

# Standard Essential Patents and FRAND Licensing for Technological Sovereignty: A Eurasian Perspective

Patentes essenciais para cumprir con las normas técnicas y licencias FRAND para la soberanía tecnológica: una perspectiva euroasiática

Patentes essenciais a padrão e licenciamento FRAND para a soberania tecnológica: uma perspectiva eurasiática

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## Abstract

This article examines the challenges for the intellectual property regulation arising from the growing importance of standard essential patents (SEPs) and the associated obligations to license such patents on fair, reasonable, and non-discriminatory (FRAND) terms. The author presents an analysis of key regulatory issues and explores the impact of SEPs and FRAND licensing on the pursuit of technological sovereignty in the Eurasian regional context.

**Keywords:** Standard Essential Patents; SEP; FRAND Licensing; Eurasian Patent System; Patent.

## Resumen

El presente artículo analiza los desafíos que plantea la regulación jurídica de la propiedad intelectual, relacionados con la difusión de las patentes esenciales para cumplir con las normas técnicas (PEN) y de las obligaciones asociadas de concesión de licencias en condiciones justas, razonables y no discriminatorias (FRAND). El autor presenta su visión de las principales cuestiones regulatorias en este ámbito y examina la influencia de las SEP y del licenciamento FRAND en la consecución de la soberanía tecnológica en el contexto regional euroasiático.

**Palabras clave:** Patente esencial para cumplir con las normas técnicas; PEN; licencias FRAND; Sistema de patentes euroasiático; patente.

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## Resumo

Este artigo examina os desafios para a regulamentação da propriedade intelectual decorrentes da crescente importância das patentes essenciais a padrões (SEPs) e das obrigações associadas de licenciar tais patentes em termos justos, razoáveis e não discriminatórios (FRAND). O autor apresenta uma análise das principais questões regulatórias e explora o impacto das SEPs e do licenciamento FRAND na busca pela soberania tecnológica no contexto regional eurasiático.

**Palavras-chave:** Patentes essenciais a padrão; SEP; licenciamento FRAND; sistema de patentes eurasiático; patente.

## 1 Introduction

The international agenda includes the issue of regulating situations in which protected intellectual property (IP) is used in national or international standards. In today's global economy, the pace of technology diffusion has increased significantly. In its 2026 Report "Technology on the Move", the World Intellectual Property Organization (WIPO) notes that the time required to implement modern digital solutions has decreased from several decades to a matter of days<sup>2</sup>.

The expansion of cross-border trade, the migration of skilled professionals, foreign direct investment, and global value chains has accelerated the international diffusion of knowledge. Digital technologies have also made a significant contribution to the rapid dissemination of innovation. At the same time, digitalization is affecting an increasing number of industries, thereby accelerating the pace of change across virtually all sectors of the economy.

As innovative technological solutions spread rapidly, interoperability between devices and systems has become a key factor for success. Technical standards enable products developed by different manufacturers to function seamlessly with one another. At the same time, many of these standards are based on patented technologies. This creates a fundamental contradiction: on the one hand, a patent grants its owner the exclusive right to use an invention; on the other hand, the widespread adoption of a standard requires that the underlying technology be accessible to all market participants.

In modern intellectual property law, the concept of standard-essential patents (SEPs) and the associated obligations to license on fair, reasonable, and non-discriminatory (FRAND) terms is attracting increasing attention from experts and rights-holding companies.

In this article, the author analyzes the use of SEPs in the Eurasian context, taking into account the development of a common market in a number of Eurasian states.

## 2 History

Some studies have linked the emergence of the concepts of standard-essential patents and fair, reasonable, and non-discriminatory licensing to the longstanding practice of U.S. antitrust authorities intervening in the exercise of exclusive patent rights (this mechanism

2. World Intellectual Property Organization. *World Intellectual Property Report 2026: Technology on the Move*. Geneva: WIPO, 2026, p. 5. Available at: <https://www.wipo.int/web-publications/world-intellectual-property-report-2026/assets/84979/944-WIPR%202026-EN-web.pdf>. Accessed: 3 June 2026.

is discussed in greater detail in the article “Standard-Essential Patents and FRAND Licensing” by A. G. Ivliev<sup>3</sup>). Researchers attribute this intervention to the fact that the United States has never had a general statutory framework for compulsory licensing; such mechanism is provided for only in specific technical fields such as healthcare, nuclear energy, and environmental protection. In the telecommunications industry, the concept of fair, reasonable, and non-discriminatory licensing effectively performs the function of compulsory licensing.

