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**Developments on SEP/FRAND Issues in the U.S. and
abroad**

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4 Core Principles and Approaches for Licensing of Standard Essential Patents

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Foreword

1 This CEN Workshop Agreement, including its Annexes (CWA) has been drafted and approved by a
2 Workshop of representatives of interested parties on 2019-01-16, the constitution of which was
3 supported by CEN following the public call for participation on 2018-2-12.

4 A list of the individuals and organizations which supported the consensus represented by the CEN
5 Workshop Agreement is available from the CEN-CENELEC Management Centre. These
6 organizations were drawn from the following economic sectors: Semiconductor; Automotive;
7 Telecommunications; IoT; Wireless; Technology Equipment; Legal; Software; Technology SME; and
8 Manufacturing.

9 The formal process followed by the Workshop in the development of the CEN Workshop Agreement
10 has been endorsed by the National Members of CEN but neither the National Members of CEN nor
11 the CEN-CENELEC Management Centre can be held accountable for the content of the CWA.

12 The final review/endorsement round for this CWA was started on 2019-01-04 and was successfully
13 closed on 2019-01-21. The final text of this CWA was submitted to CEN for publication on 2019-01-
14 21.

15 Below is a list of companies/institutions that endorsed this CWA:

16 — **[TO BE ADDED]**

17 In addition, while the following companies did not participate in the drafting of this document they are
18 expressing their general support for its content:

19 — **[TO BE ADDED]**

20 The Participants to the CWA encourage that any interested stakeholders please provide feedback and
21 comments to the CWA, and expect that such feedback, as well as future legal and business
22 developments, may lead to future updates to the CWA. The Participants encourage that any
23 suggestions for additional or updated content can be submitted through the CWA's Secretariat (DIN).

24 This CEN Workshop Agreement is publicly available as a reference document from the National
25 Members of CEN: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia,
26 Finland, Former Yugoslav Republic of Macedonia, France, Germany, Greece, Hungary, Iceland,
27 Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal,
28 Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and United Kingdom.

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Introduction

Technical standards help to drive the modern global economy. As industry continues to develop and evolve in Europe and worldwide, new standards are directed to the so called “Internet of Things” (IoT), the “5G” suite of standards, and other next generation standardized technologies. It is anticipated that more and more industries will incorporate these types of standardized technologies and the interoperability that they provide.

Standardized technologies are commonly developed by standard development organizations (SDOs),¹ where industry participants and other stakeholders come together to develop and agree upon technical specifications. While there are hundreds of significant SDOs, a few prominent European and international SDOs include:

- the European Telecommunications Standards Institute (ETSI), which focuses on telecommunications standards;
- the Institute of Electrical and Electronics Engineers (IEEE), which is the world’s largest technical body and focuses on both wireless and wired communications, as well as other industry solutions;
- the International Telecommunication Union (ITU), which is a United Nations (UN) agency focused on standardization in telecommunication, video and audio technologies, and which commonly works in partnership with two other key SDOs, the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC);
- the European Committee for Electrotechnical Standardization (CENELEC), which is responsible for European standardization in the area of electrical engineering, and the European Committee for Standardization (CEN), which is responsible for European standardization in other areas; *and*
- Various national standards organizations, such as the German Institute for Standardization (Deutsches Institut für Normung or DIN), which is the German national organization for standardization and delegate for participation in ISO.

In developing technical standards, SDOs can develop specifications that incorporate technologies that may, in many situations, be the subject of patents (or pending patent applications) either held by the contributor to the specification or by other third-parties. Patents that are necessary in order to implement a standard are referred to as standard-essential patents (SEPs).² In SDOs, it is commonly the case that companies participate both as contributors to the development of standards, as well as market participants that intend to market products implementing the standard once finalized. Efforts to create sharp divisions between so called “contributors” and so called “implementers” are generally

¹ SDOs may also be referred to as “standard setting organizations” or SSOs. The terms are meant to be used interchangeably herein.

² SDO patent policies may provide more specificity or information in defining SEPs subject to the particular policy. Moreover, it is important to note that a patent is not a SEP simply because the patent holder asserts so. Where there are disputes about essentiality, infringement, validity or the like, the national courts are generally the appropriate body to determine whether a patent is, or is not, a SEP.

1 incorrect, and tend to mischaracterize the interests of the SDO participants in developing strong, usable
 2 and successful standards. Furthermore, there are many companies that are both “contributors” as well
 3 as “implementers” of standards.

4 Patents reward innovation, and it is important that SDOs have the ability to incorporate innovative new
 5 technologies. The challenge is to guard against potential abuse of the lock-in effect, when competitors
 6 select patented technology for standardization thereby creating an inability to design around such
 7 technology.

8 To address these standardization “hold up” issues, as they are often termed, SDOs such as those listed
 9 above commonly adopt patent policies providing for licensing of SEPs on specified fair, reasonable
 10 and non-discriminatory (FRAND) terms.

11 SDOs differ to some extent regarding their policies for SEP licensing, and licensing terms may be a
 12 factor considered when stakeholders decide whether to participate in a given standardization effort.
 13 For example, some SDOs provide for FRAND royalty free (FRAND-RF or FRAND-Zero) licensing
 14 of SEPs applicable to their standards. Other SDOs have adopted policies that provide for licensing on
 15 FRAND terms, which may include royalties. The focus of this CWA will be on those SDOs operating
 16 under policies involving FRAND licensing obligations that may include royalties.³

17 Under FRAND policies, standards participants voluntarily promise to license their patents on fair and
 18 reasonable terms. This secures for patent holders an ability to obtain reasonable and non-
 19 discriminatory value for patents contributed to SDOs, while also addressing – provided the FRAND
 20 commitment is upheld – SDO and SDO participant interests to mitigate the possibility of SEP hold up.

21 In recent years, there have been quite a lot of debates, disputes, court litigation and, more recently,
 22 governmental and regulatory investigations involving disagreements around obligations that arise from
 23 the voluntary FRAND commitment (or “FRAND obligations”). These issues are of increasing
 24 importance as standardized technologies, including wireless communication technologies, move into
 25 new industries such as automotive, industrial, energy, finance, transportation, warehousing,
 26 infrastructure and security.

27 This CWA seeks to (a) provide educational and contextual information regarding SEP licensing and
 28 the application of FRAND, (b) identify and illustrate some of the questions that negotiating parties
 29 may encounter, and (c) set forth some of the key behaviors and “best practices” that parties might
 30 choose to adopt to resolve any SEP licensing issues amicably and in compliance with the FRAND
 31 obligation. Our hope is that this CWA can assist both experienced and inexperienced SEP
 32 negotiators and inform any other interested stakeholders how to more effectively reach fair
 33 agreements and to better promote the goals and interests of industry, standardization and, ultimately,
 34 consumers.

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3 This CWA often refers generally to “standards”, but it is noted that, depending on the context, various terms may be used to refer to standardized technologies. For example, Regulation (EU) 1025/2012 on European standardisation defines the meaning of the terms “standard” and “technical specification”, both of which are relevant to this document. Likewise some SDOs may use terms such as “deliverables”, “technical output”, “recommendation”, or other terms. In this CWA the term “standard” is used generally to refer to various types of standardized technologies regardless of the formal name that may be applicable in the particular context or organization. As noted, the focus of this CWA is addressing SDOs and standards involving FRAND licensing obligations that may include royalties.

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