



SDO IPR Policy as a means to regulate Patent Hold-Up?

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Open Standards definition

Global Standards Collaboration (GSC) recognise an Open Standard when all the fundamental elements are included:

1. the standard is developed and/or approved, and maintained by a collaborative consensus-based process;
2. such process is transparent;
3. materially affected and interested parties are not excluded from such process;
4. the standard is subject to **RAND/FRAND Intellectual Property Right (IPR) policies which do not mandate, but may permit, at the option of the IPR holder, licensing essential intellectual property without compensation**; and
5. the standard is published and made available to the general public under reasonable terms (including for reasonable fee or for free). [[GSC10/Closing\(05\)12](#)]



Role of an SDO IPR Policy

To ensure wide dissemination of the Open Standard to implementers, the IPR Policy relies on :

1. the **commitment** to grant a license for Standard Essential Patents (SEP) – unless declared otherwise
2. to **potential licensees**
3. on **Fair, Reasonable And Non-Discriminatory (FRAND)** terms and reciprocal conditions.

The meaning of **Reasonable is qualitative** – not quantitative – and is assumed to be defined in good faith negotiations.

The whole IPR Policy is assuming **fair-play** and good faith dealings and does **NOT** attempt to address cases of abusive or bad conduct.



Diversity of « Hold-Ups »

Hold-up (abuses) can be exercised by **SEP holder and/or potential licensee** on e.g. :

1. Royalties (SEP valuation, meaning of Reasonable, stacking)
2. Other licensing terms and conditions
3. SEP validity and essentiality
4. Infringement (i.e. is the feature covered by SEP implemented?)
5. Threat of litigation, including risk of injunctive relief
6. Timing (ex-ante, ex-post) :
 - SEP declaration (existence, licensing terms)
 - Patent Holder seeking a license from a potential licensee
 - Potential licensee not seeking a license from a SEP Holder



Regulatory means in SDO (non-exhaustive)

1. Bylaws and IPR Policy
 2. Pre-determination of royalties (e.g. Royalty-Free), or pre-defined license or license type (e.g. Non-Assert)
 3. SEP declaration mandatory + selection of licensing option
 - Missing “obligation” from potential licensee to take a FRAND license ?
 4. Disclosure of the most restrictive licensing terms by SEP holder
 5. Review of licensing terms (not negotiation)
 6. No technical essentiality assessment, nor SEP landscaping
 7. Mediation / arbitration if dispute {not used where existing}
- **No involvement of SDO in private licensing disputes** (resource, competence/experience, exposure) to be solved in Court
- **Contractual benefits limited to its members** (no protection against non-members)



Recent developments in SDO IPR Policy

No consensus to

1. Limit the right to seek or enforce **injunctive relief** in case of infringement of a declared SEP
2. Define or quantify the **meaning of Reasonable** in FRAND
3. Grant a **license at the demand of any implementer** regardless its position in the manufacturing chain

Consensus to

- Include rules covering the **transfer of SEP rights** so to be an encumbrance on the FRAND-declared SEP
- Look for means to **improve transparency in SEP declarations**
- Look for means to permit SDO to deliver software under an Open Source license in a way compatible with the IPR Policy



Thank You

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