

Comments of the International Center for Law & Economics

UK Intellectual Property Office Consultation on Standard-Essential Patents

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Executive Summary

We are pleased to offer comments to the Intellectual Property Office (IPO) regarding its consultation on standard-essential patents (SEPs).¹ The International Center for Law & Economics (ICLE) is a nonprofit, nonpartisan research organization whose core mission is to promote the application of law & economics methodologies to inform public-policy discussion. Our work focuses on developing intellectually rigorous, data-driven analyses to foster efficient policy solutions that enhance consumer welfare and global economic growth.

The IPO is considering new regulations for SEPs—patents necessary to implement technical standards, such as those used in smartphones. The IPO claims “systemic issues” require government intervention, but this assertion contradicts substantial evidence and repeats mistakes recently made by the European Union.

The IPO’s premise of market failure lacks empirical support. A comprehensive 2023 European Commission study found no evidence that current SEP-licensing practices deter innovation or cause companies to avoid standardized technologies. SEP litigation rates are low and falling relative to other patent disputes. The European Commission recently withdrew its own similar regulation after it failed to gain support, largely because it could not demonstrate a problem requiring intervention.

The consultation focuses exclusively on “patent holdup”—the theoretical risk that patent owners might overcharge implementers. It ignores, however, the well-documented problem of “patent holdout”, where companies deliberately delay or refuse licensing, forcing patent owners into costly litigation. A 2024 study estimated patent owners lost \$7.28 billion in 2021 alone due to holdout behaviour. Proceeding with interventions shaped by this one-sided perspective is likely to foster proposals that systematically favour infringers over innovators.

There are serious problems with each of the main interventions the IPO has thus far proposed. The so-called Rate Determination Track is a government price-setting mechanism that would function as a price-control mechanism, replacing efficient market negotiations with bureaucratic decisions. It would encourage companies to avoid good-faith negotiations and would ultimately diminish the incentives to innovate. A second potential intervention would establish mandatory databases and essentiality checks, which impose costly burdens on innovators while providing questionable value. Given that only an estimated 25-40% of declared SEPs are truly essential, creating databases with poor signal-to-noise ratios could enable strategic delay tactics. Finally, weakening inventors’ ability to obtain injunctions would do more harm than good. Limiting injunctions to prevent unauthorized use would remove the primary deterrent against infringement. This would, in turn, encourage “efficient infringement” strategies, where companies simply use technology without permission and treat eventual royalties as business costs.

¹ *Standard Essential Patents Consultation - CP 1357*, INTELL. PROP. OFF. (July 2025), available at https://assets.publishing.service.gov.uk/media/6874dea293d52d8659e4653b/Standard_Essential_Patents_Consultation_Print-ready_PDF_.pdf [hereafter “Consultation”].

These proposals would reduce patents' value and enforceability, directly contradicting the IPO's mission to promote innovation and economic growth. They would particularly harm small companies and startups that rely on strong patents to attract investment. By weakening patent protection, the UK would inadvertently subsidize foreign manufacturers, while undermining its own innovators.

The UK already possesses excellent courts capable of resolving these disputes. Rather than create new regulations to more stringently police a non-existent problem, the IPO should maintain strong property rights and allow market-based solutions to develop naturally.

I. Introduction and Overview

The IPO's consultation proceeds from the assertion that "available evidence indicates there are systemic issues in the SEPs ecosystem around transparency and dispute resolution that may require government intervention".² This premise, which suggests a dysfunctional market in need of correction, animates the series of regulatory proposals that follow.

