Intellectual Property Office

# Standard Essential Patents Consultation

CP 1357


# Standard Essential Patents Consultation

**The Patent Office**

Presented to Parliament by the Parliamentary Under-Secretary of State for AI and Digital Government by Command of His Majesty

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## Ministerial foreword

Strong intellectual property protection underpins the technologies that are changing our world. Patents do something simple but powerful – they give inventors the confidence to invest in turning their ideas into real innovations that improve our lives.

Standard essential patents (SEPs) can be found in the technologies which connect our digital world. Those technologies allow your smartphone to talk to your headphones, your car to connect to traffic systems, and hospitals to use the latest healthcare innovations. They make our modern, connected lives possible.

But the successful adoption of those technologies in new or growing areas like Internet of Things and AI can turn on how fairly and easily SEPs can be licensed, in what can be a complex ecosystem.  In this consultation, we're looking at how to make that ecosystem work better and more transparently for innovative UK businesses of all sizes – from tech startups to major manufacturers.

These innovative businesses are at the heart of our mission to grow the economy. The telecommunications sector alone adds over £40 billion annually to UK GDP, with manufacturing contributing approximately £180 billion. When these industries thrive, Britain thrives.

The current SEP ecosystem presents challenges that may hinder innovation and investment, particularly for smaller businesses. For example, licensing costs are often unclear due to confidentiality agreements, making it difficult for companies to plan effectively. Additionally, resolving disputes can be costly and time-consuming—one recent case cost £31.5 million—driving up expenses that may ultimately be passed on to consumers.

The consultation suggests practical steps that may improve the ecosystem and unlock innovation – like creating a faster, more affordable way to determine fair prices and making it easier for businesses to find out which patents they need to licence. We’re looking at improving the information available through the Intellectual Property Office, through proposals for patent holders to share more details about their technologies.

In tackling these issues, we can create a more balanced system that works for everyone involved – from the innovators who create patented technologies to the businesses that use them to create products we all depend on.

I invite everyone with a stake in this issue – whether you're running a startup, a research lab, a legal practice, or a major corporation – to share your views in this consultation.

**Feryal Clark MP**

**Parliamentary Under-Secretary of State for AI and Digital Government**

# Overview

## Executive summary

1. Standard Essential Patents (SEPs) are of growing importance to the UK economy. Our aim through this consultation is to ensure the SEPs ecosystem functions effectively and continues to support UK innovation and creativity both now and in the future.

2. Available evidence indicates there are systemic issues in the SEPs ecosystem around transparency and dispute resolution that may require government intervention. Without intervention, we believe there could be a risk that innovation will be stifled in emerging industries that depend on technical standards, such as connected vehicles and green technology.

### Pricing Transparency

3. One of the government's main proposals is the potential introduction of a Rate Determination Track. This would have the objective of providing all ecosystem stakeholders, but especially SMEs, the ability to obtain an independently adjudicated licence rate, in an efficient and cost-effective way, where licensing negotiations are not proving successful.

### Essentiality

4. We are also considering making the provision of information on patents disclosed as essential at standard development organisations mandatory. This will enable users to navigate published patent information and search for standard related patents information at the UK IPO.

### Further evidence gathering

5. In the rest of the consultation, the government will ask questions about the SEP framework and how to improve transparency on both pricing and essentiality, reduce information asymmetry and achieve greater efficiencies in dispute resolution.

6. We are seeking further evidence on ways to encourage early disclosure in SEP licensing negotiations of relevant information to deal with information asymmetry on pricing and essentiality. This also includes understanding the use of pre-action protocols in SEP licensing where negotiations are less likely to reach agreement and may move towards litigation.

7. We also wish to better understand the demand for, and use of, essentiality checking services. In particular, the government is seeking evidence on how accessible commercial essentiality services are, or if there is a case for government to introduce an essentiality determination opinion service.

8. In addition, the government wants to understand whether the patent framework provides adequate remedies for SEP disputes. We will seek evidence on how well it is functioning and whether there are sufficient provisions to deal with and encourage effective resolution of disputes.

9. Finally, the government is also asking for your input on the use and effectiveness of existing alternative dispute resolution (ADR) services in SEP disputes. We will use the findings to consider if and how improvements could be made to the ecosystem and whether there are ways to increase use of ADR services.

**How to engage with this consultation**

10. The consultation is an opportunity for anyone with an interest in these issues to share their views on these proposals. You do not need to respond to every question and can send in a response only on the areas which affect you, for example.

11. You may respond via Citizen Space. Alternatively, please send responses to SEPs@ipo.gov.uk. To ensure we can make best use of your evidence, please make sure relevant methodologies and data are included or clearly referenced as part of your response, where possible. Qualitative evidence is also welcome, such as case studies. Please consider the guidance on providing evidence for policy making[1] when drafting your response.

12. This consultation will run for 12 weeks. It commences at [12:00] on [15 July 2025] and will close at [23:59] on [7 October 2025].

13. During the consultation, we will also run wider engagement activity to help ensure that the full range of views is heard.

14. The government will assess responses after the consultation closes. We will use the information we receive to help design the best possible policy to achieve the aims and objectives set out in this consultation.

**Data protection and confidentiality**

15. A summary of responses to this consultation will be published on GOV.UK. The government considers it important in the interests of transparency that the public can see who has responded to government consultation and what their views are.

16. By responding to this consultation, you acknowledge that your response, along with your name and/or organisation may be made public. Responses to the consultation may be published in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000[2] (FOIA), the Data Protection Act 2018[3] (DPA) and the UK General Data Protection Regulation (UK GDPR).

17. Additionally, information provided in response to this consultation, including personal information or commercially sensitive information, may be made available to the public on request in accordance with the requirements of FOIA.

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[1] https://www.wipo.int/publications/en/details.jsp?id=4460
[2] https://www.legislation.gov.uk/ukpga/2000/36/contents
[3] https://www.legislation.gov.uk/ukpga/2018/12/contents

18. If you wish to highlight that information is confidential or sensitive, please advise us in writing when you provide your response. If there is a request to make any confidential information publicly available, we will consider the request according to the appropriate legislation. We will treat each request individually and in line with any request to maintain confidentiality.

