



## American Intellectual Property Law Association

October 7, 2025

The Honorable Kanishka Narayan MP  
Parliamentary Under-Secretary of State Minister for AI and Online Safety  
Department for Science, Innovation and Technology  
22-26 Whitehall  
London  
SW1A 2EG  
United Kingdom

Via email: [SEPs@ipo.gov.uk](mailto:SEPs@ipo.gov.uk)

Dear Mr. Narayan:

The American Intellectual Property Law Association (“AIPLA”) appreciates the opportunity to respond to the UK IPO’s Standards Essential Patents Consultation published in July 2025 (the “Consultation”).

AIPLA is a U.S. national bar association of approximately 6,500 members engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property, and the resolution of disputes in these areas. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective laws and policies that stimulate and reward invention while balancing the public’s interest in healthy competition, reasonable costs, and basic fairness.

Because many of our members represent companies that own patents within the UK and are engaged in licensing patents within and outside the UK, AIPLA is grateful for the opportunity to provide these comments in response to the Consultation.

The objectives of improving predictability and efficiency in Standard Essential Patent (SEP) licensing, while ensuring access for all stakeholders, are important. AIPLA respectfully suggests that further clarification and evidence would help strengthen the Consultation’s foundation and ensure that any future measures achieve a balanced approach for both SEP holders and implementers.

To help strengthen the Consultation process, AIPLA respectfully suggests the UKIPO consider:

- **Publishing evidence** on first-hand SME experiences and verifiable litigation data relied on in the Consultation.
- **Evaluating costs and benefits** of proposed measures for both implementers and SEP holders, including SMEs on both sides.

- **Reassessing the role of essentiality checks**, recognizing that while essentiality may be useful in the context of patent pools or portfolio valuation for small portfolios, infringement is the decisive issue in bilateral licensing.
- **Exploring proportionate alternatives**, such as existing voluntary and flexible mediation mechanisms before adopting or even piloting more formal regulatory measures.

## 1. Evidence on Transparency

The Consultation refers to transparency challenges, including SME experiences and examples from litigation, but the underlying data and methodology are not disclosed. For example, the SME survey is cited as showing that many respondents reported insufficient information, but details such as sample size, sector distribution, or comparison with existing disclosure mechanisms are not provided.<sup>1</sup>

AIPLA, in its comments on the European Commission's (EC) proposed SEP regulation,<sup>2</sup> emphasized the importance of clear and well-substantiated evidence before introducing new obligations noting the following:

- *Lack of evidence of systemic failure.* AIPLA emphasized that the EC did not present data or concrete evidence showing that the existing SEP framework is broken or that systemic problems justify a sweeping new regulatory regime. Instead, the EC appeared to rely primarily on anecdotal assertions.<sup>3</sup>
- *Transparency concerns not substantiated.* While the EC highlighted “transparency” as a rationale for reform, AIPLA noted that transparency was not clearly defined, and no evidence was provided that existing disclosure obligations were inadequate. As a result, the asserted need for greater transparency rested on unverified assumptions rather than demonstrated shortcomings.<sup>4</sup>

Providing fuller evidence or publishing supporting data would give stakeholders a better basis to evaluate the scope and nature of any transparency concerns. This would also ensure that potential measures are closely tailored to the problems identified.

---

<sup>1</sup> The UK IPO Consultation states: “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.” UK IPO, *Consultation on Standard Essential Patents*, ¶ 33 (July 15, 2025), <https://www.gov.uk/government/consultations/consultation-on-standard-essential-patents-seps/consultation-on-standard-essential-patents>. However, the Consultation does not disclose whether these responses came from SMEs that had actually been required to take SEP licenses or faced infringement litigation. Without such context, it is equally plausible that SMEs were expressing a generalized concern about the possibility of being targeted by SEP holders, rather than reporting actual experience. In reality, it is rarely economical for large SEP holders to pursue licenses from SMEs, and there is little evidence that they frequently do so. Greater transparency about the survey’s methodology—including the questions asked, respondent demographics, and total number of respondents—would allow stakeholders to more meaningfully assess the weight to be given to these findings.

<sup>2</sup> AIPLA, *Comments to the European Commission on Proposed SEP Regulation* (Aug. 10, 2023) [hereinafter *AIPLA Comments on Proposed EC SEP Regulation*], <https://www.aipla.org/docs/default-source/advocacy/aipla-comments-to-eu-on-proposed-sep-regulation-8.10.23.pdf>.

