

UK IPO

SME and SEPs Questionnaire findings

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NOT GOVERNMENT POLICY

Background

- A call for views was undertaken to gather evidence on whether the UK framework around standard essential patents (SEPs) is functioning efficiently and effectively and struck the right balance for all businesses involved. Government published a Summary of Responses in August 2022.
- Some respondents to that call for views said that the SEPs licensing framework worked well, as evidenced by the fast adoption of connected technologies. But some said that the current framework creates issues or barriers to innovation, particularly for smaller businesses and start-ups.
- Those issues and barriers included:
 - ❖ Lack of transparency in the licensing system, including around pricing of SEPs.
 - ❖ An uncertainty around the essentiality of patents to technical standards.
 - ❖ Threats of court-imposed injunctions and the potential for litigation impacting on businesses' approach to effectively licensing of SEPs.
- We wanted to obtain more evidence directly from UK SMEs, small-cap and mid-cap businesses, and we launched a questionnaire. The questionnaire would allow us to better understand those issues and barriers, and explore what experiences these businesses faced in respect of SEP licensing and interacting with or using technical standards.
- The questionnaire closed on 25 April and a Summary of Responses was published on 5th July 2023.

High-level summary of what we heard:

Licensing of SEPs – *at least some evidence from respondents that: they were involved in SEP licensing as implementers; didn't know a licence was needed; had been approached by SEP holders to take a licence; had reached out to SEP holders to seek or clarify licences. Also, some responses from those who were SEP holders.*

Transparency around licensing – *at least some evidence of: insufficient clarity around what constitutes fair rates; imbalance between negotiating parties; information asymmetry and lack of predictability for SMEs; lack of certainty around FRAND rates; insufficient information as to essentiality*

Licensing disagreements – *larger proportion of respondents (who are involved in licensing) claimed that they experienced issues when licensing, including significant proportion claimed licences offered weren't FRAND; Limited evidence around utilisation of ADR*

Framework challenges – *at least some evidence on changes required to the SEPs licensing frameworks in order to make it work better, including better support for smaller businesses, increased predictability for licensees and more SME involvement in standard development.*

Key topics covered in the SME Questionnaire

- Section one – Profile of respondents
- Section two - Understanding of and involvement in technical standards
- Section three - Licensing of SEPs and transparency
- Section four – Changes required to SEP licensing framework

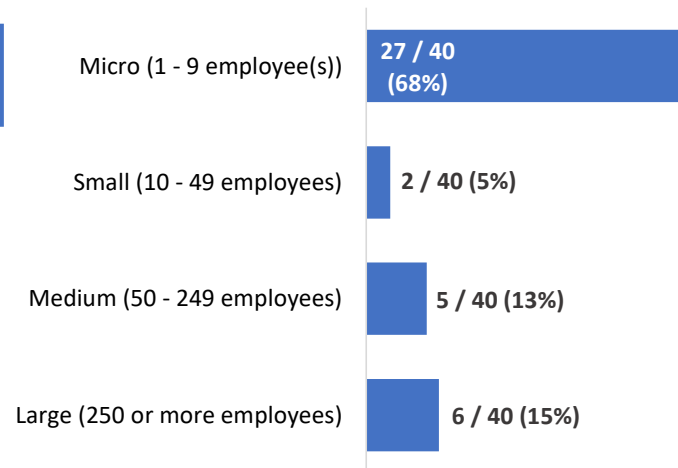
Section one: number and profile of respondents

The questionnaire received **47 responses with 40 passing validation***.

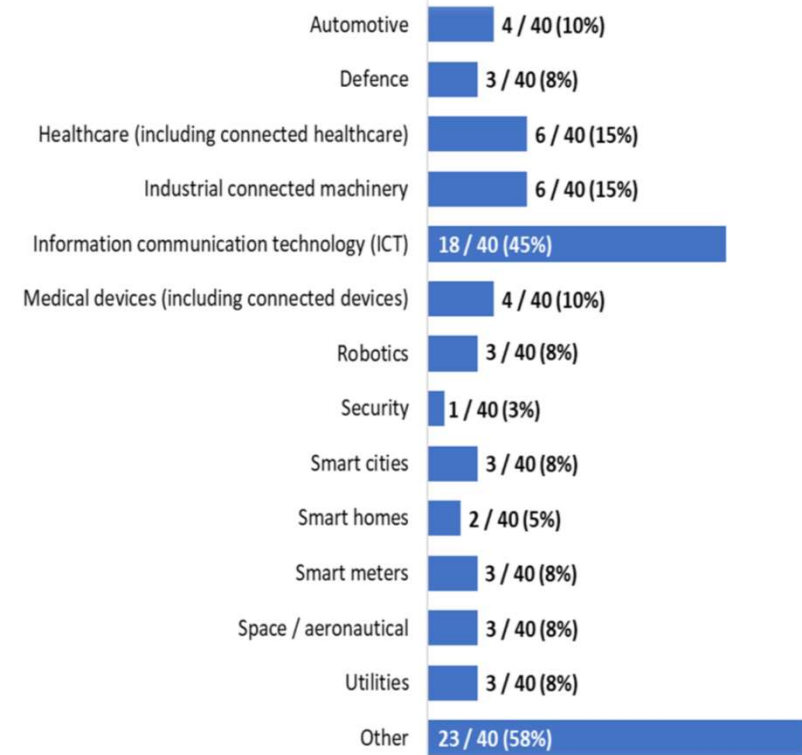
Is your company UK headquartered?