19. The Government may also publish consultation responses in response to any FOIA requests on GOV.UK. Please read the privacy statement and privacy notice for consultation[4] for more information. This notice also provides information on how the IPO may use AI tools to process your personal data.

## Standard Essential Patents and innovation

### Background

*The Government's Growth Mission*

20. The government's primary mission is to enable economic growth. Enabling growth will help fund public services, investment into schools and hospitals, and raise living standards for everyone.

21. The government's economic growth mission informs DSIT objectives to accelerate innovation, investment and productivity through world-class science and development. It also informs the IPO's mission to help grow the economy by developing an IP system that encourages investment in innovation and creativity.

22. These objectives underpin the government's work on SEPs and its review of the SEPs ecosystem. Also relevant to the work are government objectives to boost productivity and growth in small businesses and building more secure, resilient and innovative telecoms supply chains.

23. SEPs are of growing importance to technological innovation and the UK economy. They are the building blocks of our connected future, enabling our devices to communicate seamlessly - from smartphones to electric vehicles, smart manufacturing to innovations in healthcare. They help deliver real technological change for real people.

24. A patent that protects technology which is essential to implementing a standard is known as a Standard Essential Patent (or a SEP). A technical standard is an agreed or established technical description of an idea, product, service, or way of doing things, which enables the sharing of knowledge. Standards can encourage innovation, enable jobs and growth, and ensure the interoperability, safety and quality of products.

25. Technical standards are usually produced by standard development organisations (SDOs), with inputs from industry and technical experts. The government recognises in the Technology and Science Framework[5] the importance of UK businesses being able to navigate standards and participate in their development. This ensures promotion of innovation and supports the creation of new markets and technologies across the UK.

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[4] https://www.gov.uk/government/publications/intellectual-property-office-privacy-notices/privacy-notice-for-personal-data-processed-for-consultations-and-stakeholder-engagement
[5] https://www.gov.uk/government/publications/science-and-technology-framework/science-and-technology-framework

26. Important technology areas where technical standards are used include digital communication, telecommunications, consumer electronics, automotive, and semiconductors. Examples of well-known technical standards include mobile connectivity standards, such as 4G and 5G, and digital compression standards like MPEG-2. Other emerging industries expected to increasingly rely on technical standards include connected health (e.g. healthcare and medical devices), connected vehicles, green technology and clean energy, streaming services and video-on-demand.

27. Domestically, the numbers of UK businesses in the Internet of Things sector has more than doubled in the last decade, the majority of whom are SMEs. This is a trend that is set to continue. Emerging industries that rely on technical standards are expected to grow at a faster rate than the UK economy as a whole. This growth will continue to be driven by high demand for interconnected devices, including smart home technologies in the UK consumer market. The government's Digital and Technology sector plan, part of its Industrial Strategy, identifies advanced connectivity technologies as one of six areas that has the greatest potential to stimulate technology-enabled growth over the next decade.

28. The importance of SEPs to technical standards and the increased use of SEPs across industries in the UK is therefore expected to grow. The number of patents declared as essential worldwide is growing exponentially. SDOs like the European Telecommunications Standards Institute (ETSI) publish thousands of new standards every year, and there are important standards in development (e.g. 6G).

**Challenges in the SEP ecosystem**

29. The SEPs ecosystem is complex. It intersects with the patent framework, competition law, standardisation and contract law. It is also a global ecosystem, in that SEPs licenses can be granted to a licensee globally. This has resulted in several complex cross-jurisdictional disputes, including parallel litigation.

30. The UK plays an important role in this global ecosystem and has increasingly become a forum of choice by businesses to resolve disputes in SEP licensing. The government recognises the need to ensure the UK SEP framework strikes the right balance for all interested parties. We want the UK to continue to be a forum of choice to resolve disputes and a location to innovate on standards and SEPs.

31. The IPO's Call for Views in 2021, the 2023 SME SEP questionnaire and ongoing evidence gathering, point to the following challenges.

**Transparency**

**Pricing transparency**

32. Once a patent is declared essential to a standard, the SEP holder generally makes an irrevocable agreement with the relevant SDO to make their SEP available on 'fair, reasonable and non-discriminatory' (FRAND) licence terms. There is some variation between SDOs, but this requirement is usually set out in the SDO's IPR policy.

33. As licence rates are privately negotiated between businesses, pricing information is protected by non-disclosure agreements (NDAs). This lack of public information on pricing makes it difficult for licensees to establish if a rate offered by a SEP holder is FRAND or competitive. For example, the IPO's 2023 SME survey revealed that 83% of respondents involved in SEP licensing said they did not feel they had sufficient information on pricing. Information on pricing is important for licensees to plan their costs, construct business plans, and access finance from investors.

34. Additionally, there is no single methodology for calculating a FRAND rate, and the methodology used is not always disclosed by the SEP holder during licensing negotiations. This asymmetry of information on pricing and essentiality between the SEP holder and the licensee can lead to requests for more information and disagreements over pricing, delaying the agreement of the license.

35. Improved pricing transparency in SEP licensing is observed in technologies with more mature SEP markets, such as cellular technology. Patent pools have formed in these markets, with rates publicly disclosed on pool administrators' websites. However, pricing transparency is poorer in markets for emerging technologies, though it may be expected to improve as these markets evolve.

36. A lack of pricing transparency means that licensees can overpay for licences, and we have seen evidence emerging through litigation that licensing offers made by SEP holders have exceeded court adjudicated rates by 4-500 times. Further, not all licensees, and especially SMEs, can currently afford to challenge suspected supra-FRAND rates through litigation.

**Transparency around essentiality**

37. There is a growing body of evidence indicating that, because SEP holders have all the information on their patent (e.g. on its essentiality and value), there is information asymmetry between them and the SEP licensees. It may be difficult for licensees and implementers to know which patents are truly essential to a standard, and therefore whether a licence is needed and what the licensing obligations are.

38. Evidence suggests that only about 25-40% of all declared SEPs are truly essential to a given standard. Patent holders are generally required by SDOs to declare essentiality of their patents early in the technical standard development process. These declarations reflect the SEP holder's belief, at that time, that their patent may be or may become essential to a standard.

39. There are differences in SDO practices; regarding the level of information demanded by the SDO; the point in time that the SEP holder provides information; and the presentation of that information. Some SDOs, including the European Telecommunications Standards Institute (ETSI), publish a database of patents declared essential to their standards. However, there are many SDOs worldwide that do not have the same requirements. Not all SDOs require SEP holders to make essentiality declarations or commit to providing FRAND licence terms.