<sup>3</sup> *Id.* at 11-12.

<sup>4</sup> *Id.*

## 2. Ensuring Balance Between Stakeholders

The Consultation seeks to create a balanced ecosystem. AIPLA encourages the UK IPO to further consider how proposals might affect both sides of the licensing relationship.

Some measures—such as a Rate Determination Track (RDT), enhanced disclosure obligations, or special pre-action protocols—appear to focus primarily on supporting implementers,<sup>5</sup> particularly SMEs. While this is an important policy goal, it may be helpful to also assess the costs and obligations these measures would place on SEP holders, including universities, not-for-profit entities and smaller patent owners, to ensure that the international standards development system remains balanced, companies remain incentivized to invest in the UK, and SEP holders continue to contribute to standards development supporting innovation in the UK.

AIPLA cautioned in its comments on the EU proposal that:

- One-sided requirements could impose significant costs and delays on SEP owners without evidence of commensurate benefits.<sup>6</sup>
- Any system should not impose disproportionate burdens on SEP holders where SDO policies are carefully crafted to promote balance among all stakeholders.<sup>7</sup>
- Claim-chart production and registry obligations may skew the balance in favor of implementers.<sup>8</sup>
- AIPLA believes that assessing both implementer and patentee perspectives will be equally important in developing a framework that fosters fairness and encourages continued contributions to standards.<sup>9</sup>

---

<sup>5</sup> The UK IPO states: “Due to the sheer volume of declared SEPs, it can be difficult for licensees to determine which SEPs they need to license to implement a standard. This creates search costs for licensees seeking to understand which SEPs they need to license, and who to obtain a license from. This in turn can lead to legal uncertainty that may deter businesses from market entry.” *Consultation on Standard Essential Patents*, supra note 1, ¶ 41. While the Consultation highlights search costs and challenges faced by implementers, it does not address the parallel costs and burdens borne by SEP holders—particularly those with large portfolios participating across multiple SDOs—who already must comply with diverse disclosure and essentiality policies. As AIPLA has observed, additional essentiality checks and disclosures would increase these burdens substantially, yet the Consultation does not appear to weigh those costs against the benefits claimed. *See AIPLA Comments on Proposed EC SEP Regulation*, supra note 2, § II.C.

<sup>6</sup> In addressing the EU's failure to propose a proportional measure for the problem it was trying to address—lack of transparency and more efficient resolution of FRAND disputes—AIPLA noted: “The statement that ‘actions at EU level will be efficient and save costs for stakeholders’ is unsupported and AIPLA believes is inaccurate. A mandatory FRAND determination proceeding will add substantial cost, particularly for parties that have already attempted negotiations or other alternative dispute resolution procedures. Nor has the EC considered the effects of mandatory additional proceedings for SEPs that are close to the end of their lifetime. Where time is of the essence, these mandatory proceedings could hinder enforcement and impair securing a return on investment.” *AIPLA Comments on Proposed EC SEP Regulation*, supra note 2, at 8.

<sup>7</sup> *Id.* at 17-21.

<sup>8</sup> *Id.* at 16.

<sup>9</sup> The UK IPO's Consultation appears primarily framed around risks to innovation from SEP licensing practices, with comparatively less attention given to the role of continued IP contributions that make standardization possible. For example, the Consultation states: “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.” *Consultation on Standard Essential Patents*, supra note 1, ¶ 33.

### 3. The Role of Essentiality Checks

The Consultation gives considerable weight to essentiality and the possibility of essentiality checks. While essentiality is important in the formation of a SEP patent pool, it is less relevant in bilateral licensing negotiations. It also requires a sufficient pool of informed experts to conduct essentiality checks, which may not be available.

Even if a patent is declared essential, an implementer negotiating with a SEP holder must still assess whether the patent is infringed. AIPLA has also pointed out:

- Essentiality determinations do not resolve the issue of infringement; and
- Essentiality checks may create a false sense of certainty and add cost, without resolving the issues that actually drive disputes.<sup>10</sup>

Moreover, AIPLA cautions that essentiality may not be a useful measure of value in very large portfolios, where the overall worth derives from the breadth and adoption of the technology and other factors rather than from the essentiality of each individual patent.<sup>11</sup> In such cases, the cost of checking essentiality patent-by-patent is disproportionate to the limited insight it provides into portfolio value.

