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Standard Essential Patents
Artificial Intelligence

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Intellectual Property for the EU in a World of Challenges

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Standard-Essential Patents: an EU Framework

- Why an EU framework?

  - SEPs underpin the roll-out of IoT and 5G (potential gains of € 110 billion revenue per year in the EU)

  - IoT entails new landscape of licensees: need to avoid bumps in the road

- Key objectives of the SEP Communication:

  - **Balance** (taking account of needs of SEP holders and implementers, with a specific focus on newcomers /SMEs)

  - **Holistic approach** (focus on entire 'ecosystem')

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SEPs - What are the issues?

- Lack of transparency

  - Self-declaration of SEPs at SDOs, without scrutiny – or blanket declarations

  - Asymmetry of information (risks for start-ups and SMEs)

- Disagreement on 'FRAND' licensing principles

  - Diverging views on royalty calculation and licensing conditions: e.g. where to license in the value chain

  - Lack of predictability fuels possible abuses ('hold up'/ 'hold out')

- Increased (sometimes abusive) litigation

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Transparency

- Improve databases of declarations at SDOs
  - User-centric
  - On-line declarations
  - Up-to-date and complete information (link to patent databases)

- Awareness-raising (in particular for SMEs)

- Fostering patent pools and other licensing platforms

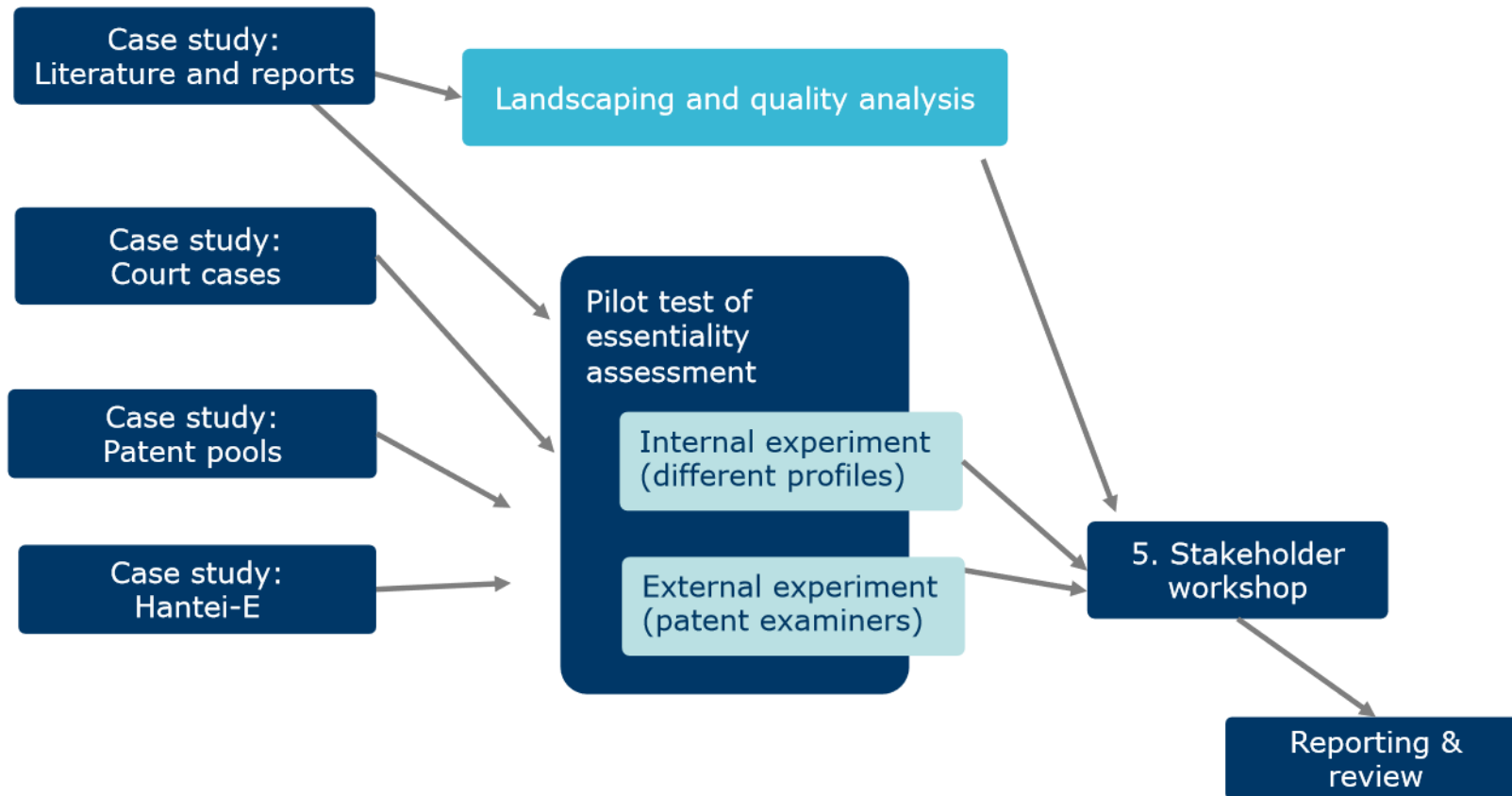- Exchange of information between SDOs and Patent Offices

