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SMEs and Standard Essential Patents:

Licensing Efficiently In The Internet Of Things



Authors TSILIKAS, Harris / TAPIA, Claudia

Author of the summary: Dr. Begoña G. Otero

SUMMARY			
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Author	Dr. Begoña G. Otero	Date	31.10.2018

Abstract

In the present paper, the authors examine the challenges that SMEs face in licensing within the field of ICT standardization and provide some practical solutions that might contribute to overcome them. For the Internet of Things in particular, the paper explains the relevance of the independent platform AVANCI regarding licensing models.

Summary

In Europe, policymakers have looked closely to the issue of SME participation in collaborative standardization. Although there have been some policy measures that have boosted SME participation in standardization, among the main challenges in collective support measures is the loss of sight at differentiating between SMEs involved in development and SMEs interested in implementation of standards.

The authors tackle the main costs for both, SMEs developers and implementers, and provide them with a set of recommendations.

For those SMEs contributing to standardization, the costs of patent development, licensing and enforcement are substantial. Moreover, patent holders with insufficient resources might struggle to license their technologies and earn a return on their investment. Recommendations for them begin with achieving adequate IP protection for their technologies. Secondly, get in touch with SME associations specialized in standardization. Thirdly, SMEs in development should seek for financial support in the commercialization phase of their technologies. Fourthly, any SME undertaking a FRAND commitment should offer access on FRAND terms and establish a mechanism to determine FRAND accurately. Lastly, it is advised to prepare claim charts to demonstrate the essentiality of the patent. Also, regarding effective patent protection, it is recommended to check the CJEU ruling on *Huawei v ZTE* as this is a landmark decision that sets the rights and obligations when negotiating a FRAND commitment.

For those SMEs interested mainly in implementation, one of the major challenges are the information costs to trace and implement a relevant standard. Transaction costs of licensing might be substantial too. Thirdly, as SEP licensing negotiations are typically confidential, SMEs with no experience in this field might have a hard time in evaluating an offer and coming back with a FRAND counteroffer. Among the recommendations, the authors propose providing SMEs access to a pool of experts in SEP licensing. Secondly, SMEs should reject any FRAND determination based alone on SDO databases of patents

declared as potentially essential. Also, SMEs should seek for specialized counsel and support in commercialization. They should also request claim charts to have a better understanding of the essentiality of the technology in negotiations and be aware of their rights and obligations according to the CJEU ruling on *Huawei v ZTE*.

Regarding the Internet of Things, the paper recommends both SMEs developers and implementers to check the independent platform AVANCI¹, as it provides a forum for SEP holders to share and collaborate innovation wise. The platform could be used by SMEs implementers as well, as a benchmark in their FRAND determination. AVANCI could also be a great alternative to bilateral and costly licensing negotiations.

¹ See <http://avanci.com/>