



# CEN and CENELEC Technical Body Officers Event

**CEN and CENELEC policies on copyrights, patents and confidentiality**

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- IPR is a term referring to a number of distinct types of **creation of the mind** for which **temporary property rights** are recognized by the law
  
- Under IP law, owners are granted certain **exclusive rights** to a variety of intangible assets, such as music, inventions, symbols and designs.
  - ▶ Economic rights (right of exploitation, remuneration, distribution...)
  - ▶ Moral rights (right of authorship, integrity...)

**IPRs = offers legal, economic and business advantages**



- ❑ Common types of IPR include:
  - ❑ **Patents**: protect new technical inventions (products, processes, technologies...)
  - ❑ **Copyright**: protects original creative works (text, music, software, artwork...)
  - ❑ **Trademarks**: protect signs that distinguish goods or services (company names, logos, colors,...)
  - ❑ **Design**: The appearance of a product or part of a product (contours, shape, texture, material...)
  - ❑ **Trade secrets**: protect confidential business information with commercial value (formulas, processes...)



# IPR - practical example

## Trademarks

	1907-1914	1900	ROBERT BOSCH
	1907-1914	1913-1955	<i>Bosch</i>
	1919	1914	BOSCH
	1931	1925	<b>BOSCH</b>
	1981	1981	<b>BOSCH</b>
	2001	2001	<b>BOSCH</b>

**Registered Company Name:** Robert Bosch GmbH  
**Commercial Name:** BOSCH  
**Domain Name:** www.bosch-industrial.com

**Patent:** engine and drum



**Copyright:**  
User manual



# Exercise: discuss with your neighbour



# IPR example

Copyright



Design (bottle's shape, curved profile)  
Trade secret (formula)

Domain name

[www.coca-cola.com](http://www.coca-cola.com)



Verbal (word) & figurative trademarks



# IPR example

Trademarks  
(word mark)



Registered Company Name: Daimler AG

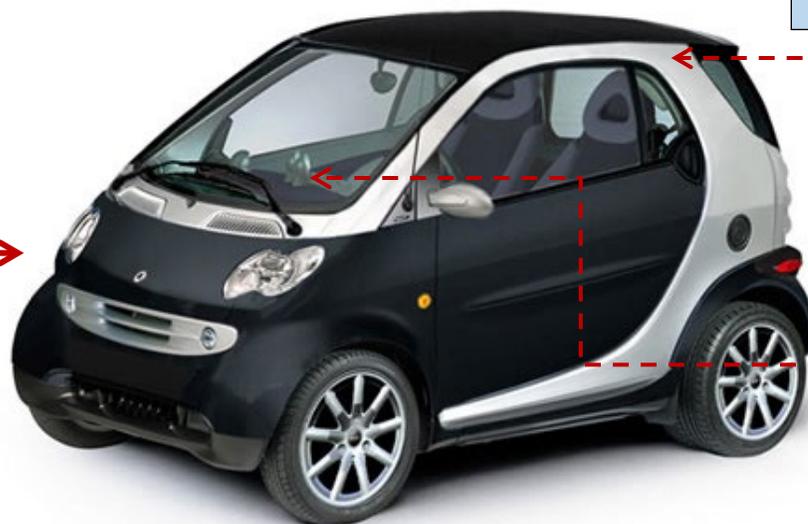
Commercial Name: SMART

Domain Name: www.smart.com

Design: Body, Rim

Patent: Engine

Copyright:  
User Guide



# IPR in the standardization context

- **2 main types** of intellectual property

PATENTS

IPR **IN** standards

COPYRIGHT

IPR **OF** standards



# IPR in standards - Patents

- Exclusive rights granted for an invention (product or process) for a period of 20 years

- **Conditions** for a patent:

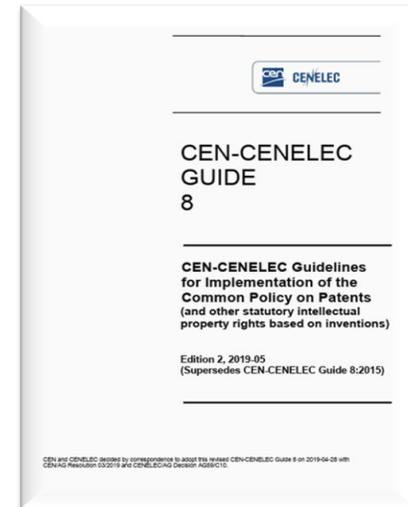
- Novel
- Involve an inventive step
- Susceptible for industrial application

- A patent confers a “monopoly” that may entitle its owner to exclude others

- Patents may enhance investments in research and development (innovation)