For this reason, essentiality checks may be relatively important when evaluating smaller portfolios or forming patent pools, but they are less determinative in bilateral negotiations and in the valuation of large portfolios. In those contexts, infringement (together with the value to the licensee implementing the essential claims in its products) remains the decisive issue for licensing, and portfolio value is shaped more by market realities (i.e., the cost of the license versus the profit from selling the products) than by essentiality audits.

Thus, requiring or emphasizing essentiality checks in bilateral negotiations, especially when large portfolios are involved, may not improve efficiency or improve value transparency. Instead, they risk adding administrative expense without reducing the need for case-specific infringement analysis, which is central to determining whether a license is required.

### 4. Alternative Approaches Before New Regulatory Measures

The Consultation proposes new structures such as an RDT and supplemental essentiality requirements. While these mechanisms are intended to increase certainty, they may not in

---

<sup>10</sup> *AIPLA Comments on Proposed EC SEP Regulation*, supra note 2, at 16-17; see also *AIPLA response to Joint ITA-NIST-USPTO Collaboration Initiative Regarding Standards* (Docket No. PTO-T-2023-0034), at 3-4, [https://www.aipla.org/docs/default-source/advocacy/aipla-comments-on-uspto-ita-and-ntia-on-standards-policy.pdf?sfvrsn=442d0680\\_1](https://www.aipla.org/docs/default-source/advocacy/aipla-comments-on-uspto-ita-and-ntia-on-standards-policy.pdf?sfvrsn=442d0680_1) (“Whether any of the claims contained in declared patents are in fact essential is a red herring. Even when a patentee contends that their patent is essential to a standard, practicing the standard does not necessarily infringe. ... These effects complicate attempts to conflate essentiality with infringement because only infringers require a license, regardless whether the patent claims are essential.”).

<sup>11</sup> See, e.g., *AIPLA Comments on Proposed EC SEP Regulation*, supra note 2, at 23-24 (As the AIPLA has noted before, FRAND negotiations especially involving larger portfolios are complex and require tradeoffs among many different terms and conditions.); see also *AIPLA Comments on Discussion Paper On Standard Essential Patents And Their Availability On FRAND Terms*, at 5 (Apr. 26, 2016) (“License terms often vary for different licensees because negotiations lead to agreements addressing far broader cross licenses, portfolio licenses, and other business issues between specific parties.”), <https://www.aipla.org/docs/default-source/uploadedfiles/documents/advocacy/intl/documents/aipla-comments-on-india-dipp-4-22-16-final.pdf>.

practice as discussed above. Meanwhile such new regulatory requirements may also create substantial new costs, obligations, and unnecessary delays for SEP owners and implementers alike that should be further analyzed before being implemented, even on a pilot basis.

Currently, SEP disputes typically address three issues: (i) validity, (ii) infringement, and only then, (iii) FRAND license terms. The UK IPO's proposals appear to reorder this process by encouraging or requiring parties to agree on FRAND license terms before infringement and validity are resolved. However, there are already appropriate and proportionate ways to "front-load" a FRAND resolution using existing alternative dispute resolution (ADR) mechanisms. Mediation, in particular, can be structured to determine licensing terms early in a dispute when both parties agree that such an approach is efficient for them.

As AIPLA noted in its response to the EU's proposed SEP regulation:

- Mediation is a flexible tool that can provide quicker, less costly resolution of licensing disputes than judicial or administrative determinations.
- Voluntary mechanisms such as mediation should be encouraged before creating entirely new regulatory structures.
- Imposing mandatory rate-setting processes risks adding unnecessary costs when voluntary mediation can achieve similar ends.<sup>12</sup>

AIPLA suggests that rather than creating entirely new regulatory mechanisms, the UK IPO could support and promote mediation as a tool—a mechanism proportional to the challenges the UK IPO seeks to address. This would allow parties who wish to resolve FRAND issues early on to do so, without introducing additional mandatory procedures imposing costs and unintended effects not yet well understood.

