



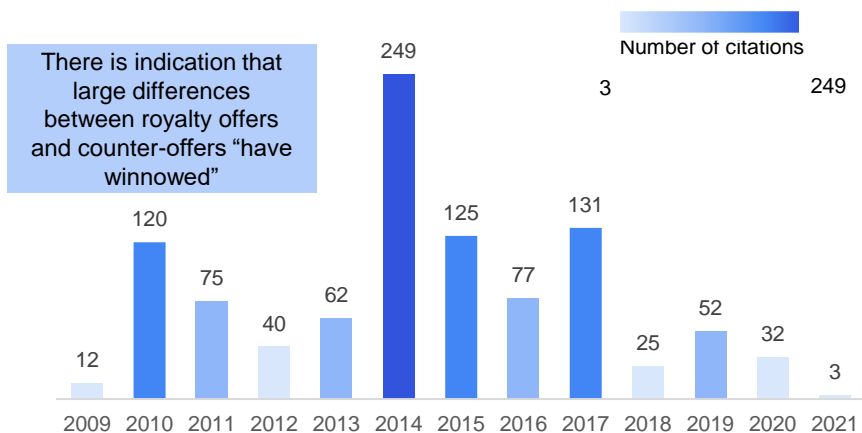
EU Proposed Regulation for Standard-Essential Patents

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May 2023

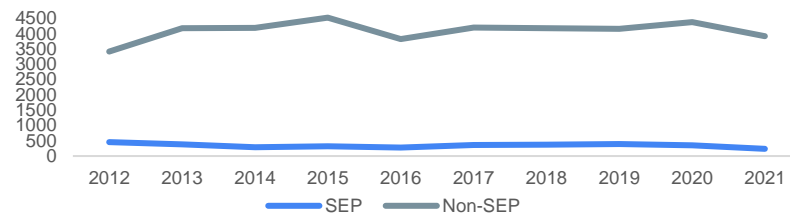
EC says that disagreements about FRAND are likely to increase in the future, but empirical evidence points in the opposite direction

A study prepared for the EC finds that SEP litigation is decreasing both in absolute and in relative terms

Number of citations of “FRAND” in worldwide patent litigations

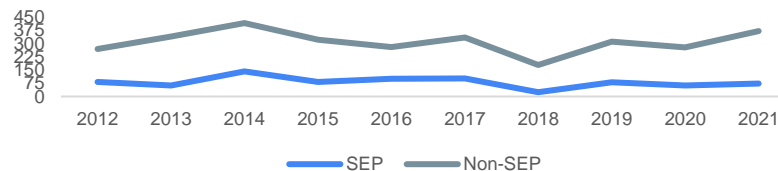


Global* litigation counts - SEP vs Non-SEP



*Includes US, China and Europe

European litigation counts - SEP vs Non-SEP



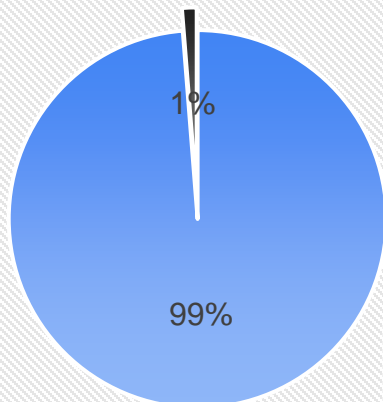
There is also no evidence of other systematic detrimental effects on the markets or consumers

The same study finds no empirical evidence of "opt-out" or harm to SMEs

No evidence of large scale opt-out

The study concludes that opt-out is more of a **“theoretical possibility than an empirical reality.”** It describes a market with “healthy innovation and wide adoption.”

No empirical evidence about systematic harm to SMEs



Conclusions about SMEs are largely based on a survey with an **extremely small sample of SMEs** (about 1% of potential implementers)

- EU SMEs that are potential manufacturers of standard-compliant products
- SMEs that participated in the survey

Concerns with SMEs and SEPs

SMEs do not have the expertise and resources to negotiate license agreements with SEP holders or to engage in litigation

BUT the IA also finds that most SMEs do not have a license, and many do not expect to be contacted by SEP holders for a license

- SEP holders often do not license SMEs because the costs of doing so outweigh the expected revenue
- Majority of SMEs are not licensed (only 17% of the respondents had a license)
- About 1/3 of the responding SMEs believe that it is unlikely they will be invited to take a license



Of course, improvements are possible, but is there a need for a complete overhaul of SEP licensing?

The various solutions presented in the regulation need to be examined and assessed individually.

- Free advice for SMEs
- Registry of SEPs with essentiality checks
- Announcement of non-binding aggregate royalty rates
- Out-of-court FRAND determinations