- CEN and CENELEC **Guide 8**

*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*



## □ CEN and CENELEC Guide 8

- It defines how innovators inform others of protected inventions
- It is aimed at guaranteeing an effective access to standards and the use of them

## □ Based upon **three** pillars

1. Early disclosure: role of experts in BT + chair
2. Balanced approach:
  - Rights of patent owners
  - Rights of third parties to develop and sell products (make use of standards)
  - The public interest to protect against abuse of IP (patent ambush, royalty stacking)
3. Transparency: ensure clarity on **Standard Essential Patents**, via a SEP declaration database on CEN and CENELEC website



# Which kind of patents are included?

- Patents that are **essential** for the standard

*"When it is not possible at the time the standardisation-making process takes place, to make a product/method according to the standard without infringing the patent holder's right on that patent" (full definition in **Clause 2.6. Guide 8**).*

## AND

- Patents of which **licensing conditions** are declared:
  - Declaration form from Guide 8 ("Patent Policy")
  - Based upon FRAND conditions (Fair, Reasonable and Non-discriminatory)
  - Licensing conditions remain if patent would be transferred to third-party



# CEN and CENELEC Patent Policy:

## Early disclosure and licensing commitment



### SEP Declaration

#### Option 1: Free-of-Charge

Patent holder prepared to negotiate licences free of charge on a non-discriminatory basis on reasonable terms.

#### Option 2: FRAND commitment

Patent holder prepared to negotiate licences on a non-discriminatory basis and on fair, reasonable terms and conditions.

#### Option 3: Unwillingness to licence

Patent holder is not willing to grant licences in accordance with option 1 or 2.

- If a patent holder selects licensing **option 1** or **option 2**, the following applies:
  - **Negotiations are left to the parties** concerned and are carried out outside CEN and CENELEC.
  - Licensing declarations are **irrevocable**, to the extent the patent remains essential to the standard.
  - **Reciprocity (optional)**: licensing commitment conditional on obtaining commitment, where applicable, from the prospective licensee to license its patent(s), for implementing the standard.
  - Licensing declarations **shall bind all successors-in-interest** as to the transferred patent.
- If a patent holder selects licensing **option 3**, the following patent information is “**requested**”:
  - Granted patent number, patent application number (if pending), or registration number.
  - An indication of which portions of the standard are affected.
  - A description of the claims covering the standard.
  - A standard will not be published with those patented elements.



# The declaration looks like...

Patent granted "free of charge"

Patent granted € at FRAND conditions

Patent not granted

## 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 required 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 a free of charge license 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 IPR Holder's willingness to license is conditioned on reciprocity for the above document.*

*Also mark here \_\_\_ if the IPR 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. Patent or other IPR Holder is prepared to grant a license to an unrestricted number of applicants on a worldwide, non-discriminatory basis and on 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 IPR Holder's willingness to license is conditioned on reciprocity for the above document.*

3. The Patent or other IPR Holder is unwilling to grant licenses in accordance with provisions of either 1 or 2 above.  
In this case, the following information is strongly desired by CEN and CENELEC as part of this declaration:
- granted patent number, patent application number (if pending), or registration number;
  - an indication of which portions of the above document are affected;
  - a description of the claims covering the above document.

**Free of charge:** The words "free of charge" do not mean that the IPR Holder is waiving all of its rights with respect to the essential intellectual property right. Rather, "free of charge" refers to the issue of 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 license 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, the word "reciprocity" means that the 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.

# Practical implementation



- Company A makes a product and needs to implement a standard
- The standard contains an essential patented technology of company B
- Company A needs a licence to use that patented technology
- Thanks to the patent declaration, company B is committed to deliver such a licence for free or by payment at FRAND conditions

**The standard can be implemented**



# CEN and CENELEC Patent Policy:

## Process Guidance to Technical Committees



### ► Requirements :

1. Use all efforts to inform CEN or CENELEC of patents/patent applications deemed essential
2. Inform CEN or CENELEC of any **up-to-date legal status information** on essential patents or patent applications (e.g., change in ownership, lapsed application, jurisdictions, IPR still valid or in force)
3. Proceed, where possible or applicable, with **early disclosures** of granted patents or pending patent applications (meaning as early as possible throughout the work of the Technical Committee)
4. Notify CEN or CENELEC of all patents or patent applications deemed essential for the standard or publication, accordingly with the rules defined under Guide 8 on **declarations and commitments**

### ► Duty of Chairs :

1. Ask, at an appropriate time in each meeting, whether anyone has knowledge of patents deemed essential for implementing the standard or publication. This must be reflected in meeting reports
2. Ensure that patent holder(s)/applicant(s) sign(s) relevant SEP Declaration(s) prior to any publication
3. Ensure that experts / contributors are well acquainted with the rules of CEN and CENELEC Guide 8