AIPLA also submitted comments on the UPC PMAC's draft mediation rules<sup>13</sup>, emphasizing the strengths of flexible mediation approaches. AIPLA noted that:

- Mediation processes should retain procedural flexibility, including applicability across both SEP and non-SEP disputes, reflecting the variety of needs across patent licensing contexts.
- Adopting a generalized framework—such as WIPO-style core rules with optional guidelines and templates—provides broader and more effective use, without mandating rigid structures.

AIPLA believes that mediation, in particular, is already well-suited to accommodate optional, early FRAND agreements. Parties can tailor these mediation procedures to their needs, including front-loading FRAND agreements when appropriate, without needing entirely new regulatory instruments. Leveraging existing mediation procedures avoids the risk of over-engineered procedures and supports flexible, cost-effective resolution strategies.

## **5. UK Consultation requests for further evidence.**

---

<sup>12</sup> *AIPLA Comments on Proposed EC SEP Regulation*, supra note 2, at 13-14 and 22-23.

<sup>13</sup> *AIPLA's Response to the UPC PMAC Public consultation on draft Mediation Rules*, [https://www.aipla.org/docs/default-source/advocacy/aipla-comments-to-upc-pmac-on-mediation-rules.pdf?sfvrsn=bb950f18\\_1](https://www.aipla.org/docs/default-source/advocacy/aipla-comments-to-upc-pmac-on-mediation-rules.pdf?sfvrsn=bb950f18_1).

The UK IPO has made several requests for further evidence throughout its Consultation. The AIPLA responds to certain questions as follows. Failure to respond to any specific question should not be interpreted as either acquiescence or indifference to such question or any portion thereof.

## **A. Potential measure 1: RDT.**

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

AIPLA notes from the IPEC Guide<sup>14</sup> that the IPEC “aims to provide a procedure for intellectual property litigation which is speedier and less costly” than the Patents Court, and also seeks “to safeguard parties from the risk of paying large sums in costs to the opposing party at the conclusion of the proceedings,” with the intention of ensuring that “parties without the benefit of large financial resources are not deterred from seeking access to justice because of the high cost of litigation.”

The right to a measure of justice for both the implementer and the SEP holder<sup>15</sup> can be achieved through a combination of at least the following:

- a. Active case management of proceedings, including early exchange of Statements of Case to narrow the issues for trial, resulting in a corresponding narrowing of the scope of expert evidence and cross-examination to only those issues (a list of issues being agreed between the parties);
- b. A cap on trial length of 2-3 days;<sup>16</sup>
- c. A costs recovery cap of £60,000;<sup>17</sup> and
- d. A damages cap of £500,000, though this can be varied or waived if the parties agree.<sup>18</sup>

In the circumstances, the IPEC is not the appropriate venue for an RDT for the reasons set out below:

FRAND disputes are commercially significant and the proper resolution of them requires substantial expert evidence. In light of the recent decision of the UK Court of Appeal in *Optis v Apple*, it is clear that evidence from multiple experts may be required. All of the three FRAND rate determination trials that have taken place before the Patents Court have been well in excess of the trial length cap imposed by the IPEC.

---

<sup>14</sup> The Intellectual Property Enterprise Court Guide, Issued November 2024 (hereinafter *IPEC Guide*): <https://www.judiciary.uk/wp-content/uploads/2024/12/Intellectual-Property-Enterprise-Court-IPEC-Guide-revised-November-2024.pdf>.

<sup>15</sup> It is worth noting that the fundamental rights charter Article 47, acknowledges that the rights holder is entitled to a trial. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT>.

<sup>16</sup> *Id.* § 3.2 (“...[A] party wishing for the proceedings to be in IPEC remains under an obligation to tailor their case to ensure that all the issues in the proceedings will not give rise to a trial lasting more than 2 days, or exceptionally, 3 days.”).

<sup>17</sup> *Id.* § 1.2 (“At the end of trial the losing party may be required to pay the winning party’s legal costs, but with very limited exceptions such costs will not exceed £60,000 in the IPEC multi-track.”).

<sup>18</sup> *Id.* (“In the IPEC multi-track, litigants may claim up to £500,000 in compensation for infringement of their rights. This cap on compensation may be waived by agreement of the parties.”).



As such, the active case management promoted by the IPEC, in relation to expert evidence and cross-examination of experts at trial, and the trial length cap render the IPEC an inappropriate forum for the RDT.