Size of your company?



Industry in which your company operates

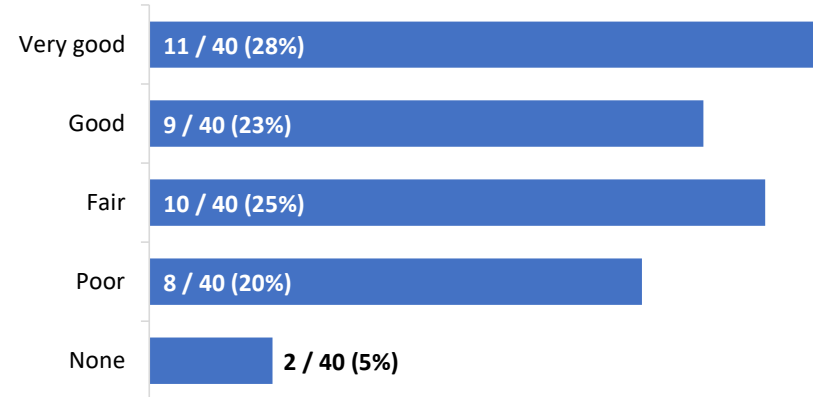
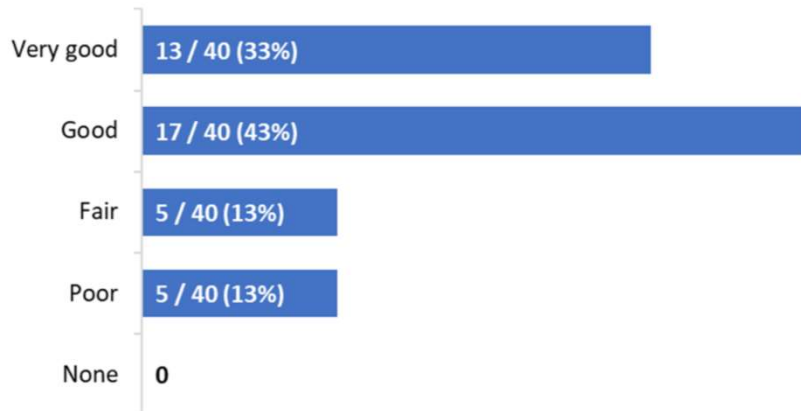


Section two:

Are you involved with technical standards?

