



# CEN-CENELEC GUIDE 8

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## **CEN-CENELEC Guidelines for Implementation of the Common Policy on Patents (and other statutory intellectual property rights based on inventions)**

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(Supersedes CEN-CENELEC Guide 8:2015)**

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# **CEN-CENELEC Guidelines for Implementation of the Common Policy on Patents (and other statutory intellectual property rights based on inventions)**

*"Rules for Mariners caught on a lee shore:  
Rule 1. Don't get caught on a lee shore!"  
English Seamen's Manual, 18th century*

## **1 Purpose**

CEN and CENELEC have had an intellectual property rights (IPR) policy for many years under the provision of the CEN-CENELEC Guide 8 "Standardization and intellectual property rights (IPR)"; the purpose of these common guidelines is to provide in simple words practical guidance to the participants in their technical bodies in case patent or other intellectual property rights matters arise.

For the sake of clarity this document refers to "patents", as most - but not all - IPR issues that CEN and CENELEC technical bodies have to deal with concern patent rights. However, the same implementation principles shall apply to other statutory intellectual property rights based on inventions that may arise, such as utility models or registered semiconductor topographies (see Clause 2, *Terms and definitions*).

Considering that technical experts are not normally familiar with the complex issue of patent law, the Common Patent Policy for ISO/IEC/ITU endorsed by CEN and CENELEC (hereafter referred to as the "Patent Policy") was drafted in its operative part as a checklist covering the three different cases which may arise if a deliverable requires licences for patents to be practiced or implemented, fully or partly.

These Guidelines for Implementation of the Common Policy on Patents for CEN and CENELEC (hereafter referred to as the "Guidelines") are intended to complement, clarify and facilitate the implementation of the Patent Policy, a copy of which can be found in Annex 1 and also on the websites of both organisations.

The CEN and CENELEC Patent Policy requests stakeholders participating in technical Committees, and in particular patent holders, to proceed to early disclosures and identification of patents that may be considered, at the best of their knowledge, to be essential for the future use of the deliverables under development. In doing so, greater efficiency in standards development is possible and potential patent rights problems can be avoided.

CEN and CENELEC are not involved in evaluating patent relevance or essentiality with regard to deliverables, nor to interfere with licensing negotiations, or engage in settling disputes on patents. This is left to the parties concerned.

## **2 Terms and definitions**

For the purposes of this Guide, the following terms and definitions apply:

**2.1**

**contribution**

document submitted for consideration by a technical body

**2.2**

**declaration Form**

“Statement and Licensing Declaration for a CEN and CENELEC Deliverable” attached as Annex 2

**2.3**

**deliverable**

CEN and/or CENELEC technical publication

**2.4**

**patent**

temporary, limited legal right granted to an inventor by public authorities to prevent others from manufacturing, selling or otherwise dispose utility models and other statutory rights based on her/his invention, including any applications for any of the foregoing

**2.5**

**patent holder**

person or entity that owns, controls and/or has the ability to license Patents

**2.6**

**essential patent**

patent considered, for the purpose of making a patent declaration to CEN and CENELEC, by the patent holder as 'essential' when, in her/his own judgment, it is not possible on technical grounds, considering the state of the art at the time the standardisation-making process takes place, to make, sell, lease and otherwise dispose an equipment, product or method which comply with a deliverable without infringing her/his IPR on that Patent.

**2.7**

**organisation(s)**

CEN and/or CENELEC

**2.8**

**free of charge**

as used herein, without due payment to the patent holder as part of the licensing arrangement for the purpose of making a patent declaration to CEN and CENELEC

**2.9**

**reciprocity**

as used herein, requirement for the patent holder to give a license to any prospective licensee only if such prospective licensee will commit to license, where applicable, its essential patent(s) or essential patent claim(s) for implementation of the same above document free of charge or under reasonable terms and conditions

**2.10**

**technical bodies**

Technical Committees, Subcommittees, Working Groups, Workshops and other groups in CEN and CENELEC

## 2.11

### FRAND

Fair, Reasonable And Non-Discriminatory conditions

### 3 Essential patent disclosure

Any party participating in the work of CEN and CENELEC is requested, from the outset and at the best of her/his knowledge, to draw attention to any known patent or to any known pending application on patent, either their own or of other organisations that, according to her/his own judgment, may be considered as an essential patent for the deliverable.

In this context, the words “from the outset” imply that such information should be disclosed as early as possible during the development of the deliverable. It is understood that disclosure might not be possible when the first draft text appears since, at this time, the text might be still too vague or subject to subsequent major modifications.