Similarly, the cost of litigating a FRAND rate determination action is often well in excess of the costs recovery cap in the IPEC – the Consultation itself cites that the *InterDigital v Lenovo* trial resulted in combined legal costs totalling £31.5m.<sup>19</sup>

As the UK IPO will be aware, in the United States, except for exceptional circumstances (which are rare), parties bear their own costs, and so we approach the issue of costs recovery and the costs recovery cap from a strategic and common-sense perspective.

The costs recovery cap will not deter well-resourced stakeholders from spending many magnitudes in excess of the recovery cap in advancing their case. By contrast, for an SME, the costs recovery cap may provide a false sense of security that the other party in an RDT dispute will not spend in excess of the cap, whereas this is unlikely to be the case. If the SME were to appreciate this and also spend in excess of the cap, then it will be hindered in its costs recovery in the event it is successful because of the cap.

In relation to the damages cap, AIPLA notes that the case law as it stands construes past royalties as matter of determination of the terms of a FRAND license, with past release addressed therein, rather than as matter of damages for past use. As such, the damages cap may not be relevant. To the extent there is an associated damages claim, in a SEP context it is likely that the current damages cap would be insufficient, and although it can be waived or varied with the parties' consent, this is unlikely to be forthcoming in a litigation scenario.

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

If the UK IPO believes voluntary mediation is inadequate because it cannot produce a binding rate determination or would impose costs and uncertainty similar to a trial for SMEs, there are already well-established arbitration mechanisms that could fill this role. Allowing parties to opt for binding arbitration, rather than creating a new and potentially less effective rate determination track, would be a more practical alternative. Designing an entirely new judicial process is unnecessary, especially since there is little evidence that a standalone rate determination—separate from the merits of the patents—would resolve SEP disputes efficiently or cost-effectively.

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

As discussed at Section 4 above, there already exist a number of ADR processes, some of which are specifically tailored to addressing FRAND disputes.<sup>20</sup> Promoting the use of such processes

---

<sup>19</sup> *Consultation on Standard Essential Patents*, supra note 1, ¶ 44.

<sup>20</sup> See, e.g., WIPO Arbitration and Mediation Center, *WIPO ADR Options for FRAND Dispute Management and Resolution* (2022), [https://www.wipo.int/export/sites/www/amc/en/docs/2022/wipo\\_adr\\_options\\_for\\_frاند\\_disputes\\_management\\_and\\_resolution.pdf](https://www.wipo.int/export/sites/www/amc/en/docs/2022/wipo_adr_options_for_frاند_disputes_management_and_resolution.pdf).

would assist in achieving the governments objectives, whilst giving stakeholders the flexibility to use the most appropriate ADR.

From an SME perspective, this could be achieved by properly signposting SMEs to such ADR processes using the existing SEP hub for SMEs.<sup>21</sup>

**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)?**

At present, the English Court permits either a SEP holder or an implementer to bring suit for a determination of the rate and terms of a global FRAND license provided jurisdiction is established, typically by way of bringing into suit at least one UK SEP in the relevant SEP portfolio.

The remit and scope of any RDT, if established, should be no broader than the established practice of the Patents Court in this regard.

**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?**

As a preliminary matter, the UK IPO should consider evidence as to whether a RDT is needed or would be helpful. As discussed in Section 4, ADR processes, including mediation, can serve as flexible tools to provide quicker, less costly resolution of licensing disputes than either judicial or administrative determinations. The IPO indicates that there is “an expectation that ADR mechanisms will have been used before use of the RDT” and that such “mechanisms should have narrowed down disagreements in SEPs disputes to the issue of a license rate (and perhaps other relevant terms of a license).”<sup>22</sup> It is not clear why those same ADR processes cannot be used to achieve complete resolution of applicable rates and other terms needed to resolve a license agreement.<sup>23</sup>

**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)?**

For the reasons discussed in this response to the Consultation, AIPLA does not believe the UK IPO should implement an RDT.

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

The Patents Court already provides a forum for and experience in engaging in global rate determinations, at the instigation of either a licensor or a licensee.

---

<sup>21</sup> See <https://www.gov.uk/government/collections/seps-resource-hub>.

<sup>22</sup> *Consultation on Standard Essential Patents*, supra note 1, ¶ 66.