40. Furthermore, SEP declarations recorded in these databases are not updated when a patent becomes invalid or no longer essential. There is therefore limited data available on SEPs across different SDOs, so it is difficult to gain a comprehensive picture.

41. Due to the sheer volume of declared SEPs, it can be difficult for licensees to determine which SEPs they need to licence to implement a standard. This creates search costs for licensees seeking to understand which SEPs they need to licence, and who to obtain a licence from. This in turn can lead to legal uncertainty that may deter businesses from market entry.

42. This lack of certainty on which SEPs are essential is compounded by difficulties involved in establishing essentiality. Only courts can provide a definitive ruling on essentiality, but litigation is a costly route. In the absence of third-party checks (e.g. independent checks arranged by a patent pool) licensees must turn to commercial providers. There are some commercial SEPs mapping and landscaping services available. They provide information on essentiality of patents, but can be costly to access, especially for SMEs, and may not provide certainty.

43. A lack of transparency in relation to both pricing and essentiality can make it difficult for licensees to make informed licensing decisions and can lead to inefficient outcomes, including lengthy licensing negotiations, payment of supra-FRAND licenses, or court litigation. These factors can create uncertainty and could result in the slow uptake and diffusion of innovation by UK licensees. This risks the competitiveness of UK goods and services, less consumer choice and higher consumer prices. Barriers to innovation can be most strongly felt in the very newest industries, like green technology and streaming services.

**Litigation**

44. The government is aware of the complexity of SEP litigation as evidenced through UK court cases that have considered FRAND rates. Litigation for a SEP dispute can take several years and attract significant costs for businesses involved (both licensors and licensees). For example, in *Interdigital Technology Corporation & Ors v Lenovo Group Ltd & Ors [2023] EWHC 1578 (Pat) (27 June 2023)*[6] the cost was estimated to total £31.5 million (£17.25 million attributed to InterDigital, and £14.27 million for Lenovo).

45. Whilst there is evidence of UK SMEs being involved in smaller court cases or joined to cases involving larger and better resourced companies, there is some concern that court costs are likely to be prohibitive to SMEs. For example, when asked to provide further detail on limitations to their company's success in the current SEPs licensing framework, several SMEs said that smaller companies faced financial risk entering SEP licensing as they didn't have the fees for litigation or to hire lawyers. The government recognises there is a need for choice in resolving disputes, especially with complex SEP licenses. However, there are concerns that inefficient or lengthy dispute resolution may have a detrimental impact on businesses and innovation.

**Our objectives**

46. Based on the issues with the SEPs ecosystem identified above, our objectives are to:

- help implementers, especially SMEs, navigate and better understand the SEPs ecosystem and Fair Reasonable and Non-Discriminatory (FRAND) licensing
- look at ways of improving transparency in the ecosystem, both on pricing and essentiality

[6] https://www.judiciary.uk/judgments/interdigital-v-lenovo/

- identify ways of achieving greater efficiency in dispute resolution, including arbitration and mediation

47. In meeting the above objectives, and addressing ecosystem issues, we are considering how to achieve a reduction in licensing frictions, more efficient dispute resolution, and an increase in the confidence of UK businesses to invest in innovation. We also considering how to create confidence in the use of new standardised technologies and increased participation in standardisation.

48. Ultimately, we want to shape a SEPs ecosystem that is *balanced* – that ensures SEP holders can protect and enforce their rights and licensees can develop standard compliant products with confidence that licensing obligations are better understood, and SEP licensing rates are fair and reasonable. This balanced ecosystem is essential to support innovation and promote competition.

**Current non-regulatory measures**

49. Until now, the IPO has worked on non-regulatory measures. The introduction in July 2024 of the SEPs Resource Hub[7] was the first such measure. The Hub is an educational resource for UK businesses, providing information to help them navigate the licensing ecosystem. It includes guidance on standardisation, where SEPs arise, licensing of SEPs, and how to navigate licensing disputes. The Hub also provides links to resources on case law, providers of ADR services and a glossary of commonly used terms. This resource will continue to develop over time, and new resources will be added on a regular basis, including after consultation.

50. The IPO has also increased our involvement with SDOs worldwide to understand and, where appropriate, influence their IP Rights policies. We have also increased our collaboration with global partners and regulators. The first steps to find global solutions have been made by setting up an Intergovernmental SEP Network (ISN), where the UK IPO brings together interested countries to discuss SEPs issues at an international level.

51. Alongside publication of this consultation, the government is conducting an evaluation of the SEP Resource Hub. We have included questions on this and our other non-regulatory measures in this consultation.

52. Although the government has some evidence that the Resource Hub has been effective, we believe that the provision of information alone may not remedy deep-seated ecosystem issues. Without further measures, the government would rely on markets evolving as technologies mature, allowing for the continued emergence of market-led solutions, such as patent pools that can improve licensing efficiency. The government recognises that the successful diffusion of telecommunication technologies is evidence of this, where the market developed over time. Such an approach could also be seen to reduce the risk of government interventions 'crowding-out' private sector solutions.

53. On the other hand, licensing frictions may persist and may be more seriously felt in markets with emerging technologies. Transparency would increasingly be left to court determinations in high-profile SEPs cases. Potentially lengthy cases may disproportionately affect SMEs. For example,

[7] https://www.gov.uk/government/collections/seps-resource-hub

we have seen some recent UK court determinations indicating that smaller businesses (which were not parties in the litigation) may agree to higher ('supra-FRAND') licence rates, potentially putting them at a competitive disadvantage in important technology fields. In addition, the cost of lengthy litigation may be beyond the reach of many SMEs. The government therefore believes that we need to consider further actions to create the conditions for SMEs to grow and succeed in emerging technology markets.

**Potential measures to improve efficiency and transparency in SEP licensing**

54. The government's consultation proposals have increased transparency and efficiency at their heart. We recognise the risks and unintended consequences associated with over-regulation and want to take proportionate, targeted action. The government is looking at how the proposed mechanisms could work and measures that encourage behavioural changes.

