

Från: "Matthieu Guillard-Bond" <matthieu.guillard-bond@electrolux.com>
Skickat: den 22 juni 2023 16:47:56
Till: "JU Remissvar" <ju.remissvar@regeringskansliet.se>
Kopia: "Susan Storer" <susan.storer@electrolux.com>; "ju.l3@reginskanliet.se" <ju.l3@reginskanliet.se>
Ämne: RE: Remiss EU-kommissionens patentpaket Ju2023/01196
Categories: ME

Dear Sirs,

Please see below Electrolux Group comments on 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:

Overall: Electrolux Group supports the proposed regulation with some concerns

Electrolux Group welcomes the initiative of the European Commission to propose a regulation on standard essential patents (EU) 2017/1001 (COM(2023) 232 final). The proposed Regulation should bring more clarity and provide guidance at the same time, which are crucial in this area for implementers which are not coming from the same technology area as the Standard Essential Patents (SEP) Holders. Indeed the new SEP register will allow implementers to have access to a clear database showing all the necessary information on SEP in relation to a standard. It will provide more transparency on each standard implementation. The essentiality check will also offer more certainty in a domain where non-essential patents might be used to frighten the implementers and obtain more royalties. The expert opinion on aggregated royalty and the subsequent procedure for determination FRAND terms and conditions for a SEP License will offer an independent expertise and support in a domain where lobbying is intense and case law in the EU could differ. It should hopefully develop knowledge and raise awareness of the SEP licensing within the EU, and create a playing field for all implementers equally.

Non Practicing Entities or patent holders who has not committed to license on FRAND terms should be included

We have an initial comment on the scope of the Regulation itself. The intent is to regulate standard essential patent licensing, however, the regulation is limited to SEP holder which have committed to a standard development organisation (SDO) to license on FRAND Terms. By essence it could exclude some situation including Non Practicing Entities or patent holders who have not committed to license on FRAND terms, even though such entities own a patent essential to the standard. Even though there is case law showing that FRAND commitment shall be transferred with the patent, it is still not regulated what happens to the FRAND declaration when the SEP is transferred to a third party and whether, how and to what extent the acquirer is bound by this declaration of the transferor. We are also questioning how any aggregated royalty rate could be calculated and applied, if in fact entities could still avoid any such regulation and ask for non FRAND royalty fee. There is a potential that the regulation could be circumvented or even encourages patent holders to not participate in certain SDOs. It would affect the aim of the European Commission to create certainty and transparency in relation to the use of standards.

Lack of competence on a short term

The creation of a competence centre inside EUIPO is causing some concerns as there is currently no expertise in relation to patent or SEP. The recruitment and creation of a competence centre in a short term can be challenging. Any lack of competence would have an impact on the quality of the guidance provided.

Giving crucial guidance power to a newly created body

The Regulation does not provide key answers on two domains:

- **What is FRAND ?**

The Regulation has a procedure for FRAND determination but provide no guidance on what will be considered FRAND. It will therefore leave the implementers to wait some years to obtain enough expert decisions to create more certainty on the FRAND model. And in addition, the most favourable terms for small and media enterprise, although positive, can prove challenging without further guidance as it should normally be the essence of FRAND to allow conditions that are sustainable for SMEs.

- **More certainty in the domain of licensing SEP down in the value chain if the Commission sets criteria when the impact on a value chain is not acceptable**

In relation to the expert opinion on aggregate royalty and the proposal for FRAND terms and conditions, it is referred that the expert shall take into account the impact on the value chain and to innovation. We welcome the opening of another discussion in this domain, nonetheless, it has already been heavily debated in court before. We would have more certainty in the domain of licensing SEP down in the value chain if the Commission could propose criteria when the impact on a value chain is not acceptable. It is almost certain that module and chipset providers which have never paid any royalty for SEP before will be impacted if they become the licensees. Also the SEP holders will most likely have less royalty considering the price of components. The impact is already known, but it is unclear from the proposed regulation when the impact is too high or when it would be beneficial for the whole ecosystem. The guidance would have to come later from the expert decisions.

The potential issue with the lack of clarity in these domains and competence is to create an additional burden on companies in Europe or having business in Europe that will cause extra costs and delay without providing any long term value or help.

We remain at your disposal should have any further questions.

Kind regards,

Matthieu Guillard-Bond
Senior Group Legal Counsel



AB Electrolux (publ)
IP Legal Department
Direct phone +31 (0) 622242166
S:t Göransgatan 143
S-105 45 Stockholm Sweden

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without expressed permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

Classified as Internal

Classified as Internal

From: Kristina Teglund <kristina.teglund@regeringskansliet.se>

Sent: den 12 maj 2023 14:43

To: contact.center@se.abb.com; groupinfo@volvo.com; Info.se@alfalaval.com; juliana.perez-falke@almi.se; maria.bristrand@almi.se; emil.brengesjo@msa.se; kontakt@astrazeneca.com; camilla.blomberg@autoliv.com; info@business-sweden.se; registrator@chalmers.se; hello@ctek.com; lars.ribnell@doro.se; Susan Storor <susan.storor@electrolux.com>; fredrik.egrelius@ericsson.com; info@ficpisweden.se; info@folkhalsomyndigheten.se; kenneth.nyblom@generikaforeningen.se; info@fuhs.se; info@foretagarna.se; registrator@fmv.se; exp-hkv@mil.se; erika.snygg@hexagon.se; konsument@husqvarnagroup.com; info@ikem.se; registrator@isp.se; registrator@ivo.se; icc@icc.se; info@investorab.com; registrator@ki.se; kemi@kemi.se; registrator@kommerskollegium.se; konkurrensverket@kkv.se; kronofogdemyndigheten@kronofogden.se; registrator@kth.se; info@lo.se; info@lif.se; registrator@lakemedelsverket.se; registrator@msb.se; hi@northvolt.com; info@nnr.se; prv@prv.se; regelradet@regelradet.se; info@ri.se; info@sandvik.com; ann-sofie.hellstrom@scania.com; henrik.gustafsson@scania.com; info@smaforetagarna.se; socialstyrelsen@socialstyrelsen.se; jordbruksverket@jordbruksverket.se; stockholms.tingsratt@dom.se; registrator@swedac.se; svea.hovratt@dom.se; info@svenskhandel.se; marianne.levin@juridicum.su.se; david.ramsjo@sandart.se; sekreterare@sipf.se; info@sis.se; info@spof.se; info@upppinnare.se; remisser@svensktnaringsliv.se; christina.wainikka@svensktnaringsliv.se; info@advokatsamfundet.se; kansli@saco.se; registrator@skr.se; info@sepaf.se; info@swedenbio.se; registrator@tlv.se; asa.zetterberg@techsverige.se; info@teknikforetagen.se; telia-info@telia.se; tillvaxtverket@tillvaxtverket.se; info@info@tco.se; registrator@foi.se; tullverket@tullverket.se; registrator@uu.se; vinnova@vinnova.se; registrator@vr.se; publicaffairs@volvocars.com; mattias.johansson.7@volvocars.com; registrator@aklagare.se

Cc: Carl Johan Sundqvist <carl.johan.sundqvist@regeringskansliet.se>; Marie Häggkvist <marie.haggkvist@regeringskansliet.se>; Anders Olin <anders.olin@regeringskansliet.se>; Ju Registrator <ju.registrator@regeringskansliet.se>

Subject: Remiss EU-kommissionens patentpaket Ju2023/01196

EU-kommissionens patentpaket

Remissinstanser

ABB

AB Volvo

Alfa Laval AB

ALMI Företagspartner AB

AIPPI Sverige

AstraZeneca AB

Autoliv Sverige AB

Business Sweden

Chalmers Tekniska Högskola Aktiebolag

CTEK Sweden AB

Doro AB

Electrolux AB

Ericsson AB

FICPI Sweden

Folkhälsomyndigheten

Föreningen för Generiska läkemedel och Biosimilarer (FGL)

Föreningen universitetsholdingbolag i Sverige (FUHS)

Företagarna

Försvarets materielverk (FMV)

Försvarsmakten

Hexagon AB

Husqvarna AB

Innovations- och kemiindustrierna i Sverige (IKEM)

Inspektionen för strategiska produkter (ISP)