Having originated in the United States as a safeguard against patent holders’ actions, the FRAND concept has become firmly established in the legal practice of many countries. As English courts rightly observed in one of the most prominent standard-essential patent disputes of recent years<sup>4</sup>, an order compelling a party to enter into a contract is not a standard legal remedy under English, U.S. or French law, including in disputes involving SEPs. Likewise, German courts<sup>5</sup> and the Court of Justice of the European Union<sup>6</sup> treat FRAND commitments as a defense available to implementers rather than as a means of “attack” against patent holders<sup>7</sup>.

### 3 The Complex Nature of Standard-Essential Patents

Issues surrounding the regulation of standard-essential patents are complex. The challenges stem from several fundamental aspects:

a) Achieving a balance between economic incentives for authors and rights holders, on the one hand, and the interests of society and the benefits of technical standardization, on the other.

The essence of this issue lies in a conceptual contradiction: the legal protection of the results of intellectual activity and means of individualization is based on the mechanism of exclusive rights, while the regulation of standardization is based on the application of a specific set of mandatory technical requirements available in production. As a general rule, such requirements should not be subject to legal prohibitions or impose burdens on persons required to apply the standard.

It appears that this issue is one manifestation of the conceptual foundation of the intellectual property system, namely the balance between authors’ rights and the public interest in the use of advanced and technical solutions. The public interest is the cornerstone of the intellectual property system, which is designed to foster scientific, technical, and creative progress in society.

In the Eurasian region, one of the first acts on the protection of intellectual property was the 1812 Manifesto “On Privileges for Various Inventions and Discoveries in Crafts and Arts.”

3. IVLIEV, A. G. *Standards-Essential Patents and FRAND Licensing* [Standart-neobkhodimye patenty i FRAND litsenzirovaniye]. Intellectual Property. Industrial Property, 2024, no. 2 (March–April), pp. 13-20. ISSN 0201-7067.
4. *Unwired Planet International Ltd v Huawei Technologies (UK) Co Ltd* [2020] UKSC 37, paras. 140–144.
5. PENTHEROUDAKIS, C., BARON, J.A. *Licensing Terms of Standard Essential Patents*. A Comprehensive Analysis of Cases. JRC Science for Policy Report, 2017, p. 68 et seq. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2898394](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2898394). Accessed: 4 June 2026.
6. *Huawei Technologies Co. Ltd v ZTE Corp. and ZTE Deutschland GmbH*, Case C-170/13, Judgment of the Court of Justice of the European Union (Fifth Chamber), 16 July 2015.
7. At the same time, an “attack” remains possible in the form of a claim alleging that the patent holder has breached its contractual obligations towards the Standards Development Organizations. A good example of such a claim is *Microsoft Corp. v. Motorola Inc.*, 696 F.3d 872 (9th Cir. 2012).

It already contained provisions establishing the mandatory contribution of inventors and patent holders – referred to at the time as “privileges” – to social progress. The holder of a privilege “may, for the time specified by the privilege, use the invention or discovery as his inalienable and exclusive property,” while also “introduce, use, and sell to others both this invention or discovery and transfer the privilege itself.” At the same time, “anyone wishing to obtain a privilege is obligated to submit to the government a precise description of their invention... with all its essential details, methods, and manner of use.” One of the articles stipulates that “No privileges shall be granted for items that are of no benefit not only to the State but also to private individuals, or that may even prove harmful.”<sup>8</sup>

Thus, from the very inception of the intellectual property protection system in the Eurasian region, the foundations were established to ensure a balance between the interests of the holder of exclusive rights and those of society. First, there is the requirement to disclose information about an invention; second, only that which is capable of providing a public benefit may become the subject of exclusive rights.

The first fundamental international treaty in the field of intellectual property – the Paris Convention for the Protection of Industrial Property (1883) – provides for the right of a contracting state to issue compulsory licenses to prevent abuses that may arise from the exercise of an exclusive right (Art. 5(A)(2)). Thus, at the dawn of international regulation of the IP field, mechanisms were established to counter abuses by rights holders.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994) elaborates on the provisions regarding balance. Article 7 states that the protection and enforcement of IP rights “should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.”<sup>9</sup> Article 8 also provides for the possibility of adopting “appropriate measures” in cases where existing practices “unreasonably restrain trade or adversely affect the international transfer of technology.”<sup>10</sup>

**b)** The second aspect complicating regulation and the achievement of regulatory transparency is that issues concerning the protection of standard-essential patents extend beyond intellectual property law. They engage three distinct areas of law: patent law, contract law, and competition law. At the same time, the substantive rules governing these fields, as well as their interpretation and enforcement, differ significantly across the national, regional and global levels.