This narrative, however, is not new. It closely mirrors the one that underpinned the European Commission's proposed SEP regulation, an initiative that was ultimately withdrawn.³ As the Research Network for Digital Ecosystem, Economic Policy, and Innovation (Deep-In) observed in its comments to this consultation, the concerns about systemic inefficiencies "lack robust support from empirical evidence".⁴ The central criticism levelled against the EU initiative was its weak economic justification, as there was "no discernible evidence of a market failure that needs to be addressed".⁵

The empirical record directly contradicts the premise of a systemic market failure. A comprehensive 2023 study commissioned by the European Commission and authored by Justus Baron, Pere Arque-Castells, and others examined the SEP-licensing landscape in detail.⁶ The study concluded that existing empirical evidence on the causal effects of current SEP-licensing conditions is "largely inconclusive".⁷ Specifically, the study found no evidence that frictions in licensing under fair, reasonable, and non-discriminatory (FRAND) terms deter patent holders from contributing to standards development or cause technology implementers to choose alternative, non-standardized

² Consultation, ¶ 2.

³ *Proposal for a Regulation of the European Parliament and of the Council on Standard Essential Patents and Amending Regulation (EU) 2017/1001*, EUR. COMM'N, COM(2023)232; see also *Commission Work Programme 2025—Moving Forward Together: A Bolder, Simpler, Faster Union*, EUR. COMM'N, COM(2025) 45 final, Annex IV, No. 17.

⁴ Giuseppe Colangelo & Antonio Manganelli, *Deep-In Comments* (2025), at 1 [hereafter "Deep-In"]

⁵ *Id.*

⁶ Justus Baron, Pere Arque-Castells, Amandine Leonard, Tim Pohlmann, & Eric Sergheraert, *Empirical Assessment of Potential Challenges in SEP Licensing*, Study for the European Commission (2023), available at <https://www.lexisnexisip.com/wp-content/uploads/2023/09/Empirical-Assessment-of-Potential-Challenges-in-SEP-Licensing.pdf>.

⁷ *Id.* at 185.

technologies.⁸ Furthermore, the study found that the prevalence of SEP litigation is low when compared to patent litigation involving non-SEPs and that it is not increasing over time.⁹ In fact, the share of declared SEPs subject to litigation has recently decreased.¹⁰

The IPO's consultation proceeds as if this body of evidence does not exist, and makes only a passing reference to Baron *et al.*'s research published by the European Commission.¹¹ By adopting a narrative of market failure that has already been empirically tested and found wanting in a neighbouring jurisdiction, the IPO appears to engage in a form of regulatory cascade. This process, where a policy idea is perpetuated despite a lack of evidentiary support, suggests a policymaking process driven by theoretical concerns or stakeholder lobbying, rather than robust, independent data.

Given this fundamental disconnect between the consultation's premise and the available evidence, the IPO's proposed interventions are solutions in search of a problem. This analysis will demonstrate that the IPO's diagnosis of "systemic issues" is not supported by the data, and that the proposed remedies are therefore unwarranted and likely to cause significant unintended economic harm.

II. Lessons from the EU's Failed SEP Regulation

In April 2023, the European Commission unveiled a sweeping proposal to regulate SEPs. The regulation aimed to increase transparency and efficiency by creating a new centralized bureaucracy within the EU Intellectual Property Office (EUIPO). This new "Competence Centre" would have administered a mandatory SEP register, conducted "essentiality checks", and most controversially, overseen a mandatory, prelitigation FRAND-determination process that would have delayed a patent holder's right to seek redress in court.

ICLE explained at the time that the proposal was a solution in search of a problem.¹² The regulation was an unnecessary and dangerous intervention that lacked sound economic justification. The Commission's own impact assessment failed to provide evidence of a systemic market failure. Instead, data showed that SEP litigation in Europe was stable or even falling.

The proposal's core mechanism—a mandatory nine-month conciliation process before a patent holder could go to court—would have dismantled the existing judicial framework and tilted the

⁸ *Id.* at 175, 179.

⁹ *Id.* at 108-11.

¹⁰ *Id.*

¹¹ Consultation, Annex 2, Supporting evidence.

