

# Essential patent

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An **essential patent** or **standard-essential patent** is a patent that claims an invention that must be used to comply with a technical standard.<sup>[1]</sup> Standards organizations, therefore, often require members disclose and grant licenses to their patents and pending patent applications that cover a standard that the organization is developing.<sup>[2]</sup>

If a standards organization fails to get licenses to all patents that are essential to complying with a standard, owners of the unlicensed patents may demand or sue for royalties from companies that adopt the standard. This happened to the GIF and JPEG standards, for example.

Determining which patents are essential to a particular standard can be complex.<sup>[3]</sup> Standardisation organizations require licences of essential patents to be on fair, reasonable, and non-discriminatory (FRAND) terms.

## See also

- Patent ambush, a situation where a member of a standards organization withholds information about patents they own during development of a proposed standard and subsequently claims them to be relevant to the standard as adopted.
- Patent map
- Patent thicket
- *Orange-Book-Standard*

## References

1. Shapiro, Carl, "Navigating the Patent Thicket: Cross Licenses, Patent Pools, and Standard-Setting", forthcoming *Innovation Policy and the Economy*, Volume I, MIT Press, 2001 (<http://faculty.haas.berkeley.edu/shapiro/thicket.pdf>)
2. J. Gregory Sidak, *The Meaning of FRAND, Part I: Royalties*, 9 J. COMPETITION L. & ECON. 931, 949 (2013), <https://www.criterioneconomics.com/meaning-of-frand-royalties-for-standard-essential-patents.html>.
3. Elizabeth Woyke (2011-09-21). "Identifying The Tech Leaders In LTE Wireless Patents". *Forbes*. Retrieved March 10, 2012.

## Further reading and viewing

- "Potential Antitrust Liability Based on a Patent Owner's Manipulation of Industry Standard Setting (<http://www.abanet.org/antitrust/at-committees/at-exemc/pdf/liability.pdf>)", *Proceedings of ABA Antitrust Section Spring Meeting* (2003) by Janice M. Mueller.
- "Patent Misuse Through the Capture of Industry Standards (<http://www.law.berkeley.edu/journals/btlj/articles/vol17/mueller.pdf>)", 17 *Berkeley Tech. L.J.* 623 (2002) by Janice M. Mueller.
- Mossoff, Adam; Contreras, Jorge; Kulbaski, James J. (November 30, 2012). *Standards-Essential Patents: Where Do IP Protections End and Antitrust Concerns Begin?* (ASX) (video). Washington Legal Foundation. Retrieved December 17, 2012.

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