At the same time, there is no clear interpretation of the concepts underlying FRAND licensing – namely, “fair,” “reasonable,” and “non-discriminatory” terms – when determining licensing obligations. This creates difficulties both during negotiations with the parties and when resolving disputes, including when determining the cost of a license and the amount of compensation. There is also no common methodology for assessing the value of a FRAND license.

8. *Complete Collection of Laws of the Russian Empire, from 1649* [Polnoe sobranie zakonov Rossiiskoi imperii, s 1649 goda]. Vol. 32 (1812–1814). Saint Petersburg, 1830, pp. 355–356. Available at: <https://www.prilib.ru/item/358627>. Accessed: 3 June 2026.

9. *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)*, adopted 15 April 1994 in Marrakesh, art. 8.

10. *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)*, adopted 15 April 1994 in Marrakesh, art. 9.

The ecosystem of standard-essential patents is a complex procedure lacking universal and transparent rules. The policies of standard-setting organizations, judicial practice, and business models vary widely. Uncertainty regarding which patents are truly essential and what constitutes a fair license price generates costs and disputes.

In some cases, the rights holders themselves are the ones who develop the standards. It is not uncommon for patents to be over-declared, with patent holders sometimes declaring patents as standard-essential even though they are not. According to some studies, the actual share of patents essential to a standard may range from 25% to 40% of all declared patents<sup>11</sup>. There is no common methodology for assessing whether a patent is standard-essential.

c) In addition, complexities arise from the cross-border application of technologies and, consequently, issues of determining jurisdiction.

In today's environment, cross-border economic ties and e-commerce continue to develop rapidly, despite a certain degree of deglobalization caused by the consequences of the COVID-19 pandemic and trade wars.

A number of scholars have noted a trend toward the regionalization of the global economy ("new regionalism" or the "second wave of regionalization"<sup>12</sup>), particularly in the post-COVID era. In a study by the United Nations Conference on Trade and Development (UNCTAD)<sup>13</sup>, authors Peter Enderwick and Peter Buckley point out that the COVID-19 pandemic has intensified skepticism regarding the economic model of globalization. Threats to public health have led to greater involvement of state in regulating economic processes, to the review and restructuring of supply chains using modern digital tools, and to a reduction in dependence on traditional production hubs. In this context, regional economic entities are more stable and sustainable systems because they offer a balance between national and international interests.

It appears that under current conditions, marked by the adoption of unilateral, illegitimate measures and the protectionist policies of certain countries, there is every reason to anticipate a further strengthening of regionalization trends and the emergence of preferential trade arrangements within regional integration frameworks.

This trend also affects the intellectual property system. The development of economic integration arrangements – and in some regions common markets, – has heightened the importance of issues relating to the protection of exclusive rights and the harmonization of legal frameworks governing intellectual property protection. The field of intellectual property, with its territorial nature of rights, was viewed as having an indirect impact on restrictions on exports and imports, as well as on the free dissemination of ideas and innovations. The interests of economic actors dictate the need to establish a simple, clear, and effective procedure for obtaining protection of exclusive rights within the territory of an economic union. Given

11. UNITED KINGDOM INTELLECTUAL PROPERTY OFFICE. *Standard Essential Patents Consultation*. London: UK Intellectual Property Office, 2025. Available at: [https://assets.publishing.service.gov.uk/media/6874dea293d52d8659e4653b/Standard\\_Essential\\_Patents\\_Consultation\\_\\_Print-ready\\_PDF\\_.pdf](https://assets.publishing.service.gov.uk/media/6874dea293d52d8659e4653b/Standard_Essential_Patents_Consultation__Print-ready_PDF_.pdf). Accessed: 2 June 2026.
12. REVI, Vinitha. *Regionalisation: A Better Strategy in a Post-Pandemic World?* ORF Issue Brief, No. 397, August 2020. New Delhi: Observer Research Foundation. Available at: <https://www.orfonline.org/public/uploads/posts/pdf/20230510232557.pdf>. Accessed: 8 June 2026.
13. ENDERWICK, Peter; BUCKLEY, Peter J. *Rising Regionalization: Will the Post-COVID-19 World See a Retreat from Globalization?* *Transnational Corporations*, vol. 27, no. 2, 2020, pp. 99–112. DOI: <https://doi.org/10.18356/8008753a-en>. Available at: [https://unctad.org/system/files/official-document/diaeia2020d2a5\\_en.pdf](https://unctad.org/system/files/official-document/diaeia2020d2a5_en.pdf). Accessed: 7 June 2026.

the growing role of intangible assets in the economy, the importance of regional registration systems is increasing; such systems have been established around the world. In Europe, these include the European Patent Office and the European Union Intellectual Property Office (EUIPO); in Africa, the Francophone African Intellectual Property Organization (OAPI) and the Anglophone African Regional Intellectual Property Organization (ARIPO). In addition, the Gulf Cooperation Council Patent Office (GCCPO) is in operation, and at the ASEAN level, a proposal is being developed to create a Pan-Asian Trademark Registration System (PATMA).