¹² Geoffrey A. Manne, Dirk Auer, Kristian Stout, & Ben Sperry, *Comments of the International Center for Law & Economics in Response to EU Commission Call for Evidence Concerning a New Framework for Standard-Essential Patents*, INT'L CTR. FOR L. & ECON. (8 May 2022), available at <https://laweconcenter.org/wp-content/uploads/2022/05/ICLE-Response-to-EU-Commission-Call-for-Evidence-on-SEPs.pdf>; Giuseppe Colangelo & Geoffrey A. Manne, *If Necessity Is the Mother of Invention, New EU SEP Rules Are Decidedly Unnecessary*, TRUTH ON THE MKT. (12 April 2023), <https://truthonthemarket.com/2023/04/25/if-necessity-is-the-mother-of-invention-new-eu-sep-rules-are-decidedly-unnecessary>.

playing field decisively in favor of implementers. By removing the immediate threat of an injunction, it would have created a “safe harbour” for infringement and exacerbated the problem of patent holdout.

The proposal triggered a fierce battle. Implementer groups—such as the Fair Standards Alliance—praised it as a necessary check on patent holdup. Major European innovators like Ericsson and Nokia, however, condemned it as an unbalanced intervention that would undermine Europe’s technological leadership and jeopardize the global standardization ecosystem.

Ultimately, the regulation failed to gain sufficient political support, and the Commission announced its withdrawal in early 2025. The demise of the EU SEP regulation is a powerful, real-world validation of the law & economics critique of prescriptive, top-down regulation. It demonstrates that, when they are based on flawed economic logic and a lack of empirical evidence, such interventions can and should be rejected by the market and political processes.

III. The Consultation’s Pronounced Bias Against Patent Holders

The IPO consultation states its ambition to shape a “balanced ecosystem” that ensures “SEP holders can protect and enforce their rights and licensees can develop standard compliant products”.¹³ Yet the document’s explicit objective is to “help implementers, especially SMEs, navigate and better understand the SEPs ecosystem”.¹⁴ This framing reveals an analytical asymmetry that pervades the entire consultation.

The document’s focus reflects a pronounced “holdup bias” that assumes SEP holders can leverage their position to demand supra-FRAND royalties after a standard is adopted, and that implementers have made sunk investments that lock them into using the standard.¹⁵ The IPO’s concern about licensing offers that have “exceeded court adjudicated rates by 4-500 times”¹⁶ and the “threat of injunctions” being used to extract high rates is a clear manifestation of this bias.¹⁷

While focusing on this theoretical risk, the consultation entirely disregards the countervailing and empirically more significant problem of patent “holdout”, also known as “efficient infringement”.¹⁸

¹³ Consultation ¶ 48.

¹⁴ *Id.* ¶ 46.

¹⁵ *Id.* ¶ 73 (“Licensees hold less information than licensors on which patents are truly essential, which makes it difficult for licensees to determine with confidence if a license is required. This in turn can lengthen licensing negotiations and potentially lead to payment of supra-FRAND license terms, or even court litigation.”), *see also* ¶¶ 43, 53, 59.

¹⁶ *Id.* ¶ 36.

¹⁷ *Id.* ¶ 59.

¹⁸ Richard A. Epstein & Kayvan B. Noroozi, *Why Incentives for “Patent Holdout” Threaten to Dismantle FRAND, and Why It Matters*, 32 BERKELEY TECH. L.J. (2017) 1381, 1384 (“We use the terms ‘patent holdup’ and ‘patent holdout’ as they have been used in the extensive patent literature, and in the general economics literature on holdup and holdout problems. In general, by ‘patent holdup’ we mean the theoretical claim that innovators of standard-essential patents attempt to extract excessively large royalties from implementers after those implementers have committed to a particular technological standard

Holdout occurs when technology implementers strategically delay or refuse to take a license for the patents they are using, forcing innovators into costly and protracted litigation to enforce their property rights. This is not a trivial omission. As Deep-In reports, UK courts have recognized holdup and holdout are “two sides of the same coin”, and the FRAND commitment is designed to address both forms of opportunistic behaviour simultaneously.¹⁹

The economic impact of patent holdout is substantial and well-documented. A 2024 study by Bowman Heiden and Justus Baron estimates that patent owners in the cellular SEP sector lost between \$7 billion and \$28 billion in 2021 alone due to holdout strategies.²⁰ This “royalty gap”—the difference between the reasonable value of a license and the royalties that patent holders are actually able to recoup—represents a large uncompensated transfer of value from the firms that invest in foundational research and development to firms that infringe their intellectual property.

