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## Outlining the WIPO's 2024–2026 Strategy on Standard Essential Patents

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In 2021 WIPO developed the [Medium Term Strategic Plan \(MTSP\)](#) (2022-2026) to support global innovation and creativity – and last month, two years into the plan's implementation, it released its [Strategy on Standard Essential Patents \(SEPs\)](#) (2024-2026) to supplement the MTSP in achieving its goals under the SEP framework.

The WIPO's SEP strategy is based on three core principles– neutrality of stakeholders, complementarity with national and regional initiatives, and voluntary participation of stakeholders. Based on these principles, the strategy sets out several SEP-based initiatives linked to their Expected Results (ER) per the MTSP's vision. The initiatives can broadly be grouped under the following heads – firstly, assisting the determination of essentiality; secondly, facilitating amicable agreements; and thirdly, promoting global dialogue.

### **Assistance in the determination of essentiality**

WIPO aims to assist organisations in determining the essentiality of a patent to a standard and facilitating access to knowledge and data to inform such decisions. Indeed, one of the most significant factors hindering the development of SEPs is the lack of available data to determine the essentiality of a patent and FRAND rates. And WIPO's access to global data and expertise could enhance transparency and facilitate stakeholder understanding of currently licensed SEPs. The strategy recommends the creation of a dedicated SEP page on the WIPO website with repositories and databases, including SEP case information and relevant competition regulations. The page can also incorporate FRAND determination studies and voluntary essentiality declarations in its Patent Search Tool 'PATENTSCOPE' to inform FRAND calculations.

The strategy supplements consolidation and access to knowledge initiatives by working to directly provide services to targeted stakeholders. WIPO is indeed well-placed to facilitate access to publication and standardisation documents held by Standard Development Organisations (SDOs) to entities that need it. Based on this material, according to the SEP strategy, WIPO may deploy a voluntary essentiality check service and develop an AI-assisted element as part of the essentiality check process. The success of this initiative is heavily linked to cooperation by organisations holding such documentation.

The linked ER to supplement the MTSP is increased engagement and effective partnerships with

organisations internationally. According to the WIPO strategy, the initiatives can facilitate knowledge transfer and technology adaptation across the globe, resulting in improved quality and productivity of WIPO's services. Better data and services – the strategy stresses – also mean better intellectual property (IP) knowledge and skills in WIPO member states and enhanced infrastructure for IP offices, which aligns with the MTSP's objectives.

### **Facilitation of amicable agreements**

The SEP strategy hopes to expand WIPO's role in resolving SEP disputes via alternative dispute resolution (ADR) mechanisms while simultaneously pushing its role in deal facilitation, particularly in technology licensing. The WIPO Arbitration and Mediation Center (AMC) has performed a role in settling some SEP and FRAND-related disputes since its inception in 2015. The AMC has administered over 70 FRAND-related mediation proceedings. Unfortunately, most documents are confidential and are not accessible to the public, which makes assessment of outcomes difficult. Additionally, the AMC relies on its expertise with FRAND negotiation to provide entities, particularly small and medium-sized enterprises, the means to minimise prospective SEP disputes early on.

The WIPO strategy thus focuses on improving the AMC's arbitration and mediation mechanisms in SEP and FRAND-licensing disputes. The initiatives include further improvement of expert determination services and tools to facilitate access to such services, like model submission forms. The strategy recognises that partnerships can be a crucial pathway to develop the AMC's capabilities and that increased awareness of the impartiality and efficiency of the ADR-assisted process can supplement the ER of promoting the effective global use of WIPO's services and data in the MTSP.

### **Promotion of Global Dialogue**

WIPO envisions a growing role for itself in providing a platform to diverse stakeholders across fields to contribute to the global IP discourse. Indeed, conversations, symposia and similar events enable sharing of experiences, policies, considerations, case information and outcomes to develop a shared understanding of SEPs. The dialogue can encourage the development of shared ideas and best practices between member states. Initiatives may take the form of SEP-specific global events like collaborative workshops with SDOs, engagement with global judiciaries via the WIPO Judges Forum and Master Class on Intellectual Property Adjudication, and events by the Standing Committee on the Law of Patents (SCP).

Corresponding ERs are global collaborations that address issues and policy challenges related to IP, innovation, and creativity worldwide. Such collaboration includes interaction and partnerships with the UN, Intergovernmental Organisations and NGOs. Global dialogue is expected to encourage increased IP knowledge and skills in all WIPO member states, aiding the MTSP's central object of fostering innovation and creativity worldwide.

### **Future Outlook**

The WIPO strategy uses monitoring mechanisms and incorporates flexibility to ensure sustainable success. Flexibility is embedded within the strategy by permitting the abandonment of initiatives if they do not deliver the expected value or are not supported by essential collaborators.

We particularly commend that while the strategy focuses heavily on encouraging international

cooperation, it also highlights the need for such cooperation to complement national or regional initiatives instead of attempting to derail them (Principle 2, Part III-A). This is important. Take the recent [EU SEP Regulation Proposal](#), which introduces a compulsory out-of-court procedure to determine FRAND conditions before litigation can be initiated by SEPs owners. It seems recommendable that any WIPO-managed ADR mechanisms coordinates, and does not interfere with the procedure envisaged by the [proposed Regulation](#).

Ultimately, it appears that the success of the WIPO SEP strategy depends on the support of external collaborators like SDOs and national and regional authorities in embracing the WIPO's initiatives.

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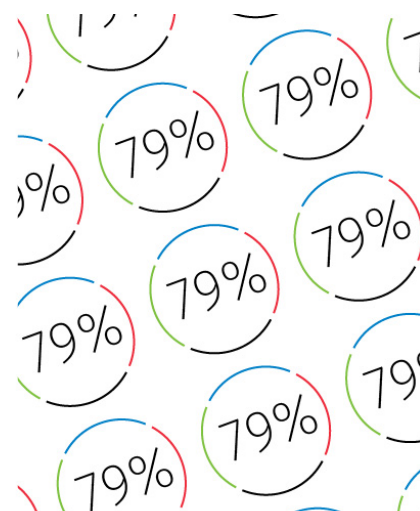
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