55. The consultation includes proposals that could require regulation. These relate to establishing a Rate Determination Track (RDT) and supplementing the One IPO Search Service with standard related patent information. We are also asking questions on other areas of the SEP ecosystem to determine if any government intervention is needed.

**Rate Determination Track**

56. The government's proposal to address lack of pricing transparency and promote efficiency in dispute resolution looks at ways to settle disputes in a more streamlined and cost-effective way. We propose the introduction of a new rate determination route in the UK to give businesses the opportunity to quickly and affordably settle disputes about a rate for SEPs they need to licence. Currently, this is challenging and time-consuming, especially for SMEs. The publication of rates determined via this route should also increase transparency and efficiency, as a starting point for commercial negotiations.

**Searchable standard related patent information**

57. To improve transparency on essentiality, the government is considering whether to supplement the One IPO Search service by mandating provision of information on patents disclosed as essential at SDOs. This could allow users to navigate the One IPO Search Service and search for standard related patents in the same way that they are able to for Supplementary Protection Certificates (SPCs) and Green Channel patents. We also want to better understand market provision of essentiality services, especially the extent to which they are accessible for SMEs. Based on the evidence we receive; the IPO will decide whether it should develop its own service or look at alternatives.

**Other measures**

**Pre-action protocols**

58. The government would like to understand how existing pre-action protocols (under the Civil Procedure Rules (CPR)) on disclosure and ADR are working to achieve effective and efficient resolution of SEP licensing disputes. Pre-action protocols encourage early disclosure of information and the use of ADR. If evidence obtained through this consultation indicates that these pre-action protocols are ineffective, we will assess the case for taking further action. This

could include the introduction of a specialist pre-action protocol for SEPs. The government's objective is to ensure that appropriate action has been taken before parties resort to litigation.

**Remedies**

59. We also wish to better understand how existing frameworks are functioning to ensure remedies in disputes are adequate and utilised. There are some concerns that the threat of injunctions is being used by some SEP holders to extract 'supra-FRAND' licence rates. The government would like to better understand this issue - the prevalence of these threats and the extent to which they impact on innovation.

**Alternative Dispute Resolution (ADR)**

60. The government is aware of ADR services (including mediation) that can help resolve SEPs disputes, such as adjudicating on a SEP royalty rate. We would like evidence about these services, to potentially supplement what we have included in the SEP Resource Hub. If evidence indicates there is inadequate provision of ADR services, we may consider the need to expand existing mediation services (like the IPO's) to provide further support to businesses experiencing SEP disputes.

# PART 1 – POTENTIAL MEASURES TO IMPROVE EFFICIENCY AND TRANSPARENCY IN SEP LICENSING

## Potential measure 1: Rate Determination Track (RDT)

### Rationale for intervention

61. The government wants to ensure it can support all businesses in the SEP ecosystem, especially SMEs, through greater transparency and predictability in SEP licensing and access to efficient dispute resolution.

62. In SEP disputes before UK courts, issues of infringement, essentiality and validity of patent(s) are determined by a series of technical trials that take place before the determination of a licence rate. This means that cases can take many years with multiple trials and associated high costs. This may demonstrate that there are opportunities to deal with rate determination first, as such an approach goes straight to the heart of the issue: resolving the dispute over the rate for a SEP portfolio.

### Introduction of an RDT

63. We are considering the introduction of a 'Rate Determination Track' (RDT) to the Intellectual Property Enterprise Court (IPEC). This would supplement the existing Small Claims and Multi Claims Track, to ensure cost effective access for businesses. IPEC is a specialist court that handles intellectual property disputes, primarily involving patents, trade marks, designs, and copyright. The RDT, if introduced, would be a simpler and more efficient approach to proceedings to determine the correct licence rate. By using pre-litigation protocols, simplified procedures, specialists, and streamlined case management, the RDT would focus on the narrow issue of rate setting. The RDT could also be launched as a pilot to allow effective evaluation over time.

64. As part of its work, the IPO supplemented the evidence it received through its call for views with independent research (see Annex 1) and carefully analysed these when developing this consultation. This includes evidence from stakeholders that there is a lack of price predictability when it comes to implementing technical standards. In dealing with price predictability and other barriers that are addressed by the RDT, the Government has also looked at a range of alternative solutions, including those put forward by stakeholders through the call for views.

65. The government has also considered several other ways to introduce a quick, cost-effective and efficient rate determination route. Although we believe there are advantages to using the existing court structure and adapting it to a new process, this is not the only option. There were a range of potential solutions we considered, including the introduction of a new arm's length body, equivalent to the Competition Appeal Tribunal. We also considered whether there is potential to expand the scope of the UK Copyright Tribunal, and whether there were other mechanisms that could be considered to achieve the same outcomes. We invite views in the consultation on what other solutions could be introduced to achieve cost effective and efficient rate determinations for SEPs.

### Proposed scope and remit of the RDT

66. We propose that the scope of the RDT is limited to cases where infringement, validity and essentiality are not in dispute. There is also an expectation that ADR mechanisms will have been used before use of the RDT. Those mechanisms should have narrowed down disagreements in SEPs disputes to the issue of a licence rate (and perhaps other relevant terms of a licence). The

RDT is therefore intended to provide a streamlined mechanism to set rates as required and agreed by the parties. There is further discussion of the government's expectations about ADR, including in the context of pre-action protocols, in Part 2 below.

67. The RDT would provide a binding rate determination on request of either the licensor or licensee. As the proposed track would sit within the High Court, there would also need to be mechanisms to ensure there is an appropriate appeal route for rate determination decisions made under the RDT, following the same appeals process as in current disputes.

**Questions**

**Q1:** Would an RDT within IPEC meet our objectives of providing fast and efficient rate determinations?

**Q2:** Locating an RDT in an existing court structure has advantages, but are there any alternatives that could achieve the government's objectives?

**Q3:** What are your views on how the government could ensure a rate determination route is accessible to SMEs?

**Q4:** What should the remit and scope of an RDT be e.g. reasonable licence rates and terms; who brings the claim (licensor, licensee or other parties)?

**Q5:** Are you aware of any additional evidence or research the IPO could utilise to inform the development of the RDT, or alternatives to the RDT that achieve the same outcomes?

