



EUROPEAN CLUSTER  
COLLABORATION PLATFORM

# Patents in Europe: A new framework for innovation



EU Clusters Talks  
31 May 2023, 8:30 – 10:00 CET

An initiative of the European Union





## Patents in Europe: A new framework for innovation

The European Cluster Collaboration Platform organised this EU Clusters Talk on 31 May 2023, 8:30 – 10:00 CET, to inform about the new proposed regulatory framework and discuss how companies, especially SMEs, can benefit from new patent rules.

### Agenda of the meeting

Moderation: Jennifer Baker

1. News from the European Cluster Collaboration Platform  
*Nina Hoppmann, team member, European Cluster Collaboration Platform*
2. Introduction to the Patent Package  
*Claudia Martinez Felix, Deputy Head of Unit, DG GROW, European Commission*
3. Supplementary Protection Certificate (SPC)  
*Lena Pauschenwein, Legal Officer, DG GROW, European Commission*
4. Compulsory licensing  
*Virginie Fossoul, Legal Officer, DG GROW, European Commission*
5. Standard essential patents (SEPs)  
*Markus Kicia, Legal Officer, DG GROW, European Commission*
6. Panel debate  
*Athanasios Konstandopoulos, Chief Scientific Advisor, CHORUS Cluster*  
*Ana Herrera Arroyo, European Patent Attorney & Manager Patent Department, PONS IP*  
*Eugene Sweeney, Senior IP & Innovation Manager, EURICE*  
*Markus Kicia, Legal Officer, DG GROW, European Commission*
7. Funding opportunities  
*Nina Hoppmann, team member of the European Cluster Collaboration Platform*

### Key messages

- The new proposals for SCPs, compulsory licensing and SEPs are steps in the right direction for the EU Single Market.
- Generally, the EU patent system should be more accessible and affordable for SMEs and start-ups.
- Checking fair and reasonable terms for licensing as well as essentiality in standard patents are key.
- Clusters can support SMEs in the patenting process, facilitate the interaction with patent attorneys, disseminate good examples and raise awareness in non-IT and more traditional sectors for the importance of IP protection.
- We should work on our IP rights culture and increase awareness of the necessity to protect innovation to get a good position in the market.



# 1. News from the European Cluster Collaboration Platform

Nina Hoppmann, team member, European Cluster Collaboration Platform

After the introduction by moderator Jennifer Baker, the following news item were presented:

1. [Trend Universe](#): A new feature for Pro Users to better understand future trends and build the cluster strategy
2. [Registration](#) is still open for the Clusters meet Regions in Skåne, Sweden, on 15-16 June
3. [Participate in a survey](#) on online discussion groups
4. ECCP has a new [Cluster Solutions Library](#) with in-depth case studies of clusters as drivers of economic transition
5. Europe's flagship event, the #EUIndustryDays, will take place in Málaga, Spain, on 4-6 October. [Apply](#) to hold a stakeholder session until 26 June
6. Enterprise Europe Network is organising a [pitching session with SMEs](#) offering energy saving and energy efficient solutions on 22 June

# 2. Introduction to the Patent Package

Claudia Martinez Felix, Deputy Head of Unit, DG GROW, European Commission

Claudia Martinez Felix explained the content of the new patent package. Intangible assets, such as intellectual property (IP), help drive the green and digital transition. Patents are gatekeepers to critical technologies. In the last 30 years, there has been an enormous increase in value of intangible assets. In the next month, a unitary patent system will enter into force for 17 Member States. This important development will make the registration of a patent easier, as it is not necessary to go through the validation process in each Member State anymore. Claudia Martinez Felix also recalled that since this year, the SME Fund that the Commission, together with the EUIPO, has rolled out to support SMEs in the management and registration of their intangible assets also covers **European patents** for the first time.

Shortcomings of the current IP system have been identified in the 2020 IP Action Plan, based on which the new proposals were developed. They aim at completing the single market for technologies, putting in place well-calibrated IP policies to help companies capitalise on their inventions and creations, whilst at the same time ensuring that inventions and creations are serving economy and society at large. In addition, further crisis instruments were developed in the aftermath of the covid crisis.

# 3. Supplementary Protection Certificate (SPC)

Lena Pauschenwein, Legal Officer, DG GROW, European Commission

Lena Pauschenwein described the SPC proposal. An SPC is an IP right that can make it possible to extend the duration of certain patents related to medicinal or plant protection products. Since the time for products to be admitted to the market is long, there is a gap for an effective patent protection and SPCs address this gap. The new SPC proposal will tackle legal uncertainty and market

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fragmentation. Currently, SPCs are granted nationally, which means high costs and administrative burden, as applicants might need to go through up to 27 parallel procedures.

The proposed reform will introduce a centralised procedure for the grant of national SPCs, as well as a unitary SPC to complement to unitary patent, making the SPC regime more effective and predictable. A centralised SPC application will be examined by the EUIPO and supported by national examiners. The grant of national SPCs by national offices follows a binding opinion while the unitary SPC will be granted by the EUIPO. This procedure will also add to transparency in the process through the creation of a central register.

## 4. Compulsory licensing

**Virginie Fossoul, Legal Officer, DG GROW, European Commission**

Virginie Fossoul explained the compulsory licensing scheme for crisis management, which aims to enable the EU to respond in a timely manner using the full potential of the Single Market. The compulsory licensing mechanism has existed for a long time, but there is little legislation on the topic. It serves as an alternative in crises in case voluntary agreements cannot be reached to unblock IP rights. Generally, this instrument is very rarely used.

The European Commission proposes one regulation on Union compulsory licensing for crisis management. One part addresses the licensing within the Single Market, making it possible to have the license granted at EU level. The other part looks at the export to non-EU countries.