The Eurasian patent system is particularly well suited for enterprises operating in several Eurasian countries. Applicants need to file a single application in Russian and pay a single set of fees. A single Eurasian patent is valid simultaneously in all eight member states of the Eurasian Patent Organization (the Republic of Azerbaijan, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Russian Federation, the Republic of Tajikistan, and Turkmenistan), without the need for additional fees, validations or translations.

Statistics from the Eurasian Patent Office demonstrate growing interest among Eurasian innovators in the regional patent. The increase in the number of invention applications filed by applicants from EAPO Member States by the end of 2025 amounted to nearly 15%.

With regard to standard-essential patents, it should be noted that protection and licensing of standard-essential patents often span multiple jurisdictions and require rights holders to adopt an international patenting strategy. Under current conditions, international dialogue on pressing issues, including the harmonization of approaches to FRAND licensing, is becoming increasingly important.

With regard to enforcement practice, WIPO notes instances of “jurisdictional competition” aimed at preventing parallel proceedings in multiple countries, including the practice of issuing anti-suit injunctions and challenging such injunctions<sup>14</sup>.

**d)** Another problematic aspect is the continued limited awareness among standards developers and manufacturers, particularly in developing countries.

Currently, the role of the intellectual property system is being redefined. It is evolving from a legal instrument of protection into a key economic asset and a prerequisite for competitiveness. All Eurasian countries have set ambitious goals regarding the development of economic turnover of IP rights and market development. IP Offices face the task of building an ecosystem in which innovations will be created, implemented, and commercialized as widely as possible both domestically and abroad.

Intellectual property is transforming into a catalyst for business growth and investment attraction, and into one of the key elements of technological leadership. Moreover, this applies not only at the national level but also within the context of regional integration platforms. Among the priorities of the two integration associations in the Eurasian space – the Eurasian Economic Union (EAEU) and the Commonwealth of Independent States (CIS) – include similar objectives: strengthening the technological sovereignty of Eurasian states, forming a common innovation and industrial base in key industrial and agricultural sectors, and developing scientific, technical, and educational ties.

14. WORLD INTELLECTUAL PROPERTY ORGANIZATION. *WIPO Strategy on Standard Essential Patents 2024–2026*. Geneva: WIPO, 2024. DOI: <https://doi.org/10.34667/tind.49036>. Available at: <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2024-12-en-wipo-strategy-on-standard-essential-patents-2024-2026.pdf>. Accessed: 8 June 2026.

It is clear that addressing these challenges is directly linked to the development of intellectual property systems at the national and regional levels. A shortage of qualified personnel in the field of intellectual property protection and management is a common problem for countries of the region. In recent years, the Eurasian Patent Office has increased funding for professional development, retraining, higher education, and postgraduate programs. In addition, the Office holds targeted educational events, including special meetings on the regulation of standard-essential patents.

## 4 The Significance of SEPs for the Economy and Examples of Regulation in the Eurasian Region

Economic efficiency, technological sovereignty, and economic security currently depend, among other factors, on the effectiveness of the tools provided to economic entities for obtaining legal protection for industrial property, the subsequent use of such property, and the enforcement of rights thereto.

Under current conditions, technical issues related to standard-essential patents are effectively the key to our technological future. Why is the inclusion of protected inventions and patents in national and international standards strategically important today? Because in the 21st century, a standard is not merely a set of technical requirements. It is a battleground for technological leadership. A standard incorporating the most advanced solutions shapes markets, attracts investment, and sets the direction for the development of entire industries. Today, this is understood worldwide – by both developed and developing countries.

Standards and patents are indeed a complex issue. They involve a fundamental tension: on the one hand, there is the need to ensure that standards remain open and accessible to all; on the other – the need to protect and reward the intellectual efforts of inventors. In Russia, this contradiction was resolved in the simplest way, which, however, may prove ineffective in the long term.