<sup>23</sup> See *AIPLA Comments on Proposed EC SEP Regulation*, supra note 2, at 12-14.



To the extent that an RDT is to be implemented, it ought to exist as a specialist track within the existing Patents Court, so that the experience and expertise of the judges of the Patents Court can be applied in resolved disputes brought in the RDT. The rules and processes of the RDT ought to be codified in an appropriate place.

The key efficiency achieved by a codified RDT is that it provides certainty to the parties going into the process about the manner in which proceedings will be conducted, rather than this being a matter of negotiation between the parties and an issue of case management for the Court.

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

In the Court of Appeal decision in *Optis v Apple*,<sup>24</sup> the Court firmly endorsed a comparable licences approach to licence rate determination, with a top-down approach to be used as a cross-check only.

AIPLA is pleased that the Consultation recognizes that there are several different models available for setting rates, and there is disagreement regarding which methodology should be applied in particular cases. Regarding the Consultation's call for comments on preferred models, AIPLA previously objected to the use of any single valuation methodology including comparables and the top-down approach because each FRAND determination must be evaluated based on the specific facts and circumstances and parties involved.<sup>25</sup>

Care should be taken not to mandate one particular approach over another. Which methodology (or methodologies) to use is very fact-specific and the UK IPO should be mindful not to box in stakeholders to a particular approach. Constraining a judge's consideration of different valuation methodologies, where judges are uniquely equipped to consider the evidence in light of the facts and circumstances in the cases before them, could deprive the parties justice in resolving their dispute. Certainty of process should not be traded off against using the most appropriate process for the issue at hand.

**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)?**

The analysis is necessarily multi-factorial and all of the aforementioned factors ought to be taken into consideration in determining which calculation method to use.

AIPLA notes that the relative strength and market position of stakeholders changes over time—a net implementer one year may be a net licensor five years later, and this transition involves a change in market position and licensing requirements/desires. Similarly, a net implementer in one market may be a net licensor in another market. Moreover, what constitutes a “small” implementer can differ based on the context and product vertical or geography in question even

---

<sup>24</sup> *Optis v Apple* [2025] EWCA (Civ) 552.

<sup>25</sup> *AIPLA Comments on Proposed EC SEP Regulation*, supra note 2, at 25-26 (“Because a primary goal of the Proposed Regulations in setting an aggregate royalty is to provide knowledge of a potential total royalty for implementor cost determinations, the Proposed Regulations are directed toward the aggregate royalty being used in a “top-down” approach for calculating SEP royalties for SEP holders. Although patent counting is tempting in determining royalty rates for a standard with many contributors and declared SEPs, it suffers from a sensitivity to variability in validity and essentiality rate determinations, and does not account for relative valuation of patents having wildly different scope and technical contributions.”) (cites omitted); *See also Id.* at Section III.B.4

though the implementer may be a “large” entity or market participant in other areas. Such distinctions would not be accounted for if a single formulaic approach for FRAND determinations is adopted.

Such situations should be taken into account when considering appropriate methodologies.

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

As we have noted previously, valuation methodologies should remain flexible—there is no one-size-fits-all approach. That said, certain contexts may call for different methodologies, such as when dealing with large portfolios, cross-licenses, or emerging technologies where comparable licenses are not available. Even within these broad categories, however, no single methodology is universally applicable; each situation involves unique factors that must be taken into account including situations where one or both parties are SMEs.

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

FRAND disputes in the Patents Court already result in published judgments unless the parties settle before trial, so the mere publication of RDT decisions would add no transparency beyond what is already available. And while publication alone is unlikely to deter parties from using the RDT—just as it has not discouraged FRAND actions in the Patents Court—the broader shortcomings of the RDT process described above would remain unaddressed and would reasonably discourage use of the RDT.

Mere publication of rates would do little to aid transparency without publication of the other terms of the license and the parties’ specific situations.<sup>26</sup> The risk of publication of the details of a licensing programme in a judgment can be a key enabler of settlements that already exists through the Courts.

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

AIPLA notes that the RDT is envisaged to render a “binding” decision. At a conference in London, England, in an interview session, a UK IPO representative clarified that the UK IPO is not proposing this but is seeking evidence on a proposal that decisions be “binding.”<sup>27</sup>

It is difficult to envisage how an RDT decision could be made binding on the parties. The form of relief granted at present by the Patents Court is declaratory in nature—it declares what a FRAND rate and/or terms would be and is not in itself binding.