**Efficiency, structure and functioning of the RDT**

68. We expect to achieve increased efficiency through a combination of streamlined mechanisms tailored specifically to rate setting and FRAND obligations. These include appropriate rules and protocols, case management guidelines to expedite hearings, and the adoption of tailored procedural rules of evidence proportionate to the case. In addition, we will consider how cases can be heard by relevant subject-matter experts, to reduce the need for detailed expert evidence in some cases and improve speedy decision making. The RDT will have the flexibility to adopt processes, including remote hearings where appropriate.

**Questions**

**Q6:** How do you think an RDT should be structured and resourced to be effective and accessible (e.g. composition of a panel with relevant expertise, decision-making processes, procedural rules)?

**Q7:** In your view, how would the government's proposed RDT provide efficiencies above and beyond what is available elsewhere in the High Court?

**Proposed methodologies for SEP determinations**

69. We recognise that different methods exist for setting rates (including comparable rates; top-down, bottom-up; hedonic price regression; hypothetical negotiation scenario; and incremental value approach). Disputes arise across a range of contexts, each requiring different approaches to calculating rates. Whilst some may favour a standardised methodology to ensure consistency and predictability, others may argue flexibility is essential to reflect the specific facts and nuances

of each case. At this stage, we are keen to understand whether a single approach would be appropriate or whether the RDT should be empowered to apply different methodologies.

**Questions**

**Q8:** What would be your preferred model to base licence rate calculations? What specific methodologies or principles do you believe should be considered?

**Q9:** What factors should determine which calculation method is used, or be taken into consideration (e.g. license facts such as duration, scope, age, term, previous royalty rates, fee structure; and company specific data such as size, sales volume, products)?

**Q10:** Do certain sectors or technologies require their own specific methodology? Please provide examples.

**Transparency considerations**

70. Publication of the decisions of the RDT would encourage increased transparency. It would create a credible data point for SEP licence negotiations, and this can help build public trust. However, we are also mindful that some users may view publication as a barrier to accessing the RDT, particularly where sensitive commercial information is concerned.

**Question**

**Q11:** Would publication of decisions be an enabler of transparency or discourage use of the RDT?

**Rules and procedures of the RDT**

71. The government seeks industry views on the operational aspects of the proposed RDT e.g., rules of procedure. We want to ensure it has sufficient powers, whilst also providing efficiencies for parties using the track.

**Questions**

**Q12:** What powers or procedural rules should be implemented to ensure the RDT operates effectively and facilitates accessible, quick and cost-effective rate determinations?

**Q13:** What powers and rules of procedures would be most useful to ensure the RDT can encourage its use by all parties in the SEP ecosystem?

## Potential measures 2: Searchable standard related patent information

### Rationale for intervention

72. The government believes it is important to improve transparency so that there is greater clarity around the standard related patents that need to be licensed to implement a standard.

73. Information on the patents relevant to technical standards, including ownership information, is currently often fragmented and inconsistently reported. Licensees hold less information than licensors on which patents are truly essential, which makes it difficult for licensees to determine with confidence if a license is required. This in turn can lengthen licensing negotiations and potentially lead to payment of supra-FRAND license terms, or even court litigation.

74. There is no centrally held repository of SEP declarations. Information is currently held across various SDOs globally that are not linked up and there is no simple, accessible or user-friendly way for users to navigate.

75. The question of transparency of SEPs that have been declared as essential is different from SEPs that have been verified as truly essential. How to assess true essentiality is discussed in the section on further evidence gathering in the section on 'essentiality checking services'.

### Proposed solution under consideration

76. We are considering, as a proposed solution to address these challenges, introducing an additional search function to the One IPO Search service for standard related patents. Introducing an additional search function in the service would enable a user to search for patents that relate to technical standards, just as they can for Supplementary Protection Certificates (SPCs), patents with licences of right and Green Channel applications/patents. The service would provide information on the status of the patent, e.g. granted or pending, who the owner is, and which standard the patent is related to. All this data would be in one place, as it would link to the usual data published for patents.

### Mandating disclosure of standard related patent information

77. To provide a meaningful search function for standard related patents, patent owners would need to provide the IPO with information. This may include the possibility of mandating or incentivising the provision of such information under UK law, so users could search for standard related patents in the One IPO Search function. Any requirement to supply information on standard related patents will not interfere with the patent prosecution process as the IPO would record the data upon grant or, where it concerns European Patent Office patents, at first renewal of an EP(GB) patent. Our view is that, at this point, there will be some certainty of patent validity and whether it is included in a final standard. As far as European Patent Office patents are concerned, renewal of EP(GB) patents is the point where the IPO naturally has its first contact with the patent owner.

78. As a patent examination office, the IPO is well placed to collect standard related patent information. One IPO Search users would be able to access patent data without the need to search global SDO databases and could be signposted to any other relevant information.

79. We believe that integrating standard related patent information into the existing One IPO Search, with appropriate disclaimers to its accuracy, will enhance transparency and improve usability for all ecosystem stakeholders. In providing a central, authoritative source of standard related patent information, licensees in particular would have a better understanding of licensing obligations and access to the information they need to commence negotiations.

80. There are other projects attempting to achieve the same outcome but by using different methods. This includes SDO-driven activity, and initiatives by the European Patent Office (Patent and Standards Project) and the World Intellectual Property Organization (new SEP information provided in Patent Scope). The government's proposal would provide a central source of information in the UK, and we would look to see how this could align with the ongoing development of other initiatives such as WIPO's.

**Questions**

**Q14:** In your view, would this proposal meet the government's aims of increasing transparency and reducing information asymmetry? Please explain why.

**Q15:** How should the government provide legal certainty for users on what is in scope of this proposed mandatory requirement (e.g., specific provisions enshrined in law outlining when the requirement to provide information is triggered or what is excluded from the requirement)?

**Q16:** What standard related patents information should rightsholders be required to submit to the IPO to build a useful data set (e.g. technical specification or standard the patent relates to, FRAND commitment, availability of licences)?

**Q17:** Are there alternative mechanisms or routes that might more easily achieve the government's objectives of increasing transparency and reducing information asymmetry?

**Operational aspects and compliance**

81. To ensure we fully understand the operational aspects of this proposal, we are seeking views on what mechanisms should be put in place to ensure rightsholders submit accurate and timely data on standard related patents and how to deal with non-compliance.