Information on essential patents should be provided in good faith and on a best effort basis, but there is no requirement for patent searches.

In addition to the above, any party not participating in technical bodies may draw the attention of both organisations to any known patent, either their own and/or of any third party that may be considered as essential for the deliverable.

When disclosing their own patents, patent holders shall use the declaration form as stated in Clause 4 of these Guidelines.

Any communication drawing the attention to any third-party patent shall be addressed to CEN or CENELEC in writing. The potential patent holder will then be requested by the relevant organisation to submit a declaration form.

The Patent Policy and these Guidelines also apply to any Patent disclosed or drawn to the attention of CEN and CENELEC subsequent to the approval of a deliverable.

Whether the identification of the essential patent took place before or after the approval of the deliverable, if the patent holder is unwilling to license under Paragraph 2.1 or 2.2 of the Patent Policy, the concerned organisation shall promptly advise the technical bodies responsible for the affected deliverable so that appropriate action can be taken. Such action shall include, but may not be limited to, a review of the deliverable or its draft in order to remove the potential conflict or to further examine and clarify the technical considerations causing the conflict.

## 4 Statement and Licensing Declaration for CEN and CENELEC Deliverable of Essential Patents and other statutory Intellectual Property Rights based on inventions

### 4.1 Purpose of the Declaration Form

Patent holders shall use the CEN-CENELEC Declaration Form to provide the necessary information to be included in the CEN and CENELEC Patent Information databases. The CEN-CENELEC Declaration Form is available on the website of each organisation (the Declaration Form is included in Annex 2 for information purposes). Declaration Forms must be sent to the attention of the Director Standards of the CEN-CENELEC Management Centre.

The purpose of the Declaration Form is to ensure a standardised submission to CEN and CENELEC of the declarations being made by patent holders and, most importantly, in case the patent holder declares her/his unwillingness to license under option 1 or 2 of the Declaration Form (i.e. declares option 3 of the Declaration Form) to provide the supporting information and an explanation, as strongly desired by CEN and CENELEC.

The Declaration Form gives patent holders the means of making a licensing declaration relating to rights in the essential patents required for implementation of a specific deliverable. Specifically, by submitting this Declaration Form, the submitting party declares its willingness/unwillingness to license the patents held by it and whose licence would be required to practice or implement part(s) or all of a specific deliverable, in accordance with the Patent Policy.

The statement contained in the Declaration Form remains in force as long as it has not been replaced, e.g. in case of obvious errors.

Multiple Declaration Forms are appropriate if the patent holder has identified several essential patents and classifies them in different options of the Declaration Form and/or if the patent holder classifies different claims of a complex patent in different options of the Declaration Form.

The words “free of charge” in the Declaration Form do not mean that the patent holder is waiving all of its rights with respect to the essential patent. Rather, it refers to the issue of monetary compensation; i.e. that the patent holder will not seek any monetary compensation as part of the licensing arrangement (whether such compensation is called a royalty, a one-time licensing fee, etc.). However, while the patent holder in this situation is committing to not charging any monetary amount, the patent holder is still entitled to require that the implementer of the above document sign a licence agreement that contains other reasonable terms and conditions such as those relating to governing law, field of use, reciprocity, warranties, etc.

## **4.2 Relevant information**

In completing Declaration Forms, attention should be given to supplying contact information that will remain valid over time. Where possible, the “Name and Department” and e-mail address should be generic. Also it is preferable, where possible, that parties, particularly multinational organisations, indicate the same contact point on all Declaration Forms submitted.

With a view to maintaining up-to-date information in the patent information database of each organisation, the patent holder is requested to inform the CEN-CENELEC Management Centre of any change or corrections to the content of the information provided in the Declaration Form submitted in the past, especially with regard to the contact person, or information that may be relevant for the purpose of the Declaration e.g. in case the relevant patent application has been granted or rejected, or information regarding changes to the legal status of the relevant patent application or patent.

Any other party that may have relevant updated information on the list of the patent database, is also invited to inform the CEN-CENELEC Management Centre.

## 5 Conduct of meetings and duties of Chairs

Early disclosure of essential patents contributes to the efficiency of the process by which deliverables are established. Therefore, in the course of the development of a deliverable, technical experts participating in the technical body are requested to inform about - or to disclose if relevant - any patent that, according to their own judgment, may be considered as an essential patent for the proposed deliverable. Technical experts are deemed to provide such information on any known essential patents in good faith and at the best of their knowledge.

In particular, the Chair of technical bodies will ask, at an appropriate time in each meeting, whether anyone has knowledge of essential patents, the use of which may be required to practice or implement the deliverable being considered. The fact that the question was asked shall be recorded in the meeting report, along with any affirmative responses.