The policy options presented by the IPO reflect this analytical imbalance. The proposals uniformly target SEP holders, imposing new obligations such as mandatory information disclosure and creating new constraints through a government-administered rate-setting process. Simultaneously, they offer no corresponding mechanism to ensure the timely and effective enforcement of patent holders’ rights against recalcitrant infringers. This one-sided approach creates a system of asymmetric rules that favours infringers over innovators. This regulatory framework would systematically disadvantage the party that invested in creating the technology in favour of the party using it without permission. The long-term consequences of such a policy include a reduction in the expected return on innovation, leading to less investment in the foundational technologies that drive economic growth.

IV. The Proposals’ Unintended Consequences and Economic Costs

While presented as measures to improve “efficiency” and “transparency”, the IPO’s proposals are likely to introduce significant economic distortions, increase costs, and ultimately harm the very innovation they intend to support.

A. The Rate-Determination Track: The Perils of Price Regulation

The proposal to create a Rate Determination Track (RDT) within the Intellectual Property Enterprise Court (IPEC) to provide a “binding rate determination” is, to be blunt, a price-control

that requires the use of the patent(s) in question—that is, a standard that renders the patent(s) ‘essential.’ Under the ‘patent holdup’ theory, the royalties in question are excessively large because they exceed the ‘true’ value of the invention(s) in question, and are derived, so the theory goes, because the innovator can leverage the implementer’s sunk cost in committing to the standard to extract more than a fair royalty. By ‘patent *holdout*’ we mean the converse problem—that an implementer refuses to negotiate in good faith with an innovator for a license to valid patent(s) that the implementer infringes, and instead forces the innovator to either undertake significant litigation costs and time delays to extract a licensing payment through a court order, or else to simply drop the matter because the licensing game is no longer worth the candle. We also use the term ‘efficient infringement’ synonymously with ‘patent holdout’ here”).

¹⁹ Deep-In at 3.

²⁰ Bowman Heiden & Justus Baron, *The Economic Impact of Patent Holdout*, 38 HARV. J. L. TECH. 637, 668 (2024).

mechanism.²¹ It substitutes the judgment of an administrative or judicial body for the market's price-discovery function, which is best carried out through private negotiations among parties with the most complete information.

Regulators inherently lack the specific knowledge of value, risk, and commercial context that negotiating parties possess. Scholars such as Douglas H. Ginsburg, former head of the U.S. Justice Department's (DOJ) Antitrust Division, have argued that government price setting is inefficient and interferes with free-market competition.²² A government-set rate is highly unlikely to reflect the efficient, market-clearing price. Recognizing this danger, U.S. antitrust agencies do not regulate prices, correctly allowing firms to unilaterally set or privately negotiate them.

The existence of a low-cost RDT would also distort the incentives for both parties in a licensing negotiation. It would encourage holdout, as an implementer could refuse to negotiate in good faith, knowing it can force the matter into a subsidized administrative process with limited downside risk. It also creates incentives for parties to present extreme positions, anticipating that a decisionmaker will simply "split the difference", a well-documented problem in damages litigation that leads to unreasonable and unpredictable outcomes.²³ The proposed publication of RDT-determined rates would further harm the market by creating artificial price anchors, chilling private negotiations, and leading to inflexible, one-size-fits-all outcomes, rather than tailored and efficient agreements.

The most damaging unintended consequence of such price regulation is its effect on innovation. By artificially suppressing the potential return on investment for successful technologies, price controls blunt the incentive to innovate in the first place.²⁴ This outcome directly contradicts the IPO's stated mission "to help grow the economy by developing an IP system that encourages investment in innovation and creativity".²⁵

²¹ Consultation, ¶¶ 61-71.