Virginie Fossoul showcased the procedure on the example of a pandemic. In case there is a shortage of vaccines in the EU and there are Member States with manufacturing capacities, an EU crisis mechanism can be activated. If such EU crisis mechanism and crisis mode is activated, the compulsory licensing can be granted, typically where no voluntary agreements to produce vaccines are reached.

## 5. Standard essential patents (SEPs)

**Markus Kicia, Legal Officer, DG GROW, European Commission**

Markus Kicia shared the new proposal for SEPs, which protect technology declared essential for the implementation of a technical standard adopted by a standard developing organisation. Main applications are in information and communication technologies, automotive, and Internet of Things. Today, one in seven SEPs are owned by an EU company, and the number of SPEs is six times higher than 10 years ago, reflecting the advances in digitalisation.

In SEP regulation, the monopoly of a patent is amplified if it concerns a standard. As manufacturers need to use the patented technology, it gives SPE holders a great market power. To prevent market abuse, SEP holders are required to commit to license SPEs on fair, reasonable, and non-discriminatory (FRAND) terms. The problems are a non-transparent SPE landscape, lack of predictability, or abusive behaviour. Therefore, the Commission proposed to a centralised register and electronic database, a “Competence Centre” at the EU Intellectual Property Office to manage the



process, a SEP aggregate royalty determination process, and an out-of-court dispute resolution mechanism to determine FRAND licensing terms and conditions. The benefits of this proposal will be increased transparency, reduced transaction costs, easier negotiations, preventing over-declaration of SEPs, and predictability.

## 4. Panel debate

The speakers agreed that the new proposals regarding SCPs, compulsory licensing and SEPs are steps in the **right direction for the EU Single Market**. Athanasios Konstandopoulos stated that they were long overdue. However, the new tools come as a response to the crisis, which is not a standard mode of operation. Generally, the EU patent system should be **more accessible and affordable** for the SMEs and start-ups to protect their IP.

He misses tools such as the **provisional patent**, which is very common in the US, to allow SMEs to have sufficient time to discuss with investors and funding organisations at a reasonable cost. This tool could help be at the same level playing field with the US.

Ana Herrera Arroyo mentioned the following points as the main challenges from the perspective of patent attorneys: Companies struggle with **funding** for their patents; the need for a **harmonised system**, for which the new unified patent system is a big step; the **technology transfer**, where there is a gap between the public and private sectors; and **fairer agreements** between patent holders and licensees that reward innovation and allow the technologies to get to the market and to be used.

Talking about SEPs, Ana Herrera Arroyo and Eugene Sweeney highlighted the **importance of fair and reasonable terms for licensing as well as essentiality**. While it is needed that people confirm to standards in our globalized world, we need be sure that patents are truly essential. Currently, there is not enough checking of this essentiality. Eugene Sweeney explained that there are several **patent pools** that operate in a similar way to what is proposed. However, the terms and conditions are determined by the market and lack transparency. The benefit for the proposed SEP regulation is that companies can get support. Markus Kicia confirmed that patent pools are a good tool, which the European Commission has incentivised. However, this tool is not an ideal solution, as patent pools are not comprised of all SEP holders. Eugene Sweeney suggested a certificate for patent tools for fair and reasonable practices and for checking essentiality.

Regarding SPCs, Ana Herrera Arroyo reported that their clients currently experience uncertainties as the market is very fragmented. It is important to have a **unitary SPC** so that companies are not in a situation where an SPC is granted in some countries, but not in others. She also agreed with the European Commission's position that voluntary licensing agreements are the first choice and best way to preserve the proprietor's rights, but it is essential to have a compulsory licensing regulation.

The speakers shared thoughts about how **clusters** can support their members in this field. Athanasios Konstandopoulos described that clusters are a rediscovered tool to pull together resources and provide an environment to exchange information. In general, patent applications made by SMEs are few, which is why clusters could facilitate the **democratisation** of the patenting process for the SMEs. They can act on behalf of their members and facilitate the interaction with patent attorneys. They can disseminate good examples and raise awareness in non-IT and more traditional sectors, e.g., in manufacturing. These SMEs should not be left behind when focusing on digitalisation.



Ana Herrera Arroyo added that there is a necessity to spread the **IP rights culture** to protect innovation. In terms of numbers, the EU is behind in comparison to the US, China, or Japan. We need to **increase awareness** of the necessity to protect innovation to get a good position in the market. PONS IP collaborates with the Packaging Cluster to foster the training on IP rights protection. They also help the cluster and companies to design the best strategies for the protection of their innovation and for technology transfer, and they help in the agreements and discussions with third parties.

Closing the panel, Eugene Sweeney highlighted that IP protection should not be considered a cost, but an **investment to grow the business**. It is a strategic decision, and it depends on the sector which is the right solution to protect the invention.

## 5. Funding opportunities

**Nina Hoppmann, team member of the European Cluster Collaboration Platform**

Closing the EU Clusters Talk, Nina Hoppmann shared the following examples of funding opportunities:

1. How to become a Regional Innovation Valley: Option 1 - Call for expression of interest; [Open for regions to express their interest](#) until 18 September 2023
2. How to become a Regional Innovation Valley: Option 2 - [Call “Interconnected Innovation Ecosystems \(2023.3\)”](#); Deadline: 17 October 2023, 17:00 CET
3. [Capacity building on Intellectual Property \(IP\) management to support open science](#); Opening of the call on 6 December
4. Opportunities for SMEs: Calls from Euroclusters; published on [European Cluster Collaboration Platform](#)
5. Opportunities for SMEs under the [SME FUND 2023](#)