Provided the patent holder(s) is prepared to grant licences on “free of charge” or “FRAND” condition on those essential patent that are included in the draft deliverable, the latter can be processed for final approval. In any event, it is expected that discussions in the technical bodies also include considerations on possible patented material in a deliverable. However, it is important to underline that the technical bodies may not take position regarding the scope, validity or specific licensing terms of any claimed essential patents.

## 6 Patent Information list

In order to facilitate both the standards-making process and the implementation of deliverables, CEN and CENELEC make available to the public a common Patent Information list composed of the information that was communicated to the organisations by the means of Declaration Forms. The Patent Information list may contain information on specific patents, or may contain information about compliance with the Patent Policy for a particular deliverable.

The common Patent Information list is not certified to be either accurate or complete, but it only reflects the information that has been communicated to the organisations.

As such, the Patent Information list is to be viewed as simply raising a flag to alert standard users that they may wish to contact the entities who have communicated Declaration Forms to CEN and CENELEC in order to determine if patent licences must be obtained for use or implementation of a particular deliverable.

## 7 Specific provisions

### 7.1 Consultations on draft Deliverables

All drafts submitted for comment shall include on the cover page the following text:

*“Recipients of this draft are invited to submit, with their comments, notification of any relevant patent rights of which they are aware and to provide supporting documentation.”*

### 7.2 Notification

A published deliverable for which no patent rights have been identified during the preparation thereof shall contain the following notice in the Foreword:

*“Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights. [CEN / CENELEC / CEN and CENELEC] shall not be held responsible for identifying any or all such patent rights.”*

A published deliverable for which patent rights have been identified during the preparation thereof, shall include the following notice in the introduction:

*“The [European Committee for Standardization (CEN)] [and] [European Committee for Electrotechnical Standardization (CENELEC)] draw[s] attention to the fact that it is claimed that compliance with this document may involve the use of a patent concerning (...subject matter...) given in (...subclause...) and which is claimed to be relevant for the following clause(s) of this document:*

*[CEN / CENELEC / CEN and CENELEC] take[s] no position concerning the evidence, validity and scope of this patent right.*

*The holder of this patent right has assured [CEN / CENELEC / CEN and CENELEC] that he/she is willing to negotiate licences under reasonable and non-discriminatory terms and conditions with applicants throughout the world. In this respect, the statement of the holder of this patent right is registered with [CEN / CENELEC / CEN and CENELEC]. Information may be obtained from:*

*name of holder of patent right ...*

*address ...*

*Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights other than those identified above. [CEN / CENELEC / CEN and CENELEC] shall not be held responsible for identifying any or all such patent rights.”*

### **7.3 Irrevocable licensing declarations on Essential Patent and transfer of ownership to third parties**

To the extent the patent remain essential for the deliverable, the terms of licensing included in the Declaration Form are deemed to be irrevocable, so as to preserve clarity and transparency in the use of such deliverable.

In the event the patent holder of a declared essential patent transfers his patent ownership to a third party, his licensing declaration made in accordance with the Patent Declaration form in annex 2 of this Guide shall be interpreted as encumbrances that bind all successors-in-interest as to the transferred Patents.

Recognizing that this interpretation may not apply in all jurisdictions, any patent holder who has submitted a licensing declaration according to this Guide - be it selected as option 1 or 2 on the Patent Declaration form - who transfers ownership of a Patent that is subject to such licensing declaration, shall include appropriate provisions in the relevant transfer documents to ensure that, as to such transferred Patent, the licensing declaration is binding on the transferee and that the transferee will similarly include appropriate provisions in the event of future transfers with the goal of binding all successors-in-interest

### **7.4 Multiple patents declared**

In some occasions it could be possible that more than one essential patent may be relevant for the same CEN and/or CENELEC deliverable, or for multiple deliverables

which are needed in order to implement a specific technical solution. In these cases, and in order to facilitate the implementation of the concerned deliverable(s), the relevant patent holders can, if they deem suitable and in compliance with the relevant competition law rules, cooperate with regard to licencing arrangements that may facilitate this implementation e.g. through patent pools or other licencing platforms. CEN and CENELEC however, never interfere with licensing negotiations and any licencing discussions shall take place outside the CEN and CENELEC system and among the relevant patent or other IPR holders.