**Questions**

**Q18:** What, if any, sanctions should the government consider introducing to deal with non-compliance issues (e.g. invalidity, enforceability, public listing of non-compliant patent owners, fines, administrative fees)?

**Q19:** How should the IPO ensure information is supplied accurately by the rightsholder (e.g penalties, incentives such as reduced fees)?

# PART 2 - OTHER POTENTIAL MEASURES TO IMPROVE SEP LICENSING AND DISPUTE RESOLUTION

### Potential measure 3: Assessing the need for a Specialist SEP Pre-Action Protocol

82. The government wants to understand whether existing pre-action conduct and protocols within the Civil Procedure Rules are effective in SEP negotiations. We also want to understand whether introducing a specialist SEP Pre-action Protocol for SEP disputes could offer improvements over existing general pre-action protocols. The government's objectives here, as previously set out, are to reduce information asymmetry leading to licensing frictions and the possibility of litigation. Pre-action protocols provide an important link between dispute resolution and formal litigation and may also set expectations prior to accessing the RDT.

83. The Civil Procedure Rule Committee is responsible for the rules governing civil proceedings. Any changes or introduction of new procedures would require its consideration and approval.

### General protocols

84. The general protocols outline expectations of parties in dispute prior to commencing litigation. These are broad-based and flexible and apply to all sectors. The existing general protocols place expectations on parties to have exchanged sufficient information to make decisions on how to proceed and to have considered the use of ADR.

### Questions

**Q20:** In your view, do the general pre-action protocols as laid out in the Civil Procedure Rules (Pre-Action Protocols – Civil Procedure Rules[8]) encourage sufficient information exchange to reduce the need for litigation, including on SEP pricing and essentiality?

**Q21:** Are you aware of any instances where pre-action protocols are ineffective or not adhered to, either generally or specifically in SEP disputes?

### Specialist protocol

85. We are aware of specialist protocols in place for certain types of disputes, including in construction[9] and professional negligence[10], where early disclosure has been shown to reduce litigation and improve negotiation outcomes. Pre-action protocols under the Civil Procedure Rules are intended for use once a dispute has arisen and litigation is being contemplated. They were not designed for use during commercial negotiations such as SEP licensing negotiations, where no formal dispute has yet arisen.

86. However, the government is interested in understanding if providing structured guidance specific to SEP licensing in a specialist SEP protocol, could help reduce information asymmetry. The rationale for such an approach is to ensure mandatory obligations are not placed on parties, such as the publication of commercially sensitive information, while ensuring any non-compliance of protocols can have consequences. Such protocols could help to achieve the better exchange of information on SEP pricing and essentiality.

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[8] https://www.justice.gov.uk/courts/procedure-rules/civil/protocol
[9] https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_ced
[10] https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_neg

**Questions**

**Q22:** Do you think the introduction of a SEP specialist pre-action protocol would address information asymmetry on pricing and essentiality by providing clear expectations on information exchange at an early stage?

**Q23:** In your view, what should be included in any specialist SEP pre-action protocols to facilitate early disclosure of significant SEP information (e.g. claim charts, standard and version, essentiality data, how the FRAND rate was arrived at)?

### Potential measure 4: Assessing market provision of essentiality checking services

87. The government wants to better understand existing commercial essentiality assessment services, and the methodologies used in providing an accurate essentiality determination. We want to know if market solutions are affordable and accessible for UK innovators, especially SMEs. We will then be able to decide whether there is a need to introduce an essentiality assessment service at the IPO. An IPO essentiality service is one of several options, including the government accrediting an outside service provider, or leaving the market to develop further solutions as technologies emerge.

### Current market

88. There are growing numbers of commercial services, but these generally operate on a subscription basis. However, there is some evidence that for smaller businesses these services may not be affordable. We would like to understand the cost of services, the methodologies used to assess essentiality, and the accuracy of essentiality determinations.

### Questions

**Q24:** Have you used commercial essentiality services? **Yes / No**

**Q25:** If you have used commercial services to assess essentiality, what are your views on:

- accessibility (e.g. cost)?
- accuracy and reliability?
- how you used the data (e.g. for licensing negotiations, or valuation of a portfolio)?
- whether the services provide value for money?

**Q26:** Are you a provider of commercial services? **Yes / No**

**Q27:** If you are a service provider, can you provide details on:

- services / packages you provide?
- methodologies you use to determine essentiality, or probability of essentiality?
- what you charge for your services, and whether you offer discounts for smaller users?
- how you ensure reliability of the data?
- your main clients (e.g. SEP holders/licensees/others)?
- what your services are used for (e.g. assessing the value of a whole portfolio, dispute resolution)?

### Possibility of an IPO essentiality service

89. The IPO heard from stakeholders (including through the UK's participation in the EU Pilot study)[11] that the most credible authority to provide essentiality determinations would be patent offices. We would like your views on the potential value of the IPO introducing such a service and how it could be designed to ensure accuracy, impartiality and trust in its determinations. It is also important to

[11] https://publications.jrc.ec.europa.eu/repository/handle/JRC119894

understand what the estimated use would be, who is likely to use it, and for what purpose, e.g. licensing negotiations, disputes, valuation of portfolios. This will ensure that any solution is fit for purpose and tailored to the needs of its users.

**Questions**

**Q28:** Do you think there is value in a government-led essentiality review mechanism at the IPO?

**Q29:** How could the government provide value for money, so affordable essentiality assessments are available?

**Q30:** What do you anticipate the primary use of an IPO led essentiality checking service would be? Who would primarily make use of it and for what purpose?

**Q31:** What other options could you suggest to provide cost-effective essentiality assessments for SMEs and startups?

**Potential measure 5a: Remedies and dispute resolution**

90. The SEPs Resource Hub brings together guidance to help UK businesses, particularly SMEs, navigate the SEPs ecosystem. We included guidance on dispute resolution and remedies in SEP licensing,[12] to help businesses develop a better understanding of alternative dispute resolution (ADR) services and legal remedies when there are licensing disputes.

91. The IPO has continued to undertake further research on dispute resolution and remedies in SEP licensing, to ensure we can identify ways of achieving greater efficiency in dispute resolution.

92. We want to gather further evidence on the possible use of legal remedies, and the awareness and suitability of ADR services to resolve SEPs disputes.

