

What is
FRAND
Why does it matter?

**We are friends of FRAND.
The Fair Standards
Alliance believes that
the FRAND commitment
should be observed
following these principles.**

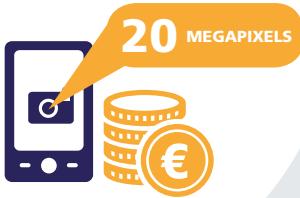
FRAND SHOULD MEAN FAIR AND REASONABLE AND NON-DISCRIMINATORY TO ALL

Any entity that implements a Standard or portion thereof should be able to obtain a SEP license, independently of its position in the market chain.

Example: A hotel or coffee shop is supplying WiFi functionality to their customers. The SEP relates to the WiFi functionality. The SEP holder only wishes to grant a WiFi technology license directly to the hotel or coffee shop and not to the WiFi component supplier. In licensing its technology only to the hotel or coffee shop, the patent holder tries to tax at a later level in the value chain for income received by the hotel which is not related to the SEP. On the contrary, if the component supplier gets a license, other actors in the market chain will not need additional licenses, because the SEP technology used would be already licensed.



FAIR AND REASONABLE ROYALTIES



Royalties should reflect case-specific factors, as well as some general fair and reasonable principles:

- Calculation of the royalties should not include the value of features of the product that are not covered by the specific SEP licensed
- No additional value should be conferred to the SEP just because it has been declared as essential to the Standard
- Reasonable royalties should consider the aggregate amount of all the royalties applied to a product
- Royalties shall consider that the value of technology reduces over time

Example: A new smartphone includes a 20 megapixel high resolution camera that attracts consumers to the brand. Holders of SEPs related to the WiFi technology used on the phone should not be able to charge higher amounts based on the perceived higher value of phone with the camera.

ENHANCED TRANSPARENCY REGARDING LICENSING OF SEPS SUBJECT TO A FRAND COMMITMENT

More transparency in the licensing of SEPs would level the playing field for companies big and small. FSA encourages SEP holders to be open and transparent regarding, amongst other things, which companies in the supply chain are licensed, the FRAND royalties that are charged, how they are calculated and other licensing conditions.

Example: A SEP holder offers different license terms to each company, and implements confidentiality agreements with all its licensees that prevent the exchange of information that would enable the licensee to assess the fairness of the terms offered. Also, the licensee does not know if he is being discriminated against. This especially puts SMEs in a vulnerable position because SMEs may have more limited negotiation power.



A FRAND PROMISE SHOULD EXTEND TO EACH SUBSEQUENT HOLDER IF THE SEP IS TRANSFERRED

If a SEP subject to a FRAND commitment is transferred, the initial transferee and all subsequent owners of the SEP must remain bound by the FRAND commitment.

Example: Company A licenses 1,000 SEPs at a royalty of 1% of the device selling price, for a 5 year period. Company B buys the ownership of 100 of those SEPs. When the 5 year term expires, Company B decides to increase the royalty for their 100 SEPs to 5% of the device selling price making Company A pay much higher royalties to license the same 1,000 patents. Company B must abide by the FRAND commitment existing on the transferred 100 SEPs.



A licensee must not be required to license the SEP holder's entire patent portfolio - only those SEPs that are needed for the licensee's implementation of the Standard.

Example: A company wants to produce TV screens but the SEP holder refuses to offer a license only to the essential TV screen patents and instead requires the company to take a license to their portfolio that covers the entire TV. The company should be able to take a license to just the patents covering the TV screen.

NO PATENT TYING - ONLY RELEVANT PATENTS SHOULD BE REQUIRED TO BE LICENSED



INJUNCTIONS FOR SEPS SUBJECT TO A FRAND COMMITMENT SHOULD ONLY BE AVAILABLE IN LIMITED CIRCUMSTANCES



Licensees willing to take a license should not be faced with the risk of injunctions.

Example: A SEP holder must not be allowed to impose abusive licensing terms and threaten the willing licensee with the risk of an injunction if the licensee challenges the FRAND terms of the offer.

What are Standard Essential Patents (SEPs)...

Standards are fundamental to a competitive and dynamic European market where innovation can thrive. “Standards” are technical specifications approved by a standardisation body.

In today’s connected ecosystems, different products made by different companies must be able to work together. Without Standards for creating that interoperability, the ability of companies to provide useful products to consumers is limited. Standards provide common, interoperable platforms, which companies can use as the basis for competitive differentiation and reduced time to market.

Standards are built in part on the Intellectual Property Rights of the patent owners of those technologies selected by the standardisation bodies for incorporation into the Standard.

...and why do their licensing conditions matter?

Standard Essential Patents (SEPs) are patents that are necessarily infringed when complying with the technical requirements of a given Standard. To ensure SEP patent holders do not abuse their exclusion rights once the Standard is declared, many standardisation bodies impose the obligation for its members to license SEPs under Fair, Reasonable and Non-Discriminatory (FRAND) terms.

If parties do not agree on the terms of the FRAND license, a court may need to determine the licensing terms. But the mere threat of injunction by a patent holder (implying the exclusion from the market of final products) might oblige Standards implementers to accept conditions outside of the FRAND boundaries.

The Fair Standards Alliance believes that unfair and unreasonable SEP licensing practices pose a significant risk to the innovation eco-system, create barriers for new market entrants, threaten to stifle the full potential for economic growth across major industry sectors, and ultimately harm consumer choice.

About the **Fair Standards Alliance**

The Fair Standards Alliance is a not for profit association whose goal is to promote a number of key principles concerning the licensing of Standard Essential Patents (SEPs) that are subject to a voluntary commitment to provide licenses on Fair, Reasonable and Non-Discriminatory (FRAND) terms.

Members



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