# Standard Essential Patents and Innovation:Call for Views Response Form

After you have read the call for views document, please consider the questions below. There is no expectation or requirement that all questions are completed. You are welcome to only answer the questions that are relevant to you, your business or organisation.

In replying to this call for views you may find it helpful to refer to the IPO’s [Guide to Evidence for Policy](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/510985/Guide_to_evidence_for_policy.pdf).

When you are ready to submit your response, please email this form and any other supporting documentation to SEPcallforviews@ipo.gov.uk.

This call for views will run for 12 weeks. It commences 10:00 on 7 December 2021 and will close at 23:45 on 1 March 2022.

After this call for views closes the government will assess the responses it has received and publish a summary of responses. The information obtained will inform the government’s decision on any next steps on potential intervention that is required. Any impact assessments and policy decision announcements are generally published on GOV.UK.

### Privacy notice for personal data processed for consultations

For information on how the IPO will process your data inline with General Data Protection Regulations (GDPR) please refer to IPO’s [privacy notice for personal data processed for consultations](https://www.gov.uk/government/publications/intellectual-property-office-privacy-notices/privacy-notice-for-personal-data-processed-for-consultations-and-stakeholder-engagement).

## Introductory questions:

**Who are you?**

*A:*

**In what capacity are you responding to this call for views?**

*A:*

## Relationship between Standard Essential Patents, innovation and competition

1. **How does the SEPs ecosystem work effectively in a balanced way to support competition and innovation?**

*A:*

1. **What actions or interventions would make the greatest improvements for consumers in the UK?**

*A:*

## Competition and market functioning

1. **In your view, are there issues in respect of market power in markets using SEPs? Examples are particularly sought on practices that create difficulties for industry or act as barriers to innovators.**

*A:*

1. **Are you aware of evidence of circumstances where an implementer of a SEP is required to buy licences to a wider patent portfolio that is not relevant to the standard or component to which the SEP relates? Are there effective ways of resolving such issues?**

*A:*

1. **Does the competition law framework impact the provisions in agreements between SEP owners in practice? If so, how does it do this? Is there room for improvement in order to better benefit and encourage competition and innovation?**

*A:*

1. **In your view, what actions or steps can be taken to encourage competition and innovation in the SEPs ecosystem?**

*A:*

## Transparency in the system

1. **Is there sufficient transparency around how patents are being declared as essential to the standard? What actions do industry, including SDOs undertake to ensure essentiality is understood?**

*A:*

1. **Are you aware of instances of under-declaration or over-declaration and what issues does this create for markets using SEPs?**

*A:*

1. **Would the introduction of an essentiality check service by an independent party improve licensing negotiations? Who would be the appropriate independent party to undertake essentiality checks?**

*A:*

1. **How should an essentiality check take place? Should there be a level of legal certainty given to essentiality checks and assertions of essentiality by IPR holders? If so, how?**

*A:*

1. **As SEP portfolios are negotiated with individual implementers, in your view is there sufficient transparency around pricing available when entering into negotiation? Is there a justification under FRAND for different SEP implementers, using the SEP for the same purpose, to be charged different rates for market access?**

*A:*

1. **Would some form of pricing transparency be appropriate for supporting implementers in FRAND pricing negotiations?**

*A:*

## Frameworks (patents, licensing, and litigation)

### Patent infringement and remedies

1. **Views are sought from respondents on the role that the patent system plays in the development of SEPs and FRAND licensing and whether there are issues within current practice (including law and court judgments) that create issues for innovators. Please include case studies or worked examples, if possible.**

*A:*

1. **As patents are territorial in nature, does the current patent regime create a fair global market? Do SEP licensing costs vary by region?**

*A:*

1. **Are legal actions and injunctive actions taken equally against infringers of SEPs, regardless of their territorial presence?**

*A:*

1. **Does the current framework work for you in enforcing your rights conferred by holding the patent? For example, are injunctions an effective tool? What is the impact of anti-suit injunctions by implementers?**

*A:*

### Licensing of SEPs

1. **In your view, how should the SEPs and FRAND licensing ecosystem adapt to new standard development for emerging technologies**

*A:*

1. **What if any, flexibilities exist within the IP framework that could improve the efficiency of obtaining a license for implementers?**

*A:*

1. **Do you have any views on any other ways of improving efficiency within the licensing landscape of SEPs?**

*A:*

1. **Would better use and access to patent pools offer improved efficiency around SEPs licensing? Or would greater use/access create barriers for innovators if there were limitations introduced i.e. cross-licensing?**

*A:*

1. **How are patent pools best created? To what extent should States, SDOs or other appropriate entities be involved (or excluded) from setting up patent pools?**

*A:*

1. **Are there alternative ways to address disputes on pricing mechanisms? For example, what point in the value chain provides an economic basis to calculate rates payable?**

*A:*

1. **How could schemes where there are specific definitions of what costs are allowable (percentage limits etc.) best be utilised?**

*A:*

### SEP Litigation

1. **In your view, what are the benefits or drawbacks of national courts setting global licensing rates?**

*A:*

1. **Is reliance on courts to determine on a case by case basis whether a licence is FRAND efficient?**

*A:*

1. **How should industry led approaches for specific areas of SEPs arbitration be explored further? Do you also have views on alternatives to industry led solutions, for example government providing alternative ways of determining and resolving FRAND licensing disputes?**

*A:*

1. **Are there already effective alternative means of arbitration and dispute resolution away from courts in respect of FRAND licensing?**

*A:*

## Other questions:

Please add any other comments or evidence the government should be made aware of here: