Reforming Standard Essential Patents: Trade, Specialisation, and International Jurisprudence

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Brussels, 18 April 2023 - The European Commission is considering a radical overhaul of the system governing Standard Essential Patents (SEPs). The leaked proposal suggests that the Commission wants to take control over the registration of SEPs, regulate their essentiality, and intervene in negotiations over royalty rates if parties do not come to an agreement. The Commission’s underlying assumption is that implementing such a system will benefit SEP implementers and the European economy, while reducing the power of common SEP holders.

However, Fredrik Erixon and Oscar Guinea challenge this assumption in a new ECIPE paper. The EU is a R&D powerhouse for many of the technologies protected under SEPs and since most of the global production of the goods using these technologies is done outside Europe, the EU is a net exporter of innovation and a receiver of revenues from the licensing of these technologies.

Using data on trade, production, and R&D spending, this paper comes to a different conclusion: the EU economy is likely to be a net loser if the balance between holders and implementers is changed. The international context of SEPs must be considered in a full analysis of what should constitute Europe’s economic interest as the EU mulls reforms of the SEP system.

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