



STANDARD ESSENTIAL PATENTS (SEPs): FROM GERMANY TO LUXEMBOURG AND BACK

Recent legal developments in Europe

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What are Standard Essential Patents?

What are Standard Essential Patents?

- Definition: Standard Essential Patents (SEPs)
- Standardization and types of standards
 - Standardization
 - Types of standards
 - Standard setting process
- Examples

Definition: Standard Essential Patents (SEPs)

Definition in Art. 15 Nr. 6 ETSI IPR Policy:

Patents for which "it is not possible on technical (but not commercial) grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization, to make, sell, lease, otherwise dispose of, repair, use or operate equipment or methods which comply with a standard without infringing that patent".

Definition by European Commission (13.02.2013, Case No. Comp/M. 6381 - Google/Motorola Mobility):

"A company wishing to produce goods complying with a certain standard cannot do so without either a license to the technology incorporated in that standard or by infringing the patents covering that technology."

Standardization and types of standards a. Standardization

Primary objective:

- Definition of technical or quality related requirements with which current or future products, production processes, services or methods may comply (Guidelines on horizontal co-operation agreements, Nr. 257)

Benefits:

- Facilitates interoperability and follow-on innovation
- Encourages widespread usage of chosen technology
- Increases price competition by eliminating switching costs

Risks:

- Lock-in effect: difficult for industry to switch to other technologies
- Potential abuse of standardization for cartel agreements (Art. 101 TFEU): must comply with European Commission's "Horizontal Guidelines" (OJ 2011/C11/01)
- Potential abuse of market power (Art. 102 TFEU) by holders of SEPs

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