The Russian national standard GOST R 1.2-2020, which establishes rules for the development and approval of national standards, contains a direct prohibition on including in standards information protected by patents. Such inclusion is permitted only if the patent holder agrees to provide perpetual, royalty-free licensing. This approach may have been a workable option in the pre-digital industrial era. However, in the author's view, in an era of rapid innovation, it has become an obstacle to development. This approach removes advanced technologies from standards, condemning them to remain secondary. In effect, it means abandoning one of the key instruments: the ability to promote one's own breakthrough technologies through standards. This undermines both innovative development and technological sovereignty, forcing us to unconditionally follow foreign standards in which such patented technologies are already incorporated.

The global solution to this situation is standard-essential patents and FRAND licensing. When a patent is recognized as essential to the implementation of a standard, its owner voluntarily commits to licensing it to all interested parties on FRAND terms – that is, fair, reasonable, and non-discriminatory terms.

The FRAND approach represents a “golden mean”:

- ◆ For innovators: it ensures that their advanced solutions can become part of the mass market while generating revenue;
- ◆ For industry: it provides access to leading technologies at predictable costs;
- ◆ For the economy: it creates a healthy ecosystem in which both innovation and implementation are economically beneficial.

The issue of standard-essential patents is one of the most pressing in the world today. In September 2025, the World Intellectual Property Organization held a special Symposium entirely dedicated to this issue. Many IP Offices and Standards Development Organizations (SDOs) have also been holding their own events in recent years. WIPO adopted a Strategy on Standard Essential Patents for 2024–2026, which underscores the systemic importance of this topic for the global innovation landscape.

In early 2025, statements regarding standard-essential patents, with links to data from Standards Development Organizations, were added to PATENTSCOPE (WIPO's global patent database). To date, PATENTSCOPE already contains more than 200,000 such records regarding the existence of SEP declarations, including Russian and Eurasian patent documents.

The European Patent Office (EPO) maintains close cooperation with standards development organizations, including participation in their working groups, and has established its own collection of standards-related documents, which it uses in conducting patent searches. The Japan Patent Office has developed a Guide to FRAND Licensing. The China National Intellectual Property Administration plays an active role in policy development, working in tandem with antitrust authorities to create a predictable environment for SEP licensing. The United States Patent and Trademark Office (USPTO) actively promotes knowledge and awareness in this field and serves as a coordinator and facilitator of interagency dialogue in the formulation of national policy. Canada has adopted one of the most advanced legislative approaches in this area: the Canadian Patent Act (section 52.1) contains specific provisions governing the succession of obligations under FRAND licensing of SEPs.

Eurasian countries also recognize the importance of this discourse: the issue of standard-essential patents is on the agenda of interagency expert groups.

## 5 Challenges and Opportunities

Of course, the FRAND framework gives rise to disputes. What constitutes a “reasonable” royalty rate? Which patents are genuinely essential to the implementation of a standard? This is where alternative dispute resolution mechanisms can play an important role.

Mediation is a particularly effective tool: it is flexible, confidential, and focused on finding a business-oriented solution rather than engaging in lengthy litigation. Over the past several years, the WIPO Arbitration and Mediation Center has administered approximately 80 mediations relating to licensing agreements based on FRAND principles.

How might the Eurasian Patent Office contribute to resolving existing issues and contradictions in the Eurasian region? There are several promising areas of work that appear important and relevant:

1. Mediation Center: the EAPO could establish a recognized, authoritative center for the pre-litigation settlement of disputes related to standard-essential patents and FRAND licensing for the entire region.

2. Knowledge Database: compilation of information on international experience and best practices, with open access for professionals.

3. Assessment and Expert Review: in collaboration with the intellectual property and standardization authorities of EAPO Member States, a pool of experts and a methodology for assessing the standard-essentiality of patents could be established. These assessments could be used, among other things, to provide expert support to national courts.

4. Register of Eurasian Standard-Essential Patents: the Eurasian Patent Office has the potential to serve as a hub for identifying breakthrough technologies developed in the Member States of the Eurasian Patent Organization, thereby facilitating their promotion through standardization.

## 6 Conclusion

Eurasian states need to carefully study the consequences of implementing existing approaches and revising them in light of global best practices. Rather than prohibiting the use of patented technologies in standards, it is necessary to adopt a modern regulatory framework. Eurasian policymakers and experts should consider the following areas for further work:

1. Legalize the inclusion of patents in standards subject to FRAND licensing.
2. Utilize the potential of the Eurasian Patent Office as a competence and mediation center.
3. Actively participate in discussions on the agenda of standard-essential patents, as well as shape global, regional, and national approaches.
4. Facilitate the introduction of provisions on the application of FRAND licensing into the legislation of Eurasian states for use in the circulation of standard-essential patents.

Technological sovereignty is built not on isolation, but on the ability to create and control the rules by which technologies develop. The integration of intellectual property into standards through FRAND is the very foundation of such rules.

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