents/F3434428_en

^{iv} https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13109-Intellectual-property-new-framework-for-standard-essential-patents/F3434422_en

^v <http://www.fosspatents.com/2023/04/etsi-asks-european-commission-to.html>

^{vi} <https://www.earto.eu/wp-content/uploads/EARTO-Position-Paper-on-EC-Regulation-on-SEPs-Final.pdf>

^{vii} https://www.linkedin.com/posts/joff-wild-6a80bb8_former-england-and-wales-court-of-appeal-activity-7125581578033840133-Nwga/?utm_source=share&utm_medium=member_desktop

^{viii} The Commission engaged a consortium of experts to determine if there was evidence of market failure justifying regulatory intervention. They conclude that there is no evidence of market failure:

Existing empirical evidence on the causal effects of current SEP licensing conditions is largely inconclusive. Empirically observable outcomes do not indicate the existence of pervasive “opt-out” from standards-related innovation as a consequence of SEP licensing conditions; i.e. it does not appear that the observed challenges in SEP licensing are sufficiently severe as to systematically discourage potential contributors from participating in standards development, or discourage potential implementers from creating products that use technology standards subject to potential SEPs. <https://www.iplytics.com/wp-content/uploads/2023/04/Empirical-Assessment-of-Potential-Challenges-in-SEP-Licensing.pdf> at page 185 {emphasis added}.

^{ix} See comments from small innovative European companies IQM and TacktoTek at this Euractiv conference: https://youtu.be/4t_-0ADYX0s?si=u2oej_yboNRKwmC4