




Global Governance for SEP
Seeking a balance: CEN and CENELEC position

Bardo SCHETTINI GHERARDINI
 Director Legal Affairs
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The context: membership




41 national members / 34 Countries

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The context: uniqueness



Recognition by Regulation 1025/2012 on European Standardization (CEN-CENELEC-ETSI)



Adhering to WTO/TBT principles (transparency, openness, consensus relevance, coherence...)



Public enquiry




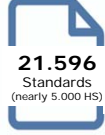
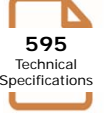




Adoption ENs




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The context: the work


 200.000 Experts	 486 Technical Committees	 1.809 Working Groups	
 21.596 Standards (nearly 5.000 HS)	 595 Technical Specifications	 564 Technical Reports	 479 CWAs

Statistical pack on www.cencenelec.eu




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The context: digital transformation



EU National initiatives


- Finland:** IMAC 2PP Programmes, IMAC2, IMAC3
- Latvia:** National Programme of Technical Education, IMAC2
- Poland:** IMAC2, IMAC3, IMAC4, IMAC5, IMAC6
- Slovenia:** Platforme in inovacije 4.0, Digitalna Slovenija 2020, IMAC2, IMAC3, IMAC4, IMAC5, IMAC6
- Czech Republic:** IMAC2, IMAC3, IMAC4, IMAC5, IMAC6
- Austria:** IMAC2, IMAC3, IMAC4, IMAC5, IMAC6
- Germany:** IMAC2, IMAC3, IMAC4, IMAC5, IMAC6
- Denmark:** IMAC2, IMAC3, IMAC4, IMAC5, IMAC6
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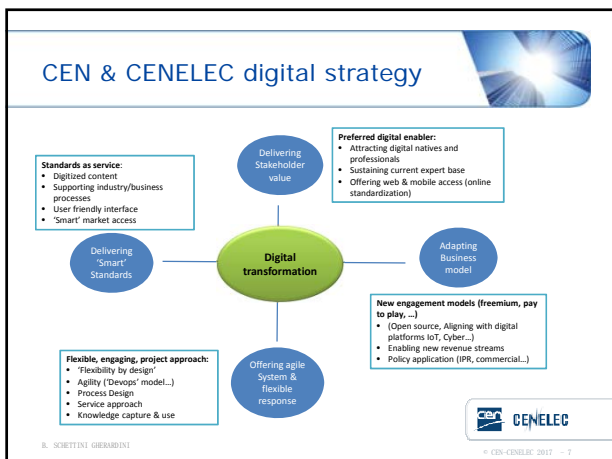
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The context: digital transformation

- EC Communication on "ICT Standardisation Priorities for the Digital Single Market" (04/ 2016)
- EC communication on standard Essential patents for European digitalised economy (expected end 2017)

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IP and standards: a growing concern?

Growing involvement/development in "smart" sectors, IoT/M2M/D2D...

Use of IP as strategic asset

Expected increase of "patent density" in standards

So far...no real problematic issues detected within CEN & CENELEC communities

CEN CENELEC

The Policy

CEN-CENELEC Patent Policy
CEN-CENELEC Guide 8

TIU/ISO/IEC Guidelines for Implementation of the Common Patent Policy

"Essential Patent"

When, at the judgment of patent holder, it is not possible, at the time of the standardization making process, to make a product/method in compliance to the standard, without infringing the patent holder's rights on his Patent.

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The Policy

CEN-CENELEC Guide 8
General Principles

- Voluntary early declarations...
- ...at the best of experts' knowledge
- FRAND conditions
- TCs may discuss the technology relevance of declared patents, but NOT scope, validity & terms

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The policy

Patent granted "free of charge"

Patent granted € at FRAND conditions

Patent not granted

Licensing declaration:
The patent or other IPR holder believes that it holds granted and/or pending applications for intellectual property rights such as Patents, utility models or semiconductor topographies, the use of which would be required to implement the above document and hereby declares, in accordance with the Common Patent Policy adopted by CEN and CENELEC, that it checks one (box only):

Q1. The Patent or other IPR Holder is prepared to grant a free of charge license to an unrestricted number of applicants on a worldwide, non-discriminatory basis and under other reasonable terms and conditions to make, use, and sell implementations of the above document. Negotiations are left to the parties concerned and are performed outside CEN or CENELEC. Also mark here ... if the IPR Holder's willingness to license is conditioned on reciprocity for the above document.