Inspektionen för vård och omsorg (IVO)
Internationella Handelskammaren
Investor AB
Karolinska institutet
Kemikalieinspektionen
Kommerskollegium
Konkurrensverket
Kronofogdemyndigheten
Kungl. Tekniska högskolan
Landsorganisationen i Sverige (LO)
Läkare Utan Gränser
Läkemedelsindustriföreningen (LIF)
Läkemedelsverket
Myndigheten för samhällsskydd och beredskap (MSB)
Northvolt AB
Näringslivets Regelnämnd
Patent- och registreringsverket (PRV)
Regelrådet
Research Institutes of Sweden (RISE)
Sandvik AB
Scania Sverige AB
Småföretagarnas Riksförbund
Socialstyrelsen
Statens jordbruksverk
Stockholms tingsrätt (Patent- och marknadsdomstolen)
Styrelsen för ackreditering och teknisk kontroll (Swedac)
Svea hovrätt (Patent- och marknadsöverdomstolen)
Svensk Handel
Svenska Föreningen för Immaterialrätt (SFIR)

Svenska Industrins IP förening (SIPF)
Svenska Institutet för Standarder (SIS)
Svenska Patentombudsforeningen (SPOF)
Svenska Uppfinnareforeningen (SUF)
Svenskt Näringsliv
Sveriges advokatsamfund
Sveriges akademikers centralorganisation (Saco)
Sveriges Kommuner och Regioner (SKR)
Sveriges Patentbyråers förening (SEPAF)
SwedenBIO Service AB
Tandvårds- och läkemedelsförmånsverket
TechSverige
Teknikföretagen
Telia Company AB
Tillväxtverket
Tjänstemännens Centralorganisation (TCO)
Totalförsvarets forskningsinstitut (FOI)
Tullverket
Uppsala universitet, juridiska fakulteten
Verket för innovationssystem (Vinnova)
Vetenskapsrådet
Volvo Cars
Åklagarmyndigheten

EU-kommissionen har den 27 april 2023 lagt fram det s.k. patentpaketet. Patentpaketet innehåller förslag om nya regler för tilläggskydd för läkemedel och växtskyddsmedel, tvångslicenser och standardessentiella patent (SEP) och avser följande förordningar:

- Europaparlamentets och rådets förordning om ett enhetligt växtskyddsmedel (COM(2023) 221 final),

- Europaparlamentets och rådets förordning om tilläggsskydd för växtskyddsmedel (omarbetning) (COM(2023) 223 final),
- Europaparlamentets och rådets förordning om ett enhetligt tilläggsskydd för läkemedel och om ändring av förordning (EU) 2017/1001, förordning (EC) 1901/2006, samt förordning (EU) 608/2013 (COM(2023) 222 final),
- Europaparlamentets och rådets förordning om tilläggsskydd för läkemedel (omarbetning) (COM(2023) 231 final),
- Europaparlamentets och rådets förordning om tvångslicenser för krishantering och om ändring av förordning (EC) 816/2006 (COM(2023) 224 final), och
- Europaparlamentets och rådets förordning om standardessentiella patent och ändring av förordning (EU) 2017/1001 (COM(2023) 232 final).

Härmed bjuds ni in att yttra er över EU-kommissionens förslag, som bifogas, och tillhörande konsekvensanalyser. Förslagen och konsekvensanalysen finns tillgängliga på kommissionens hemsida.^[1]

Remissvaren ska ha kommit in till Justitiedepartementet **senast den 22 juni 2023**. Svaren bör lämnas per e-post till ju.remissvar@regeringskansliet.se och med kopia till ju.l3@reginskanliet.se. Ange diarienummer Ju2023/01196 och remissinstansens namn i ämnesraden på e-postmeddelandet.

Råd om hur remissyttranden utformas finns i Statsrådsberedningens promemoria Svara på remiss – Om remisser av betänkanden och andra förslag från Regeringskansliet (SB PM 2021:1). Den kan laddas ner från Regeringskansliets webbplats www.regeringen.se. Remissvaren kommer att publiceras på regeringens webbplats.

Remissvaren kommer att publiceras på regeringens webbplats.

Anders Olin
Departementsråd

¹⁴¹ See https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2454.

This email and any attached files is for the attention of the intended recipient. The email and any attachments may contain material that is confidential, privileged and/or attorney work product. If you are not the intended recipient: (a) contact the sender immediately and delete from your system all copies of the email including any attachments. (b) do not read, print, retain, copy or disseminate this message or any part of it. Any such unauthorized use may be unlawful. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore cannot accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required please request a hard-copy version. The protection of your personal data matters to us. Please find relevant information relating to Art. 13 GDPR on <https://www.electroluxgroup.com/privacy/en/>. The Electrolux Group
www.electrolux.com