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Mandate SEP essentiality pilot project

- 'The Commission … will launch a pilot project for SEPs in selected technologies with a view to facilitate the introduction of an appropriate scrutiny mechanism.' EC Communication (29.11.2017)

- **Public presentation 30 March 2020 in Brussels**

Focus of analysis SEP pilot project:

- **Technical feasibility**: How could it be done? (Costs, Skills, Scope, Liability …)

- **Institutional feasibility:** Who could do it? (Market based, IPOs, SDOs, EC, Independent European body …) The technical focus of the pilot is on 3G and 4G standards developed by 3GPP/ETSI.

- The mechanism does NOT focus on: patent validity or patent enforceability (not expired, renewal fees paid, etc.).

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Role of AI

As a technical tool

- AI is capable of making the first step of the analysis of essentiality under certain conditions

- Human intervention is still necessary

AI as an inventor

- Can AI invent a SEP?

- Technical and legal situation not yet clear.

- A global discussion is taking place

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General principles for FRAND licensing

- Reasonable aggregate rate for the standard

- Rightholders cannot discriminate between implementers that are 'similarly situated'

- SEP licences granted on a worldwide basis may contribute to a more efficient approach

Expert Group on SEP Licensing and Valuation

- To facilitate exchange of experience and good practice

- To provide economic, legal and technical expertise

- To assist the Commission in monitoring SEP licensing markets to inform any policy measures

- Since 2018 the group of 15 experts works towards balanced, practical and future-oriented solutions, in the context of 5G and the Internet of Things

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Topics addressed by the Expert Group

1. What will be different in the future, i.e. with IoT?

2. Who in the supply chain should take a license?

3. Non-discrimination in FRAND

4. Other licensing terms and conditions

5. Joint licensing mechanisms for IoT

6. Valuation

7. Reform proposals

Expert Group: Next steps

- The draft report from the group is expected in 2020.

- Discussion with stakeholders.

- The Commission will take stock of all studies and results from the work of the expert group.

- The Commission may conduct additional analysis and make further proposals.

Review of the Horizontal Block Exemption Regulations

- Review of the two Horizontal Block Exemption Regulations (HBERs) and Commission Guidelines on horizontal cooperation agreements

- Evaluation phase (public consultation until 12.2.2020) => Impact assessment phase

- HBERs will expire on 31 December 2022

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International dimension

- Standards enable globalisation through interoperability of products

- Consequently, SEPs business model/ licencing is often global

- Important for many sectors, but in particular in the telecommunications field (interconnectivity itself being the main purpose)

- Presentation of the EU approach in third countries

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Next steps by the Commission

- Mandate of Commissioner Thierry Breton:

    - Contribute to the work on enhancing Europe's technological sovereignty

    - Take a close look at our intellectual property regime to ensure that it is coherent, is fit for the digital age and supports our competitiveness.

- March 2020: Industrial Policy Strategy

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Thank you

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