Also mark here ... if the IPR Holder reserves the right to license on reasonable terms and conditions (but NOT free of charge) to applicants who are only willing to license their patent claims, whose use would be required to implement the above document, on reasonable terms and conditions (but NOT free of charge).

Q2. Patent or other IPR Holder is prepared to grant a license to an unrestricted number of applicants on a worldwide, non-discriminatory basis and on reasonable terms and conditions to make, use and sell implementations of the above document. Negotiations are left to the parties concerned and are performed outside CEN or CENELEC. Also mark here ... if the IPR Holder's willingness to license is conditioned on reciprocity for the above document.

Q3. The Patent or other IPR Holder is unwilling to grant licenses in accordance with provisions of either 1 or 2 above.

In this case, the following information is strongly desired by CEN and CENELEC as part of this declaration:

- granted patent number, patent application number (if pending), or registration number,
- an indication of which portions of the above document are affected,
- a description of the claims covering the above document.

Free of charge: The words "free of charge" do not mean that the IPR Holder is waiving all of its rights with respect to the essential intellectual property right. Rather, "free of charge" refers to the issue of monetary compensation, i.e. that the Patent or other IPR holder will not seek any monetary compensation as part of the licensing arrangement (whether such compensation is called a royalty, a one-time licensing fee, etc.). However, while the Patent or other IPR holder in this situation is committing to not charging any monetary amount, the Patent or other IPR holder is still entitled to require that the implementer of the above document sign a license agreement that contains other reasonable terms and conditions such as those relating to governing law, field of use, reciprocity, warranties, etc.

Reciprocity: As used herein, the word "reciprocity" means that the IPR Holder shall only be required to license any prospective licensee if such prospective licensee will commit to license its essential patents) or essential patent claims) for implementation of the same above document free of charge or under reasonable terms and conditions.

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The Policy: "FRAND" clause

General Concerns

- Participation is voluntary
- Certainty of benefit for standard developers and users

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The Policy: "FRAND" clause



Balancing interests holders and implementers

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The Policy: "FRAND" clause


FRAND condition incentive or disincentive?

Under compensation
Barrier to participation in standardization

over compensation
Barrier to the use of standards

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CEN and CENELEC response to the European Commission's Public Consultation on Patents and Standards
Supported by ISO and IEC
February 2015

CEN and CENELEC position on:
STANDARD ESSENTIAL PATENTS AND FAIR, REASONABLE AND NON-DISCRIMINATORY (FRAND) COMMITMENTS

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CEN-CENELEC Position Paper

Evolution and NOT revolution of existing

Timely Disclosure:

- enables opportunities to discuss technology relevance +
- benchmark alternative ("design around")
- TCs, do not/cannot perform patent searches, evaluating patent relevance or essentiality

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CEN-CENELEC Position Paper

- Transparency: need for clear/strict procedure for patent calls + identification of patents
- Role of all stakeholders participating/not participating TC
- Assessment of SEP relevance: European Patent Office may help to improve disclosure process

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CEN-CENELEC Position Paper

FRAND Valuation

Pricing content to FRAND: Many discussions...

E.g.:


Patents value should be based on the claimed invention? ...Or on the added value on the specific application others make of the patented invention?

Limiting the right to seek injunction?

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CEN-CENELEC Position Paper




FRAND Valuation

1. Pricing content to FRAND “one solution/policy fits all” = fuels worldwide revenue distribution disputes!
2. NOT appropriate to provide *ex ante* guidance on licensing FRAND terms to SEP
3. Is governed by private negotiations outside SDO...in light of “*recognized commercial practices*”
4. Ex ante pricing definition: competition law?



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CEN-CENELEC Position Paper




FRAND valuation

CEN and CENELEC change of paradigm:

FRAND is NOT a “pricing mechanism” to define revenues but a “comity device” ... that generates *behavioral* obligations of the parties

Confirmed by the **European Court judgment “Huawei v ZTE”**:
FRAND commitments entail courtesy obligations on both SEP owners and prospective licensees.



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