# CEN and CENELEC Patent Policy:

## Process Guidance to Technical Committees



### ► Always remember:

1. The disclosure of patent information shall be made in good faith and on a best effort basis only
2. TCs/WGs shall not take position on the scope, validity or specific licensing terms of essential IPRs
3. Third-parties (non-members of Technical Committees) can also draw attention to essential IPRs
4. Submit signed SEP declarations to CEN or CENELEC to be then added to a centralised database
5. Licensing negotiations or discussions shall take place outside the CEN and CENELEC system
6. Licensing declarations **shall bind all successors-in-interest** as to the transferred patent
7. In case of any doubts or questions, always contact CEN and CENELEC's legal team: [legal@cencenelec.eu](mailto:legal@cencenelec.eu)

### ► If a patent owner / applicant is unwilling to licence:

1. Notify, without delay, the responsible Project Manager and Technical Bodies at CEN or CENELEC
2. Take appropriate action, incl. further examination or revision of the standard prior to publication
3. In case of any doubts or questions, always contact CEN and CENELEC's legal team: [legal@cencenelec.eu](mailto:legal@cencenelec.eu)



## □ What is copyright?

- Exclusive right that protects a work that is an **original intellectual** creation
- A work must be expressed in **concrete forms** (“expressions”)
- **Protection arises automatically** when a work is created and no registration required
- Copyright protects a **wide range of works**, incl. content structured in digital formats
- Copyrighted works cannot be used or reproduced **without prior permission**
- Copyright will subsist in the work for a certain number of years depending on the applicable law (70 years). Once this period is over, the copyright will no longer apply to the work, and it will be in the public domain

### Eligible for copyright protection:

- Literary works
- Artistic works
- Computer programs and databases
- Paintings, drawings, photographs
- Etc.

### Excluded from copyright protection:

- Legislation
- Mere ideas
- Procedures or methods of operation
- Mathematical concepts
- Etc.



# Copyright and standards

## □ Standardization?

- Standards are copyrighted collective work made by a set of independent, original inputs from experts (“the authors”)
- Standards meet the threshold of originality, as reflecting free and creative choices.

## □ Important to remember:

- Any use or reproduction of a standard **requires the prior permission** of the rightful copyright owner
- Any use or reproduction of copyrighted content of other standardization bodies require prior permission.
- **Avoid plagiarism** when reproducing copyrighted content (requirement to cite and reference original sources)
- Reference of standards in laws and regulations does not extinguish copyright of CEN-CENELEC
- To ensure the effectiveness of standardization as policy tool, the system must be **financially viable**.
- The sale and licensing of standards is necessary to sustain the European standardization bodies’ business models



# Copyright within CEN and CENELEC



- Standardisation work at CEN and CENELEC is:
  - Only partly publicly financed (20% EC/EFTA support)
  - Predominantly refinanced through sales or licensing via the Members (NSBs/NCs)
  
- Different model to other standardisation bodies
  - The system is not hybrid (unlike ISO or IEC that may directly sell and distribute)
  - Prepayment is required before any usage (content is only accessible via NSBs/NCs)
  
- Purpose of the CEN and CENELEC copyright policy (“Guide 10”) is to explain:
  - Why standards or other publications are protected by copyright
  - How standards or other publications are distributed and/or sold



# CEN and CENELEC Copyright Policy



- CEN-CENELEC Guide 10 on distribution and sales of publications
- All NSBs and NCs enjoy the exclusive exploitation right on CEN and CENELEC publications in their countries (to distribute, sub-distribute, adjust, translate, rent, duplicate, exploit licences with royalty payments....)



## CEN-CENELEC GUIDE 10

**Policy on the distribution,  
sale and copyright of CEN  
and CENELEC Content**

**Edition 5, 2024-01**

CEN and CENELEC intend to issue the new CEN-CENELEC Guide 10 through CEN and CENELEC and CENELEC's national members. The document addresses CEN-CENELEC Guide 10:2017.