The RDT, if implemented, should adopt the same approach. Rendering a binding determination that may be global in nature could result in issues of comity with other jurisdictions.

**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?**

---

<sup>26</sup> See footnote 11.

<sup>27</sup> Remarks from IAM SEP Summit Global, September 16-17, 2025.

For the reasons discussed, the UK IPO should not implement the RDT, but if it does, the RDT should only be used if both parties agree.

**B. Potential measure 2: Searchable standard related patent information.**

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

AIPLA has concerns regarding whether the proposal will increase transparency, for the reasons discussed in Section 1 above, and in connection with Q15 below regarding information asymmetry.

**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)?**

The Consultation proposes a new search function to be added to the ONE IPO search service for "standard related patents." According to the Consultation, patent owners would need to provide the UK IPO with information in order to make the search function meaningful, and the Consultation proposes the possibility of "mandating or incentivizing the provision of such information under UK law."<sup>28</sup> The Consultation states that such a search function, "with appropriate disclaimers to its accuracy, will enhance transparency" by providing licensees a better understanding of licensing obligations and information needed to commence negotiations.<sup>29</sup>

Regarding the Consultation's call for comments on whether the function would provide legal certainty, AIPLA is concerned that the Consultation is proposing to capture not only SEPs, but so-called standard related patents. It is unclear what the scope of such an obligation would be, or how patent owners would go about determining whether a patent is related enough to a standard such that a disclosure obligation would be triggered. This runs counter to legal certainty.

Even if the disclosure obligation were limited to SEPs, the proposal is problematic in terms of potential accuracy and certainty. AIPLA previously submitted substantive comments regarding the proposed requirement for all SEP holders to disclose their SEPs in view of factors including the diverse policies set forth by various standard development organizations, and incorporates those comments herein.<sup>30</sup>

In addition to the proposal's shortcomings regarding legal uncertainty, this proposal solely seeks to impose obligations on SEP holders alone without weighing the costs and benefits and without reasonably assessing whether information asymmetry is a greater factor in SEP disputes. As discussed in Sections 1 and 2, AIPLA believes the Consultation would benefit from identifying the evidence it relies on in concluding that there is a need to address information

---

<sup>28</sup> *Consultation on Standard Essential Patents*, supra note 1, ¶ 77.

<sup>29</sup> *Id.* ¶ 66.

<sup>30</sup> *AIPLA Comments on Proposed EC SEP Regulation*, supra note 2, at 17-21.

asymmetry through proposals that solely place obligations on SEP holders rather than reasonably balancing obligations among all stakeholders.

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

AIPLA, as discussed above, does not find based on the evidence disclosed that information asymmetry or transparency need special attention in SEP disputes. However, should that evidence be forthcoming, AIPLA notes that the Consultation recognizes the existence of alternative routes to achieving the objectives of increased transparency and reducing information asymmetry, including "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)." However, the Consultation opines that the proposal would provide a central source of information and would seek to align with the other initiatives.<sup>31</sup> AIPLA favors SDOs having the flexibility to formulate their own policies and procedures, and AIPLA does not support legislative, regulatory, judicial, or administrative action that requires all SDOs to adopt a single prescribed intellectual property rights/licensing and disclosure policy. Indeed, the diversity of SDO patent policies promotes competition and innovation. For these reasons, SDO patent policies rather than regulations, should control SEP disclosure and licensing matters where such policies are binding on SEP holders.<sup>32</sup>

**Conclusion**

AIPLA supports the UK IPO's efforts to explore ways of improving SEP licensing and promoting innovation. Additional transparency regarding the evidence base, together with a careful assessment of the impact of measures on both implementers and SEP holders, will help ensure that the UK IPO achieves a practical, fair, efficient, and balanced framework. If AIPLA can be of any further assistance in the development and implementation of the Guidelines or of any other assistance on intellectual property issues, please do not hesitate to contact us.

Sincerely,



Kimberly Van Voorhis  
President  
American Intellectual Property Law Association

---

<sup>31</sup> *Consultation on Standard Essential Patents*, supra note 1, ¶ 80.

<sup>32</sup> *AIPLA Comments on Proposed EC SEP Regulation*, supra note 2, at 17-21.