## Annex 1

### COMMON PATENT POLICY FOR ITU-T/ITU-R/ISO/IEC – (version 2012)

The following is a "code of practice" regarding patents covering, in varying degrees, the subject matters of ITU-T Recommendations, ITU-R Recommendations, ISO deliverables and IEC deliverables (for the purpose of this document, ITU-T and ITU-R Recommendations are referred to as "Recommendations", ISO deliverables and IEC deliverables are referred to as "Deliverables"). The rules of the "code of practice" are simple and straightforward. Recommendations | Deliverables are drawn up by technical and not patent experts; thus, they may not necessarily be very familiar with the complex international legal situation of intellectual property rights such as patents, etc.

Recommendations | Deliverables are non-binding; their objective is to ensure compatibility of technologies and systems on a worldwide basis. To meet this objective, which is in the common interests of all those participating, it must be ensured that Recommendations | Deliverables, their applications, use, etc. are accessible to everybody.

It follows, therefore, that a patent embodied fully or partly in a Recommendation | Deliverable must be accessible to everybody without undue constraints. To meet this requirement in general is the sole objective of the code of practice. The detailed arrangements arising from patents (licensing, royalties, etc.) are left to the parties concerned, as these arrangements might differ from case to case.

This code of practice may be summarized as follows:

1. The ITU Telecommunication Standardization Bureau (TSB), the ITU Radiocommunication Bureau (BR) and the offices of the CEOs of ISO and IEC are not in a position to give authoritative or comprehensive information about evidence, validity or scope of patents or similar rights, but it is desirable that the fullest available information should be disclosed. Therefore, any party participating in the work of ITU, ISO or IEC should, from the outset, draw the attention of the Director of ITU-TSB, the Director of ITU-BR, or the offices of the CEOs of ISO or IEC, respectively, to any known patent or to any known pending patent application, either their own or of other organizations, although ITU, ISO or IEC are unable to verify the validity of any such information.
2. If a Recommendation | Deliverable is developed and such information as referred to in paragraph 1 has been disclosed, three different situations may arise:
  - 2.1 The patent holder is willing to negotiate licences free of charge with other parties on a non-discriminatory basis on reasonable terms and conditions. Such negotiations are left to the parties concerned and are performed outside ITU-T/ITU-R/ISO/IEC.
  - 2.2 The patent holder is willing to negotiate licences with other parties on a non-discriminatory basis on reasonable terms and conditions. Such negotiations are left to the parties concerned and are performed outside ITU-T/ITU-R/ISO/IEC.

2.3 The patent holder is not willing to comply with the provisions of either paragraph 2.1 or paragraph 2.2; in such case, the Recommendation | Deliverable shall not include provisions depending on the patent.

3. Whatever case applies (2.1, 2.2 or 2.3), the patent holder has to provide a written statement to be filed at ITU-TSB, ITU-BR or the offices of the CEOs of ISO or IEC, respectively, using the appropriate "Patent Statement and Licensing Declaration" Form. This statement must not include additional provisions, conditions, or any other exclusion clauses in excess of what is provided for each case in the corresponding boxes of the form.

### **Application of the ISO/IEC/ITU Common patent policy to CEN and CENELEC**

When applying the ISO/IEC/ITU Common patent policy in CEN and /or CENELEC, the following terms are to be understood with a specific meaning, as follows:

<b>When the ISO/IEC/ITU-T Common patent policy mentions:</b>	<b>In the CEN/CENELEC context, understand:</b>
Recommendations   Deliverables	CEN/CENELEC deliverables
The ITU Telecommunication Standardization Bureau (TSB), the ITU Radiocommunication Bureau (BR) and the offices of the CEOs of ISO and IEC	CEN-CENELEC Management Centre
ITU, ISO or IEC	CEN and/or CENELEC
The Director of ITU-TSB, the Director of ITU-BR, or the offices of the CEOs of ISO or IEC	The Director General of CEN and CENELEC



## Annex 2



## Statement and Licensing Declaration for CEN and CENELEC Deliverable

**on Essential Patents and other statutory Intellectual Property Rights based  
on inventions**

*This declaration does not represent an actual grant of a licence*

Please return to the relevant organisation(s) as instructed below per document type by email at [production@cencenelec.eu](mailto:production@cencenelec.eu) and by post:

CEN deliverable: Director Standards  
CEN  
Rue de la Science, 23  
B – 1040 Brussels  
Belgium

CENELEC deliverable: Director Standards  
CENELEC  
Rue de la Science, 23  
B – 1040 Brussels  
Belgium

**Patent, or other Intellectual Property Right (IPR) holder:**

Legal Name \_\_\_\_\_

**Contact for licence application:**

Name & Department \_\_\_\_\_

Address \_\_\_\_\_

Tel. \_\_\_\_\_

Fax \_\_\_\_\_

E-mail \_\_\_\_\_

URL (optional) \_\_\_\_\_

**Document type:**

**CEN deliverable (\*)**       **CENELEC deliverable (\*)**

(please return the form to the relevant organisation)