# Process Guidance: Establishing copyright ownership

- Exclusive right of exploitation in own territories
- Scope of licencing: irrevocable, **exclusive exploitation right**, worldwide, transferrable, free-of-charge, sub-licensable
- Rights: translate, communicate to the public, sell, distribute or otherwise, by any means and in any form
- CEN and CENELEC retains copyright ownership, under Belgian law

CEN and CENELEC Members

CEN and CENELEC CONTENT/PUBLICATION

*Collaborative Work*

Technical Committee

Working Group

- Exclusive right of exploitation in own territories
- Scope of licencing: irrevocable, **exclusive exploitation right**, worldwide, transferrable, free-of-charge, sub-licensable
- Rights: translate, communicate to the public, sell, distribute or otherwise, by any means and in any form
- CEN and CENELEC retains copyright ownership, under Belgian law

- Adequate copyright notices on the granted rights
- Original author(s) retains 'moral rights' (inalienable)
- No adverse effects on the CEN or CENELEC Content

## Exploitation Rights Assignment Statement (ERAS)

- Signature requested at every meetings
- Scope of assignment: irrevocable, worldwide, transferrable, free-of-charge, sub-licensable
- Covers all languages, irrespective of the means or forms
- Contractual terms governed by Belgian law

## Exploitation Rights Licence Agreement (ERLA)

- IPR owner contacted to fill in and sign the ERLA
- Scope of licencing: irrevocable, worldwide, transferrable, free-of-charge, sub-licensable
- Covers all languages, irrespective of the means or forms
- Contractual terms governed by Belgian law

Transfer of rights from Experts

Transfer of rights from Third-Parties

*Pre-existing Work*



# In short

**Experts assign their  
Copyright &  
Exploitation Rights to  
CEN and CENELEC**

**CEN and CENELEC  
assign the  
Exploitation Rights to  
their CEN and  
CENELEC Members**

**CEN and  
CENELEC can  
claim  
copyright**  
Members can  
exploit the  
publications



# Transfer of copyright

- Despite transfer of rights, each expert still may continue
  - to use and exploit their own contribution for their own purposes, provided that such use does not **negatively impact the exploitation of the joint work**



# CEN and CENELEC Copyright Policy:

## Process Guidance to Technical Committees



### ► Always remember:

1. CEN and CENELEC have the copyright in all their respective publications
2. CEN and CENELEC do not sell or distribute European standards in a centralized manner.
3. CEN and CENELEC assign the exclusive right to exploit their publications to their respective Members.

### ► Any granted rights or transfers must be evidenced:

1. Experts in Technical Committees must sign an **Exploitation Right Assignment Statement** (ERAS).
2. Third-party contributors to a standard must sign an **Exploitation Rights Licence Agreement** (ERLA).
3. If not yet the case, the reproduction of content of other standardisation bodies require an agreement.
4. Any documents cited above must be saved and made easily accessible, as may be needed over time.
5. In case of any doubts or questions, always contact CEN and CENELEC's legal team: [legal@cencenelec.eu](mailto:legal@cencenelec.eu)



# Trademarks



- ▶ Any sign capable of being represented graphically and that is **sufficiently distinctive to distinguish** good or services from one undertaking to those of others.
- ▶ Trademark can be a word, a figure, a colour or a sound..
- ▶ Territory shall be where you expect to sell the products or services or where they are manufactured
- ▶ Examples of CEN and CENELEC trademarks



[cencenelec.eu](http://cencenelec.eu)  
[cencenelec.org](http://cencenelec.org)

[standards.eu](http://standards.eu)  
[european-standards.eu](http://european-standards.eu)  
[eu-china-standards.eu](http://eu-china-standards.eu)

[meetingcentre.org](http://meetingcentre.org)  
[keymark.eu](http://keymark.eu)  
[cencer.eu](http://cencer.eu)

- ▶ Use and protection of the trademarks and domain names is covered in **Guide 24**



## □ Patents

- [CEN-CENELEC Guide 8 “Guidelines for implementation of the common IPR policy on Patent”](#)

## □ Copyright

- [CEN-CENELEC Guide 10 “Guidelines for the distribution and sales of CEN-CENELEC publications”](#)

## □ Trademarks

- [CEN-CENELEC Guide 24 “Use and protection of the trademarks and domain names of CEN and CENELEC”](#)



# Confidentiality of documents

- ❑ Do not distribute any CEN or CENELEC working documents outside the bodies involved in CEN and CENELEC work (IR Part 2).
  
- ❑ To not reproduce, modify, or adapt deliverables except as needed to perform assigned tasks
  
- ❑ Risks of loss of confidentiality could lead to:
  - ❑ Risks of new patents that will overlap with standards if they are disclosed too early
  - ❑ Early sharing with third parties reduces the benefits of participating in BT or TC work



## Principle

## Description

Lawfulness and transparency

Data processed in compliance with GDPR communicated clearly to stakeholders via [CEN and CENELEC website](#)

Purpose limitation

Data collected only for standardization-related purposes (e.g. name, mail address, phone number)

Data minimization

Only essential data is processed to reduce risk

Security measures

Includes access controls, and secure IT systems

Internal policies

Staff training, confidentiality obligations, and internal Procedures (e.g. data breach...)



# Questions?

