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AQUA observes increased letter-writing practice of SEP patent owners

AQUA members have recently reported an increasing trend in which utility companies receive letters from owners of standard essential patents (SEP). In the letters the patent owners claim that the smart water or district heating meters installed by the utility companies use their patented communication technology and that the utility companies therefore owe licence fees.

AQUA is concerned by this behaviour of the patent owners which appears to intend to increase pressure and to speed up negotiations in a highly complex patent matter, namely that of standard essential patents*.

While owners of these patents are entitled to a fair licence fee from whoever should properly pay it, working out who that is, and what a fair licence fee is, is genuinely complex with thousands of patents involved.

The patented communication technologies in question are primarily cellular communication (NB-IoT, 4G, 5G) or Wi-Fi. They are fully standardized communication protocols but also protected by a myriad of patents from a large number of patent owners. Clarifying the problem of standard essential patents has been ongoing for years with the European Union launching a proposal for an SEP patent regulation but then withdrawing it. A regulatory vacuum has emerged. AQUA is watching the development and has established a standing working committee on the topic of standard essential patents, and works for creating fair and predictable rules for SEP licensing.

What AQUA recommends

Utility companies that have received such a letter should not feel pressured to agree to any payment or to sign anything. Instead, promptly forward the letter to your smart meter manufacturer who is best placed to continue the discussion with the patent owner.

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* A Standard Essential Patent is a patent that covers important parts of a technical standard and was granted to a patent owner upon the owner's promise to license the patent under fair, reasonable and non-discriminatory conditions.