

WE WILL START AT 10:00 AM (CET)

SESEC V Webinar

China SEP Policies and its Recent Development

- ✓ You are *muted*
- ✓ Use the *Q&A or Chat Panel* to submit your questions
- ✓ Keep your questions *short and concise*
- ✓ Your questions will be answered after the presentation
- ✓ *Slides and recording* will be sent to you afterwards
- ✓ Contact us: assistant@sesec.eu
- ✓ Welcome to our website: <https://sesec.eu/>



Seconded European Standardization Expert in China (SESEC) Project



CENELEC



SESEC INTRODUCTION

A Project co-funded by EC, EFTA, CEN CENELEC & ETSI

- ❖ **Promote** European and International standards in China
- ❖ **Improve** contacts between Project Partners and different levels of the Chinese administration, industry and standardization bodies
- ❖ **Enhance** visibility and understanding of the European Standardization System (ESS) in China.
- ❖ **Gather** regulatory and standardization intelligence
- ❖ **Undertake** technical lobbying



Goals

- The SESEC initiative supports **EC policy** and **ESOs strategic objectives** in China.
- Our ultimate goal is the enhancement of **EU-China dialogue and cooperation** in the field of standardization.
- It is notably expected to support the Framework Cooperation Agreement in place **between the ESOs and SAC**.

SESEC V LAUNCHED IN OCT 2022

Goals and Tasks

Call for stakeholders' Strategic Comments on Standardization Cooperation with China

Please contact

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China SEP Policies and its Recent Development

Dr. Betty Xu,
Director of the SESEC project



CENELEC



Contents

1. Background
2. Current SEP provisions and standards in China
3. Updates in SEP policies and standardization



PATENTED



1. Background



1. Background

Some facts and definitions...

a. Patents in China

Law: PRC Patent Law, 1984; amended in 1992, 2000, 2008 and 2020

Relevant ministry: China's National Intellectual Property Administration (CNIPA)

Definition: A patent grants a legal right to patentees for their creations, including inventions, utility models, and designs.

Article 22 of the Patent Law: *“inventions and utility models shall be novel, creative and of practical use to having a patent been granted.”*

Article 23 of the Patent Law: *the administration will grant a patent to designs which are distinctive and in no conflict with existing ones.”*

1. Background

Some facts and definitions...

b. Standard Essential Patents (SEP) and FRAND terms

SEP

Definition of SEP: it refers to patents that would be required/essential to implement the standards. (according to China's *Interim Provisions on the Administration of National Standards Involving Patents*)

Major stakeholders: SDOs, Patent holders/patent applicant, patentees, standards Users

FRAND terms

Purpose: to seek the balance between public benefits brought by standardization and the right of patent holders

Terms: fair, reasonable, and non-discrimination terms

Patent holders/applicants are required to follow the FRAND terms when their patents are incorporated into standards



1. Background

Intellectual Property Rights - Some definition... (From EU)

1. IPR is a term referring to a number of distinct types of creations of the mind for which temporary property rights are recognized by the law.
2. Under IP law, owners are granted certain exclusive temporary rights to a variety of *intangible assets*, such as musical, literary and artistic works; discoveries and inventions; and words, phrases, symbols and designs.
3. Common types of IPR include copyright, trademarks, patents, industrial design and domain names.

1. Background

China

Legislations and Policies

Mere technological development



Organic and innovative framework enabling interactions among technology, patents and standards

e.g.

- a. Law on Scientific and Technological Progress (2021 revised version) in 2021
- b. CPC Central Committee and the State Council issued the Outline of IPR Strong Country Construction (2021-2035) in 2021
- c. CPC Central Committee and the State Council issued the Outline of National Standardization Development in 2021
- d. The State Council: Plan for Deepening the Reform of Standardization in 2015**

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1. Background

Europe

Legislation:

27 APRIL 2023

COM(2023)232 - Proposal for a regulation of the European Parliament and of the Council on standard essential patents and amending Regulation (EU) 2017/1001

SDOs' relevant policies:

CEN and CENELEC — Guide 8: Guidelines for Implementation of the Common Policy on Patents (and other statutory intellectual property rights based on inventions)

Based on three fundamental pillars:

- 1. Early disclosure:** facilitate informed choices and predictability over possible licencing terms
- 2. Balanced approach:** ensure a level-playing field for all stakeholders, including patent owners
- 3. Transparency:** ensure clarity on use of standard essential patents, via an SEP declarations database



ETSI — IPR Policy and IPR Guide

Purpose: balance the rights and interests of IPR holders to be fairly and adequately rewarded for the use of their SEPs in the implementation of ETSI standards and the need for implementers to get access to the technology defined in ETSI standards under FRAND terms and conditions.



