

Executive summary

As the European Commission is expected to deliver an initiative seeking to promote an efficient and sustainable SEP licensing ecosystem by identifying measures to increase transparency and quality of patent declarations, it is worth analyzing the promises and limits of the different essentiality assessment approaches that have been proposed so far. Indeed, the Commission is currently evaluating a legislative initiative that, among the different policy options, would enhance transparency on SEPs by, for example, requiring the disclosure and update of certain information to improve publicly available information and introducing a system for independent third-party assessments of essentiality under the management and control of an independent body.

Against this backdrop, the paper provides a literature review to investigate which mechanism could enhance the *status quo*

The paper starts from the fundamental premise that essentiality checks represent a costly and time-consuming activity, hence they need to be performed in a reasonable and feasible way by safeguarding transparency and accuracy without imposing prohibitive costs that would overburden the system and penalize companies contributing to the standard setting process. For this reason, it is suggested that policy makers should adopt an efficiency-oriented approach in the selection of the essentiality test mechanism. Further, it is appropriate to ensure that the related decisions are legally binding in order to avoid that such a costly activity could be not only meaningless, but even harmful by providing some implementers with the chance to misuse the process in an attempt to delay negotiations or avoid the payment of royalties.

With the aim of ensuring the development of an efficient and effective essentiality check system, the findings of a literature review on the different scenarios and approaches envisaged in the EU pilot study are illustrated. Whereas a patent-by-patent examination, like the one performed in the context of patent pools, cannot satisfy the requirement of feasibility, automated systems and AI assisted methodologies appear, at the best, promising, but not yet suitable to replace human assessment. Therefore, the only feasible approaches rely on the analysis of a subset of patents as the most compelling solution, which nonetheless have their limitations too, including the risk of benefitting companies that over-disclose, thus furthering, rather than addressing, the roots of the problem.

For these reasons, the paper suggests that, according to the academic analyses, the proposals presented so far need further improvements before their implementation could enhance the *status quo*.