²² See, e.g., Douglas H. Ginsburg, Bruce H. Kobayashi, Koren W. Wong-Ervin, & Joshua D. Wright, "Excessive Royalty" Prohibitions and the Dangers of Punishing Vigorous Competition and Harming Incentives to Innovate, CPI ANTITRUST CHRON. (March 2016), available at <https://www.competitionpolicyinternational.com/wp-content/uploads/2016/03/Excessive-Royalty-Prohibitions.pdf>.

²³ Dan McManus, *Incentives Must Change: Addressing the Unpredictability of Reasonable Royalty Damages*, 5 AM. UNIV. INTELL. PROP. BRIEF 1 (2013), ("If a litigating party knows that the decision-maker is simply going to split the difference, then that party has the incentive to argue for damages as far away from their opposing party as possible. This tactic allows the party to skew the midpoint of the resulting split to their side as much as possible. This misaligned incentive is the root cause of the unpredictability in reasonable royalty damages and other proposals have failed to address it".)

²⁴ Ginsburg et al., *supra* note 22.

²⁵ Consultation ¶ 21.

B. Mandatory Information Disclosure and Essentiality Services

The proposal to mandate the provision of standard-related patent information and create a searchable database imposes direct compliance costs on innovators.²⁶ This administrative burden functions as a tax on the very innovative activity the government seeks to foster.

The utility of such a database is highly questionable. The IPO's own consultation document acknowledges that "only about 25-40% of all declared SEPs are truly essential to a given standard".²⁷ Igor Nikolic explains that, because standards-development organizations (SDOs) prioritize comprehensiveness to avoid undeclared patents, "there are far more disclosed patents that are *potentially* essential than there are patents that end up truly being essential", with empirical studies showing true essentiality rates as low as 10-40%.²⁸

More importantly, Nikolic highlights that essentiality is only one piece of a complex legal puzzle. For a licensee, the critical questions also include infringement and validity. A patent may theoretically be essential to a standard but not infringed by a specific product, or it may be invalid. For example, a U.S. study found that, in litigation, SEPs were held to be infringed in only 30.7% of cases.²⁹ Therefore, a government service that provides only an "essentiality check" offers a false and incomplete sense of certainty. Moreover, a mandatory database would be overwhelmingly populated with nonessential patents, creating a low signal-to-noise ratio. For licensees, navigating this data to determine their actual obligations would remain a complex task, for which an unreliable database would certainly increase the complexity.

Rather than facilitating efficient licensing, such a database—along with a potential government essentiality-checking service—could become a new tool for strategic delay. Implementers could leverage the high rate of "over-declaration" to challenge entire patent portfolios and bog down negotiations, a tactic that benefits the infringer at the expense of the innovator. Furthermore, a government-run or accredited service risks crowding out existing and emerging private-sector solutions, such as commercial essentiality services and patent pools, which are more likely to be efficient and responsive to market needs.

²⁶ Consultation ¶¶ 72-81, 87-88.

²⁷ Consultation ¶ 38.

²⁸ Igor Nikolic, *European Commission's Leaked SEP Regulation Would Increase Costs for Innovators, Hurt EU Competitiveness, and Fail to Reduce Litigation*, TRUTH ON THE MKT. (7 April 2023), <https://truthonthemarket.com/2023/04/07/european-commissions-leaked-sep-regulation-would-increase-costs-for-innovators-hurt-eu-competitiveness-and-fail-to-reduce-litigation>.

²⁹ Mark A. Lemley & Timothy Simcoe, *How Essential Are Essential Patents?* 104 CORNELL L. REV. 607 (2019) ("SEPs are no more likely to be found infringed than non-SEPs. Of the 215 infringement decisions in our study, 127 involved SEPs and 88 did not. The SEP infringement win rate was 30.7%, not appreciably (or statistically) different than the non-SEP infringement win rate of 29.5%.")