1. Background

International Organizations: ITU/ISO/IEC

ISO/IEC/ITU Common Patent policy in 2006



“ITU-T/ITU-R/ISO/IEC are not in a position to give authoritative or comprehensive information about evidence, validity or scope of patents or similar rights, but it is desirable that the fullest available information should be disclosed.”

Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC in 2007



2. Current SEP provisions and standards in China



2. Current SEP provisions and standards in China

Departmental rule

Interim Provisions on the Administration of National Standards Involving Patents (Enforcement date: 1st Jan 2014)



Support

National standard and national standardization technical document

GB/T 20003.1-2014 Special procedures for the development of standards—Part 1: Standard related to patents

20214507-Z-424 Disposal guidelines for patents related to association standards

Association Standard

CAS: Method for Determining the Standard Essentiality of a Patent (Draft for Comment)

Others/Vertical Sectors

Guidelines of Standard Essential Patent Licensing for the Automotive Industry

CCSA IPR policy (draft for internal comment (members only))



2. Current SEP provisions and standards in China

a. Interim Provisions on the Administration of National Standards Involving Patents

Issuing body: Standardization Administration of China and the State Intellectual Property Office

Enforcement date: 1st Jan 2014

Structure:

- Chapter 1 General Principles
- Chapter 2 Disclosure of Patent Information
- Chapter 3 Patent Implementation Licensing
- Chapter 4 Special Requirements for Mandatory National Standards Involving Patents
- Chapter 5 Supplementary Rules

Revision under discussion

2. Current SEP provisions and standards in China

a. Interim Provisions on the Administration of National Standards Involving Patents

Obligations

TCs: receive relevant information and verification materials; and submit those information to SAC

SAC: make the draft of standard and already-known patent information public before official publication

Patent holder: timely disclose their patents in any stage of standard development

Special cases:

For those national standards that identically adopt ISO or IEC standards, the patent implementation licensing declaration also applies to national standards.

For mandatory national standard:

1. do not contain patents in usual cases
2. Where the patentee or the patent applicant refuses to make the declaration of licensing a patent, SAC, China National Intellectual Property Administration, and relevant department will figure out solutions with patent holder and patent applicant.
3. extended duration for publicity before official publication

Revision under discussion

2. Current SEP provisions and standards in China

c. 20214507-Z-424 Disposal guidelines for patents related to association standards (In the Approval Stage): an improved version of T/CAS 2 (T/PPAC 2) that shares the same name

- A National Standardization Technical Guiding Document

Different from the motioned regulation and standards:

Major content

- Basic principles for disposal of patents that are involved with association standards
- General objectives
- Management and responsibilities
- Patent disclosure

GB/T 20003.1-2014 Special procedures for the development of standards—Part 1: Standard related to patents

Interim Provisions on the Administration of National Standards Involving Patents



National Standards

Offer guidance to the patent disclosure and licensing

20214507-Z-424 Disposal guidelines for patents related to association standards



Association Standard

Offer guidance to **Associations** in terms of their management of association standard essential patent

2. Current SEP provisions and standards in China

d. In automotive industry

Guidelines of Standard Essential Patent Licensing for the Automotive Industry

- a possible framework in terms of SEP licensing in automotive industry, the principles and royalty may represent an important reference for standards developing organizations and patentee in automotive industry.
- Published on 13th September 2022.

Issuing bodies: China Academy of Information and Communications Technology (CAICT) and the China Automotive Technology and Research Center

Structure:

- i) definitions
- ii) core principles for Automotive SEP licenses
- iii) principles for calculating reasonable royalties
- iv) rights of interpretation and declarations.