**Dual logo CEN/CENELEC deliverable (\*)**

(for CEN/CENELEC deliverables, please return the form to both CEN and CENELEC)

(\*)Number, \_\_\_\_\_

and/or

(\*)Title \_\_\_\_\_

and

(\*)Relevant clause(s) of the deliverable: \_\_\_\_\_

**Licensing declaration:**

The patent or other IPR holder believes that it holds granted and/or pending applications for intellectual property rights such as Patents, utility models or semiconductor topographies, the use of which would be *essential* to implement the above document and hereby declares, in accordance with the Common Patent Policy adopted by CEN and CENELEC, that (check one box only):

1. The patent (or other IPR) holder is prepared to grant an irrevocable free of charge, licence to an unrestricted number of applicants on a worldwide, non-discriminatory basis and under other reasonable terms and conditions to make, use, and sell implementations of the above document.

Negotiations are left to the parties concerned and are performed outside CEN or CENELEC.

- Also mark here  if the patent holder's willingness to license is conditioned on reciprocity for the above document.
- Also mark here  if the patent holder reserves the right to license on reasonable terms and conditions (but not free of charge) to applicants who are only willing to license their patent claims, whose use would be required to implement the above document, on reasonable terms and conditions (but not free of charge).

2. The patent (or other IPR) holder is prepared to grant an irrevocable licence to an unrestricted number of applicants on a worldwide, non-discriminatory basis and on fair, reasonable terms and conditions to make, use and sell implementations of the above document.

Negotiations are left to the parties concerned and are performed outside CEN or CENELEC.

- Also mark here  if the patent holder's willingness to license is conditioned on reciprocity for the above document.

3. The patent (or other IPR) holder is unwilling to grant licences in accordance with provisions of either 1 or 2 above.

In this case, the following information is *requested* by CEN and CENELEC as part of this declaration:

- a. Granted patent number, patent application number (if pending), or registration number;
- b. An indication of which portions of the above document are affected;
- c. A description of the claims covering the above document.

**Free of charge:** it refers to monetary compensation; i.e. that the patent (or other IPR) holder will not seek any monetary compensation as part of the licensing arrangement (whether such compensation is called a royalty, a one-time licensing fee, etc.). However, while the patent (or other IPR) holder in this situation is committing to not charging any monetary amount, the patent (or other IPR) holder is still entitled to require that the implementer of the above document sign a licence agreement that contains other reasonable terms and conditions such as those relating to

governing law, field of use, reciprocity, warranties, etc.

**Reciprocity:** As used herein, indicates that the patent (or other IPR) holder shall only be required to license any prospective licensee if such prospective licensee will commit to license its essential patent(s) or essential patent claim(s) for implementation of the same above document free of charge or under reasonable terms and conditions.

**Irrevocability:** To the extent the patent remain essential for the CEN and/or CENELEC deliverable, the terms of licensing included in this Declaration Form are deemed to be irrevocable, so as to preserve clarity and transparency in the use of such Deliverable.

**Assignment/transfer of Patent rights:** Licensing declarations made pursuant option 1 or 2 of this Patent Declaration form shall be interpreted as encumbrances that bind all successors-in-interest as to the transferred Patents. While CEN and CENELEC recognize that this interpretation may not apply in all jurisdictions, the patent holder who transfers ownership of a patent that is subject to such licensing declaration shall include appropriate provisions in the relevant transfer documents to ensure that, as to such transferred patent, the licensing declaration is binding on the transferee and that the transferee will similarly include appropriate provisions in the event of future transfers with the goal of binding all successors-in-interest.

#### Patent Information

No.	Status [granted/pending]	Country	Granted Patent Number, Application Number (if pending) or Registration Number (please include link to relevant patent databases)	Title	Relevant ADR or court decision(s)
1					
2					
3					
4					
5					

Further information is provided on additional pages:  yes -  no

(check as appropriate)

The Patent or other IPR holder undertakes to inform CEN and/or CENELEC for any update or change of the above information. By signing this Declaration the Patent or other IPR holder agrees that the information therein will be made publicly available to the CEN-CENELEC list of patent declarations.

#### Signature:

Patent or other IPR Holder \_\_\_\_\_

Name of authorised person \_\_\_\_\_

Title of authorised person \_\_\_\_\_

Signature \_\_\_\_\_

Place, Date \_\_\_\_\_

(Form CEN-CENELEC Guide 8:2019)

### Annex 3

#### Process for the handling of Declarations