C. Remedies and Pre-Action Protocols

The consultation’s framing of injunctions as a “threat” used to “extract ‘supra-FRAND’ licence rates” fundamentally misrepresents their economic function.³⁰ An injunction is not a threat—it is the legal remedy that gives effect to a property owner’s core right to exclude others from using their property without permission. It is a foundational element of the patent system.³¹

Indeed, the credible threat of an injunction is the primary mechanism that deters patent holdout. Without it, an implementer’s rational strategy is often to infringe, continue to profit from the technology, and treat any eventual royalty payment as a mere cost of doing business—a practice we note above is sometimes known as “efficient infringement”. This dynamic systematically undercompensates innovators and reduces the value of their patents. Geoffrey Manne explains:

[T]he credible threat of an injunction deters infringement in the first place. This results from the serious consequences of an injunction for an infringer, including the loss of sunk investment. [A] predictable injunction threat will promote licensing by the parties. Private contracting is generally preferable to a compulsory licensing regime because the parties will have better information about the appropriate terms of a license than would a court, and more flexibility in fashioning efficient agreements. But denying an injunction every time an infringer’s switching costs exceed the economic value of the invention would dramatically undermine the ability of a patent to deter infringement and encourage innovation. For this reason, courts should grant injunctions in the majority of cases.³²

Weakening SEP enforcement has direct geopolitical and strategic implications. Policies that limit injunctive relief inadvertently support the industrial strategies of nations like China, which are net implementers of Western technology.³³ A policy that weakens SEP protection for UK-based innovators amounts to a subsidy for foreign manufacturers, undermining the UK’s stated goal of

³⁰ Consultation ¶ 59.

³¹ See, e.g., *Smith International, Inc. v. Hughes Tool Co.* 718 F.2d 1573, 1577–78 (Fed. Cir. 1983) (“Without this injunctive power of the courts, the right to exclude granted by the patent would be diminished, and the express purpose of the Constitution and Congress, to promote the progress of the useful arts, would be seriously undermined. The patent owner would lack much of the ‘leverage,’ afforded by the right to exclude, to enjoy the full value of his invention in the market place. Without the right to obtain an injunction, the right to exclude granted to the patentee would have only a fraction of the value it was intended to have, and would no longer be as great an incentive to engage in the toils of scientific and technological research”); see also Geoffrey A. Manne, Kristian Stout, Julian Morris, & Dirk Auer, *The Deterioration of Appropriate Remedies in Patent Disputes*, 21 FEDERALIST SOC. REV. 158, 161 (2020) (“[Patent] laws would be meaningless, however, without the ability to enforce them and remedy breaches. And one of the most important remedies is the injunction”).

³² Geoffrey A. Manne, *The Final Order in the FTC’s Google Standard-Essential Patents Case and the Continuing Danger to Standard-Setting*, TRUTH ON THE MKT. (31 July 2013), <https://truthonthemarket.com/2013/07/31/the-final-order-in-the-ftcs-google-standard-essential-patents-case-and-the-continuing-danger-to-standard-setting>.

³³ Geoffrey A. Manne, *Unpacking the Flawed 2021 Draft USPTO, NIST, & DOJ Policy Statement on Standard-Essential Patents (SEPs)*, TRUTH ON THE MKT. (8 February 2022), <https://truthonthemarket.com/2022/02/08/unpacking-the-flawed-2021-draft-uspto-nist-doj-policy-statement-on-standard-essential-patents-seps>.

securing technological leadership.³⁴ This is particularly concerning given that the framework established by the Court of Justice of the European Union (CJEU) in *Huawei v. ZTE* already provides a balance, making injunctive relief unavailable against a “willing licensee”.³⁵ The IPO’s consultation appears to seek a further weakening of patent-holder rights beyond this established, balanced standard.

The IPO’s proposals are thus in direct conflict with its own stated goal of promoting economic growth and innovation. The IPO’s primary mission is “to enable economic growth” by encouraging “investment in innovation and creativity”.³⁶ Economic growth in technology sectors is driven by investment in research and development undertaken in expectation of a return secured through enforceable intellectual-property rights. The IPO’s proposals—price controls via the RDT, increased administrative burdens, and weakened injunctive relief—all serve to reduce a patent’s expected value and enforceability. By reducing the value of the primary asset that underpins technology investment, these policies will necessarily reduce the incentive to invest in R&D in the UK.