2. Current SEP provisions and standards in China

d. In automotive industry

Guidelines of Standard Essential Patent Licensing for the Automotive Industry

Key Takeaways:

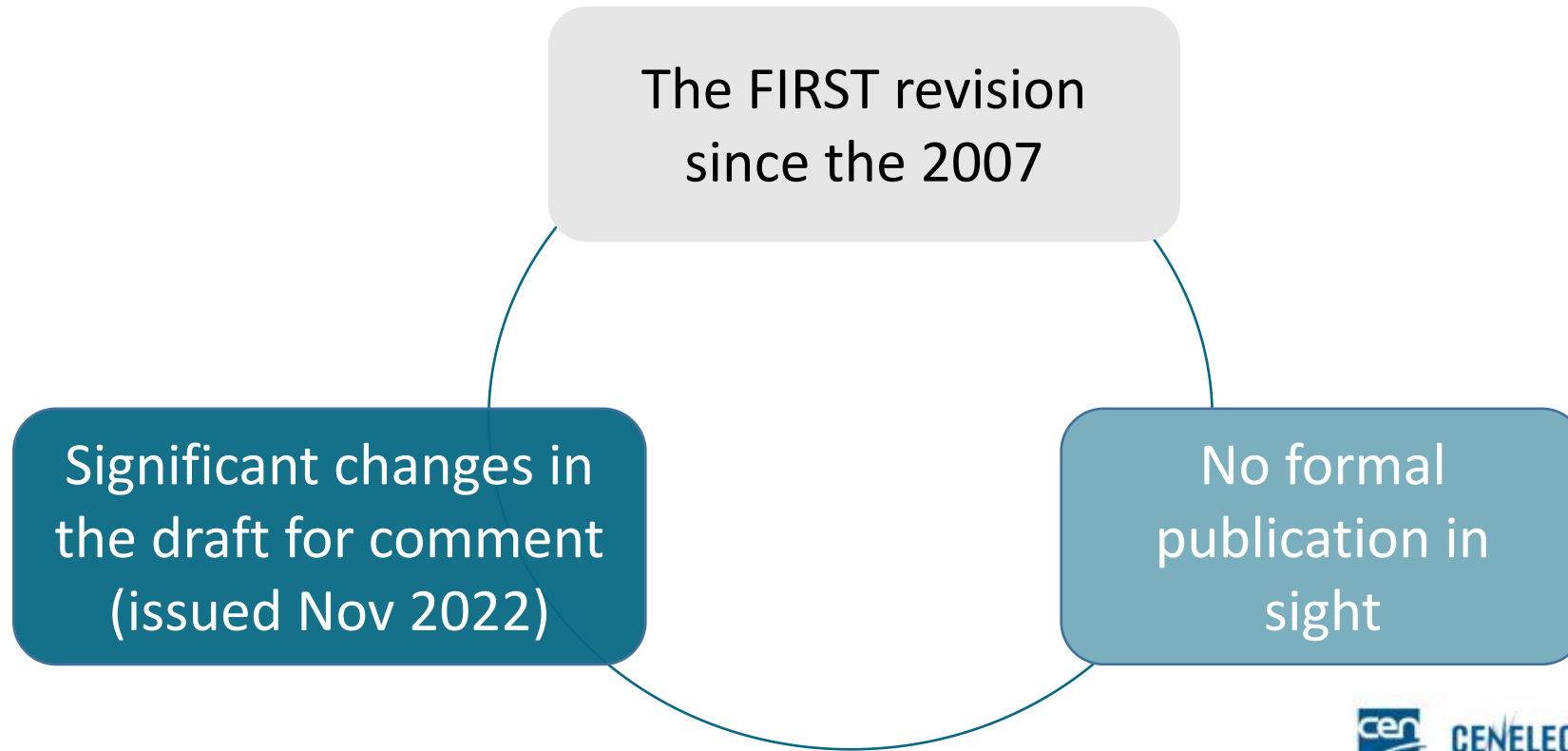
- Incorporation of FRAND terms
- "entitlement to obtain licenses at any level of the industry chain":
- “when there are discrepancies or differences between SEP licensing models and current licensing model or commercial practices”
- Detailed guidance on calculation of royalties: calculation basis, factors, principle of limitation to aggregate royalty rates, and reasonable selection of royalty calculation method

3. Updates in SEP policies and standardization



3. Updates in SEP policies and standardization

a. China Communications Standards Association (CCSA) called for internal comment (members only) on their newly revised **Intellectual Property Rights Policy**.