**Remedies**

93. The patent framework offers various remedies for patent infringement. The remedies used for SEPs disputes generally include damages to compensate for infringement; injunctions to stop infringement; and FRAND determinations.

94. The evidence suggests that most SEP holders believe that the legal remedies available to them are both necessary and used appropriately. The government understands the importance of an IP framework that ensures rightsholders can effectively enforce their rights and that relevant frameworks comply with international legal obligations. However, licensees have consistently raised concerns about the leveraging of injunction threats to extract excessive licence rates. We want to understand how widespread the practice is, and the extent to which it is a barrier to innovation.

**Questions**

**Q32:** Does the current patent framework provide adequate remedies for SEP litigation?

**Q33:** How can bad behaviours in licensing negotiations be addressed or prevented?

**Q34:** Has the threat of injunctions ever played a part in your SEP negotiations? YES/NO

**Q35**: If you believe the threat of injunctions had an impact on your SEP negotiations, please explain what that impact was, providing appropriate data and evidence.

**Q36:** Could the other proposals presented by the government in this consultation help deal with 'bad faith' behaviours, including the threat of injunctions?

**Potential measure 5b: Alternative dispute resolution**

95. The IPO has conducted a review of ADR services available for dealing with SEP disputes. We concluded there are sufficient ADR service providers domestically and internationally that can deal with IP related matters, including SEP disputes. However, the IPO has been unable to find enough evidence to assess how frequently these services are used, or their effectiveness.

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[12] https://www.gov.uk/guidance/dispute-resolution-and-remedies-in-sep-licensing

96. The limited evidence the IPO has, points to lower-than-expected use of ADR services to resolve licensing disputes. This may be because of a lack of awareness of these services but we cannot substantiate this.

97. In the UK, there is a growing desire to promote and encourage the use of ADR to resolve disputes. The Ministry of Justice, the government department at the heart of the justice system, is committed to promoting the use of dispute resolution services and continues to explore options to increase its uptake across the civil justice system. In May 2024, it brought into effect a mediation requirement for parties involved in money claims up to the value of £10k in the county courts. This allowed parties to take part in a free one-hour mediation appointment with His Majesty's Courts and Tribunals Service's Small Claims Mediation Service as an integrated step in the litigation journey. Where mediation is not successful, the case will move onto a court hearing. This reform will help thousands of people and businesses each year resolve their legal disputes without the need for litigation.

98. UK case law further reflects this development, as evidenced by the Court of Appeal decision in James Churchill v Merthyr Tydfil County Borough Council[13]. This case mandated the parties to use an existing ADR service, before any further court litigation could continue. Further to UK case law, amendments were made in October 2024 to the Civil Procedure Rules (CPR). These amendments allow courts in England and Wales to order or encourage parties to engage in ADR, where such an order is proportionate and does not undermine the parties' right to a judicial hearing.

99. We do not feel at this stage there is a need for the government to introduce any mandatory requirements regarding ADR. It is the government's aim to use the findings from this consultation to help build our evidence base to promote ADR services and encourage their use in SEPs cases. We will also ensure that ADR is considered when taking forward potential options.

**Existing ADR services**

100. The government would like to better understand the use and effectiveness of existing ADR services. We would also like to understand how improvements could be made to the ecosystem to support greater use of ADR services.

101. Outcomes could include signposting to existing services within the SEPs Resource Hub and hosting joint webinar events with ADR providers. They could also include the need for more substantial government intervention, such as expansion of existing mediation services (like the IPO's).

[13] https://caselaw.nationalarchives.gov.uk/ewca/civ/2023/1416

**Questions**

**Q37:** How aware are you of ADR services available to resolve SEP licensing disputes?

- ❑ Fully aware
- ❑ Aware
- ❑ Neither aware nor not aware
- ❑ Some awareness
- ❑ Not aware

Please explain your answer.

**Q38:** Have you used ADR services to resolve a SEP disputes? Please explain your answer.

**Q39:** What barriers, if any, have affected your ability to use ADR services to resolve a SEP dispute?

**Q40:** Are you an ADR provider? If so, could you explain your experience of dealing with SEP disputes within your services. We are particularly interested in:

- how many SEP dispute referrals have you had?
- what are the types of issues parties with SEP disputes are seeking to resolve?
- where are the parties who are seeking your services based?
- what ADR services are parties involved in SEP disputes seeking (e.g. mediation, arbitration)?
- what is the size of the businesses seeking your services to resolve their SEP dispute (e.g. micro (up to 9 employees, small (10–49 employees), medium (50–249 employees) and large (250 + employees))?
- what is the success rate of the resolution of the SEP disputes you've encountered?

**Possibility of expanding the IPO's mediation service**

**Q41:** In your view, is there a need for the government to expand the IPO's mediation services to support businesses to resolve their SEP disputes, or are existing ADR services adequate?

## Current non-regulatory measures

102. To achieve our objectives outlined in section 3, the government initially focused on three non-regulatory measures to support the SEP ecosystem:

- launching a SEPs Resource Hub
- increased international collaboration with other IP offices and jurisdictions; and
- enhanced engagement with Standard Development Organisations (SDOs)

103. The SEPs Resource Hub[14], launched in July 2024, was the first of the measures to be delivered. The Hub is an educational resource for UK businesses, providing information to help businesses navigate the licensing ecosystem. This includes standardisation, how and where SEPs arise, the licensing of SEPs, and how to navigate licensing disputes. The Hub also provides

[14] https://www.gov.uk/government/collections/seps-resource-hub

links to resources on case law, links to providers of alternative dispute resolution services and a glossary of commonly used terms. This resource will develop over time and new resources will be added on a regular basis.

104. The IPO will be conducting an evaluation to better understand UK business awareness, use and understanding of the guidance contained in the Hub. The IPO will use the findings from the evaluation to inform the creation of new resources and updates to the contents of the Hub.

105. The government recognises that SEPs are a global issue, and as such the UK is keen to ensure there is international collaboration with other IP offices and jurisdictions. We have taken a leadership role in coordinating discussions at an international level, which has resulted in the establishment of the Intergovernmental SEP Network (ISN). The ISN brings together international IP offices to discuss domestic and global policy developments. We believe the ISN will help to increase the pace and visibility of our international collaboration with other patent offices on global ecosystem challenges.

106. In relation to SDO engagement, our objective is to shape their Intellectual Property Rights (IPR) policies. We are mindful that SDOs are voluntary, member-run organisations. However, we believe there could be more consistency and transparency in IPR policies across SDOs, for example, in relation to disclosure and declaration processes and FRAND obligations. We are also interested in the possibility of data-sharing arrangements with SDOs, so UK licensees have a better understanding of UK SEPs patent filings.

107. The government will continue to pursue the above non-regulatory measures in addition to any further measures implemented following the conclusion of this consultation.

**Questions**

**Q42:** Do you think these non-regulatory measures are the right ones?

**Q43:** Do you think there is more government can do in its non-regulatory work?

## Assessment of impacts

108. Ahead of this consultation, the IPO carried out a partial analysis of the impacts of the proposals. Only the direct costs of running a Rate Determination Track and the potential familiarisation cost to patent applicants of answering questions or including additional information at the IPO on how their patent related to a technical standard were costed. No attempt was made to estimate the benefits to SEP users or holders of the policy changes outlined.

### Rate Determination Track

109. The costs of the Rate Determination Track (RDT) were modelled and are set out below. The main assumption relates to the RDT's potential caseload (see table in Annex 2). We assumed an initial higher caseload, which then falls 5-10 cases per year. This produced a long-term average cost of running the RDT of £85-£201k per year.

110. We estimate one-off costs of setting up the RDT of £80-£105k which includes £60-£80k (The range reflects uncertainty over potential supplier, and scope of this work) to procure external research to review the rate setting methodology that could be used. This also includes £10-£15k in technical set-up costs, and £5-£10k for public appointment of judiciary members. As we anticipate outside experts will be hired to carry out assessments, the IPO has not costed provision of training.

111. In its first year of operation, we estimated the RDT could cost £125-£400k, gradually reducing to £80-£130k by its seventh year, as case volumes decrease. We have assumed that the RDT incurs administrative support and judicial fees in the order of £75-£100k per year, is an online service (with negligible overheads), has 3 expert panel members paid at a rate of £50-£100 per hour, and that each case takes between 20-30 hours.

### Familiarisation costs

112. If all patent applicants are asked to provide information on whether their patent relates to any technical standards, there will be some familiarisation costs. We are uncertain whether applicants would seek legal guidance on this. We therefore have a very broad range for familiarisation costs depending on whether applicants spend a short time seeking information themselves or seek specific legal guidance.

113. Based on the assumption that familiarisation costs would include internal labour costs for the business and could be facilitated by legal counsel. We estimate familiarisation takes between 15 minutes and 1 hour and internal costs to business are based on £30 per hour salary (£51,000 p.a.). We have assumed a registered patent attorney might charge £100-£432 per hour for provision of advice.

### Potential Benefits

114. We have not currently estimated the monetary benefits associated with the RDT, including expected court savings, increased efficiency in reaching licensing agreements, and reduced barriers to market entry for businesses needing to license SEPs. We assume that potential SEP licensees who use the RDT will save court costs as high-profile FRAND determination cases can cost as much as £14m.

115. If use of the RDT leads to a reduction in SEP litigation cases being taken to UK courts, it will improve the efficiency of reaching licensing agreements. This may also result in fewer applications for injunctions, benefitting licensees in the UK by reducing the risk of their products being removed from the market, resulting in loss of revenue.

116. If rates determined by the RDT are published, the resulting increased pricing transparency may reduce barriers to market entry in industries who use technical standards.

117. We would like to estimate values for the potential benefits, so we are keen to hear your thoughts on these. This will allow us to update our assumptions and more accurately assess how the changes will affect SEPs holders, licensees and broader society.

**Questions**

**Q44:** Do you agree with the assumptions we have used in our assessment of the impacts? (Yes/No/Don't know)

If not, please explain why you did not agree with the assessment

**Q45:** Are there any other significant costs or benefits that should be included? (Yes/No/Don't know)

If yes, what are they?

**Q46:** Are you aware of any data or other information that could help us to quantify:

- the potential cost savings to businesses using RDT rather than the courts?
- the potential time and other efficiency savings from using RDT rather than courts?
- the benefits of reducing barriers to market entry through publishing rates determined by the RDT?

(Yes/No/Don't know)

If yes, what are they?

**Q47:** Please supply any other information which you consider would be useful to help us assess the impacts of the options.

**Annex 1: Rate-Setting for Standard Essential Patents; International Evidence and Analysis, prepared by Jorge L. Contreras, J.D., James T. Jensen Endowed Professor for Transactional Law, University of Utah S.J. Quinney College of Law Salt Lake City, Utah, USA**

**Annex 2: Estimated case volumes over the next 10 years for the SEP Rate Determination Body**

**Case volume**

| Year | Lower bound assumption | Upper bound assumption |
|---|---|---|
| **1** | 0 | 0 |
| **2** | 50 | 100 |
| **3** | 40 | 90 |
| **4** | 30 | 70 |
| **5** | 20 | 50 |
| **6** | 10 | 20 |
| **7** | 5 | 10 |
| **8** | 5 | 10 |
| **9** | 5 | 10 |
| **10** | 5 | 10 |

**Supporting evidence**

**SEP court case volumes:** Since 2018, on a worldwide basis, there have only been an average of 28 FRAND-related disputes per year (in 2021 there were only three[15], more information can be found using the Baron et al[16] webpage). A list of UK SEP and FRAND-related disputes is provided in the UK SEP Resource Hub[17]. We can expect more cases to be brought to the RDT, in comparison to SEP FRAND cases taken to court, on account of lower fees.

**Copyright tribunal case volumes:** The caseload has reduced over the last two decades. Two proceedings have been launched in the last 5 years, one has concluded, and one remains ongoing. Similarly, for a SEPs rate setting board, we may expect to receive a high initial number of applications, due to a backlog of unresolved SEP licensing disputes. However, the number of cases should decrease over time as published case determinations reduce information asymmetry on licence pricing.

[15] https://www.iplytics.com/wp-content/uploads/2023/04/Empirical-Assessment-of-Potential-Challenges-in-SEP-Licensing.pdf
[16] https://www.lexisnexisip.com/resources/empirical-assessment-of-potential-challenges-in-sep-licensing/
[17] https://www.gov.uk/guidance/uk-seps-case-law#uk-sep-case-law

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