This is particularly harmful to the SMEs and startups the IPO claims to help, as these entities rely on strong patents to attract venture capital and defend themselves against infringement by larger established firms. Therefore, the IPO’s policy initiative is internally incoherent, proposing measures that will actively undermine its foundational mission.

V. Conclusion

The proposals outlined in the IPO’s consultation are based on a flawed premise not supported by the available empirical evidence. Rather than correcting “systemic issues”, they are likely to create new ones—distorting markets, increasing costs for innovators, and chilling the investment that drives the UK’s technology sector. A more constructive path forward would be based on a clear-eyed assessment of the evidence and a renewed commitment to the principles of property rights and private ordering.

The fundamental premise of the consultation—that the SEP ecosystem suffers from a market failure that requires government intervention—should be rejected. The IPO should withdraw the proposals, which are solutions to a problem that the evidence shows does not exist in any systemic way.

Instead of weakening patent rights, UK policy should focus on reinforcing them. This would mean preserving the availability of injunctive relief as the primary remedy against infringement, consistent

³⁴ Department for Science, Innovation & Technology and Foreign, Commonwealth & Development Office, The UK’s International Technology Strategy, CP 810 (March 2023), <https://www.gov.uk/government/publications/uk-international-technology-strategy/the-uks-international-technology-strategy>.

³⁵ Giuseppe Colangelo, *FRAND Determinations Under the EU SEP Proposal: Discarding the Huawei Framework*, INT’L CTR. FOR L. & ECON. (15 November 2023), available at <https://laweconcenter.org/wp-content/uploads/2023/11/SEP-wp-28.9.pdf>.

³⁶ Consultation, ¶ 20-21.

with the balanced approach in existing jurisprudence. A strong property-rights regime is the most effective way to combat the real and costly problem of patent holdout.

Complex commercial disputes over FRAND licensing are best resolved through private negotiation between sophisticated parties, backstopped by the existing court system. Contract law—not administrative regulation or antitrust—is the proper domain for these issues.³⁷ The UK’s own judicial system has proven exceptionally capable in this regard. For example, the landmark decision in *InterDigital v. Lenovo* demonstrates a sophisticated, economically grounded framework that relies on market-based evidence and directly confronts the problem of patent holdout.³⁸ The UK already possesses a world-class, market-respecting judicial path to resolve these disputes, making the IPO’s proposed top-down regulatory path both unnecessary and inferior.

Finally, the government should allow market-led solutions to evolve. The consultation itself notes the emergence of patent pools in mature markets. These voluntary, private-sector arrangements are far more efficient and adaptable than top-down government regulation. The government should foster an environment where these solutions can develop, not crowd them out with unnecessary and harmful interventions. A policy of regulatory restraint is the best way to support a dynamic and innovative technology sector in the UK.

³⁷ Ginsburg et al., *supra* note 22; see also, Alden Abbott, *A Comprehensive Overview (and Sound Analysis) of the Law and Economics of FRAND Litigation, Here and Abroad*, TRUTH ON THE MKT. (15 June 2017), <https://truthonthemarket.com/2017/06/15/a-comprehensive-overview-and-sound-analysis-of-the-law-and-economics-of-frand-litigation-here-and-abroad>.

³⁸ See Valéria Silva, *FRAND-Licensing Litigation Across the Atlantic: A Comparative Assessment of US and UK Jurisprudence on Telecom Disputes*, INT’L CTR. FOR L. & ECON. (8 April 2025) (“Similarly, in *InterDigital v. Lenovo*, where InterDigital sued Lenovo for patent infringement in the UK, the UK court further cemented its position as a forum for global FRAND determinations. Justice James Mellor set a global FRAND rate for InterDigital’s 3G, 4G, and 5G SEP portfolio and the court rejected Lenovo’s arguments for country-by-country licensing. These cases illustrate the UK courts’ consistent willingness to set global FRAND terms in such situations, their evolving methodologies to determine rates, and how they seek to balance the interests of SEP holders and implementers—further solidifying the principles established in *Unwired Planet*.”).