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Background

Statistics under the 2007 CCSA IPR Policy :

As of November 2022, among standards developed by CCSA,

- Sector standards: 1011 patents are disclosed
- CCSA association standards: 195 patents are disclosed
- 3GPP standards: 162 patents are disclosed



Types of patents:

- Optical communication
- Mobile communication
- Internet
- IoT
- Communication power supply
- Quick charge of mobile telecommunication terminal equipment

3. Updates in SEP policies and standardization

a. China Communications Standards Association (CCSA) called for internal comment (members only) on their newly revised **Intellectual Property Rights Policy**.

Development process

Time	Items	Output
2021.01.25 2021.06.03 2021.06.16 2021.07.15	Revision Working Group Held Discussion meetings for IPR Policy Revision: work on revision basic principles and detailed content	<i>IPR Policy (Revision)</i> for Discussion
2021.08- 2022.11	Revision Working Group: further revision and optimization	<i>IPR Policy (Revision)</i> for Internal Comment

3. Updates in SEP policies and standardization

a. China Communications Standards Association (CCSA) called for internal comment (members only) on their newly revised **Intellectual Property Rights Policy**.

References

China's Law, Regulations and Standards

- Civil Code of China
- Standardization Law (2017 Revision)
- Patent Law (2020 Amendment)
- Copyright Law (2020 Amendment)
- Trademark Law (2019 Amendment)
- Civil Procedure Law
- Interim Provisions on the Administration of National Standards Involving Patents
- GB/T 20004.1-2016 Social organization standardization—Part 1: Guidelines for good practice
- GB/T 20003.1-2014 Special procedures for the development of standards—Part 1: Standard related to patents
- Guangdong High People's Court: Guidance on Trial of Cases about Disputes Arising from SEP
- Charter of CCSA

Policies of regional and international SDOs

- Common Patent Policy for ITU-T/ITU-R/ISO/IEC
- Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC
- ETSI Intellectual Property Rights Policy
- IEEE-SA Standards Board Operations Manual



3. Updates in SEP policies and standardization

a. China Communications Standards Association (CCSA) called for internal comment (members only) on their newly revised **Intellectual Property Rights Policy**.

Significant changes

1. Categorize articles into different chapters:

- general principles
- patent disclosure and licensing
- copyright
- trademarks
- others

2. Supplement and clarify the core definitions:

- patents that are associated with standards → standard essential patent
- Extend the IPR in the policy to patent, copyright and trademarks
- Clarify that patent in this policy include (i) authorized patent and (ii) patent in the process of application

3. Optimize the disclosure procedures and improve the transparency of SEP

4. Highlight the irrevocability, inheritance, and reciprocity of licenses

5. Detail the copyright protection of standard and deliverables

6. Specify the usage of trademarks

7. Specify the dispute-settling mechanism

3. Updates in SEP policies and standardization

a. China Communications Standards Association (CCSA) called for internal comment (members only) on their newly revised **Intellectual Property Rights Policy**.

Patent disclosure

Heavier responsibility

Interim Provisions on the Administration of National Standards Involving Patents

Chapter II **1.**
Article 5: **In any stage** of development and revision of a national standard, those individuals and organizations who participate in national standard development **SHALL** disclose **2.** the necessary patents they own and know to the relevant national standardization technical committee or secretariat as soon as possible, and provide relevant patent information and corresponding certification materials, and **be responsible for the authenticity of the certification materials provided. 3.**

Lighter responsibility

CCSA IPR Policy (Revision)

2'
Article 3: **Encourage** members to disclose SEP that they own and know as soon as possible, **especially during the development and revision stage. 1'** Yet it does not mean that the members are **responsible for patent due diligence. 3'**

3. Updates in SEP policies and standardization

a. China Communications Standards Association (CCSA) called for internal comment (members only) on their newly revised **Intellectual Property Rights Policy**.

Some controversies

Article 5 If a Member and its affiliates disclose one or more patents of a patent family, all existing and future standard essential patents in the family will be deemed as "having been disclosed and complying with the declared licensing commitments".

The definition of patent family?

What if the standards or cited standards involves patent holders that are not members of CCSA?

Article 6 Where the standard essential patents are contained in a standard that is adopted or cited during the process of revision or development of another standard, patent owners shall make patent disclosure and licensing declaration in accordance with this policy.

Article 13 The submission of Documentation from Members of CCSA shall be deemed to permit CCSA and other members to use the Documentation free of charge. The copy right of the adopted Documentation belongs to CCSA.

What if the members also submit the draft to other SDOs?



3. Updates in SEP policies and standardization

b. China Association for Standardization (CAS) convened the kick-off meeting for its association standard project: Method for Determining the Standard Essentiality of a Patent. (CAS SEP Identification standard)

Background:

Voluntary declaration is a commonly-used approach in determining SEP. In practice, identification of SEP is riddled with disputes. The “Top-Down” principle gradually shaped in practices makes the quantity of SEP a key factor in the SEP litigation/license rate calculation .

Namely, the number of SEPs directly impacts the cost used for SEP identification during the process of patent licensing and litigation.

SEP licensing and franchising should accompany reasonable fees paid to innovators as they devote their efforts and incorporate their innovation in the SEP. In this regard, no payment or unreasonably less payment will discourage technology advancement.

There is a lack of “trust” in SEP declaration and identification. Certification and accreditation, in this context, will help to establish the “trust” among different stakeholders.



3. Updates in SEP policies and standardization

b. China Association for Standardization (CAS) convened the kick-off meeting for its association standard project: Method for Determining the Standard Essentiality of a Patent.

Project Objective & Significance

- Develop **highly operable and acceptable** SEP identification methods in line with **common requirement of** industries, technology and patents.
- Standardize the SEP identification procedures
- Create a transparent and fair market environment for SEP through the implementation and promotion of this standard

The standard shall provide guidance for individuals or organizations to

- apply scientific, effective and comprehensive procedure in SEP identification;
- take into full consideration of technology, standard and patent involved in SEP identification

In the end, the standards is aimed to ensure the accuracy of SEP identification



3. Updates in SEP policies and standardization

b. China Association for Standardization (CAS) convened the kick-off meeting for its association standard project: Method for Determining the Standard Essentiality of a Patent.

Major points in dispute

- Patents' technical diversity vs. SEP identifiers' limited capacity in complex technologies.
- Protection of patentees' legal advantages vs. reduction of costs for patent users who requires prudent identification, reduction of royalty and cost, establishment of SEP clearing and exiting mechanism.
- Huge amounts of patents vs. limited time and resources for identification
- Common requirements vs. sector-specific requirements
- Usage of advanced experiences in concepts and approaches, drawn from strongly correlated sectors or developed countries, their monopolization over those concepts and approaches.
- Frequent updates of standards and patents relatively stabilized SEP identification methods.

3. Updates in SEP policies and standardization

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Future development

Developing standards is just the beginning of a long journey

SEP determination methods

SEP determination organizations

SEP determination personnel

Acceptance of SEP determination result

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Based on development and implementatin of standard, we will look into:

- disclosure and mutual recognition mechanism for SEP determination results;
- the supporting role of SEP determination in judicial administration practices;
- the positive impacts that is brought by SEP determination to patents licensing and transfer.



Conclusions and Summaries

1. SEP is a complicated issue in China, and some disputes are still need to be solved in the Courts.
2. China standardization communities started to adopt international practices for SEP policies.
3. The Key Players in China for SEP policies/regulations are SAC, MIIT and CCSA, while some newcomers (like car industries) are becoming more and more important
4. The key documents for China SEP polices are listed in the slides and the stakeholders can read and follow up the procedures and make comments timely.
5. Association standard on SEP are also very important and it may become the national standards or regulations in the future.





Thank you !

Dr. Betty Xu

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