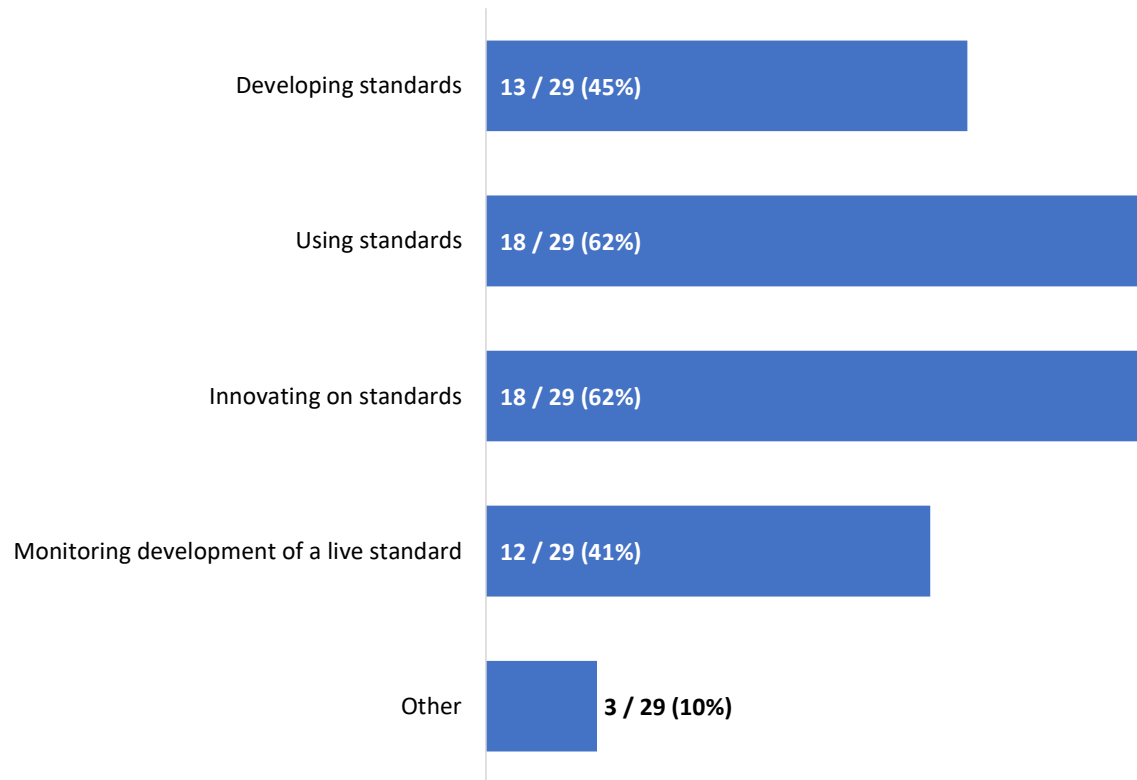


Your understanding of technical standards (left) and SEPs (right)



Section two: continued

In what capacity are you involved in technical standards?



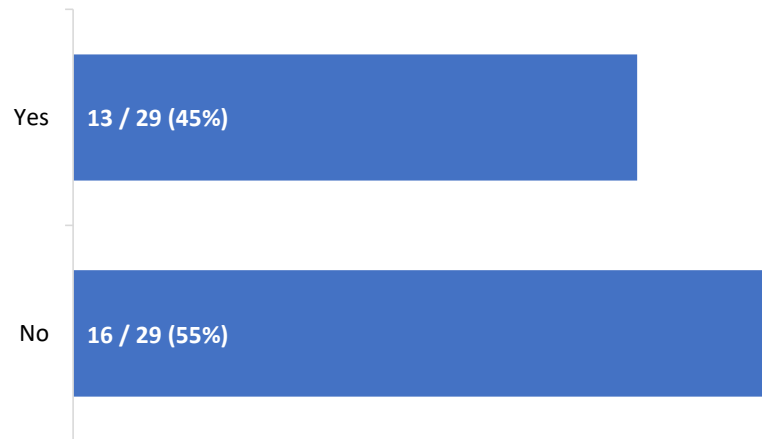
Section three: Licensing of Standard Essential Patents

We heard: Some respondents to the call for views said that the licensing of SEPs was a difficult and complex landscape to navigate, particularly for smaller businesses and start-ups when entering the market.

We asked: whether smaller businesses had involvement in licensing of SEPs and, if so, in what capacity

Our findings:

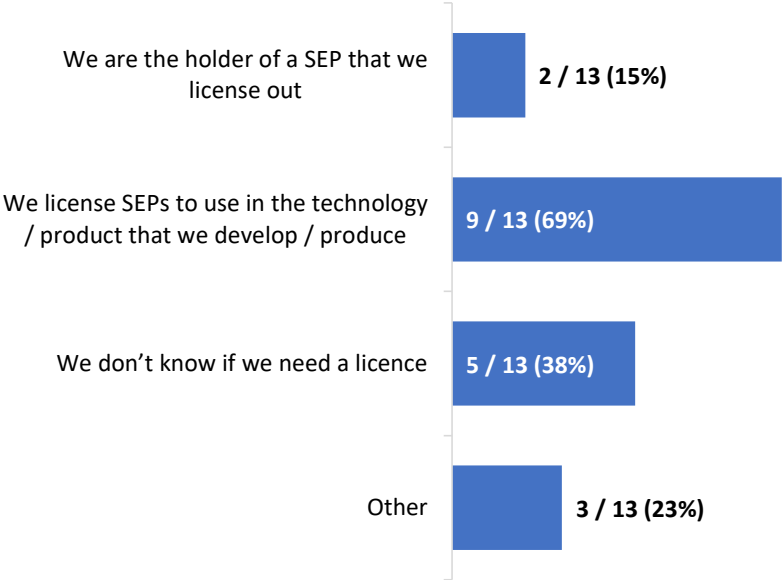
Are you involved in SEP licensing or negotiation of a SEP licence?



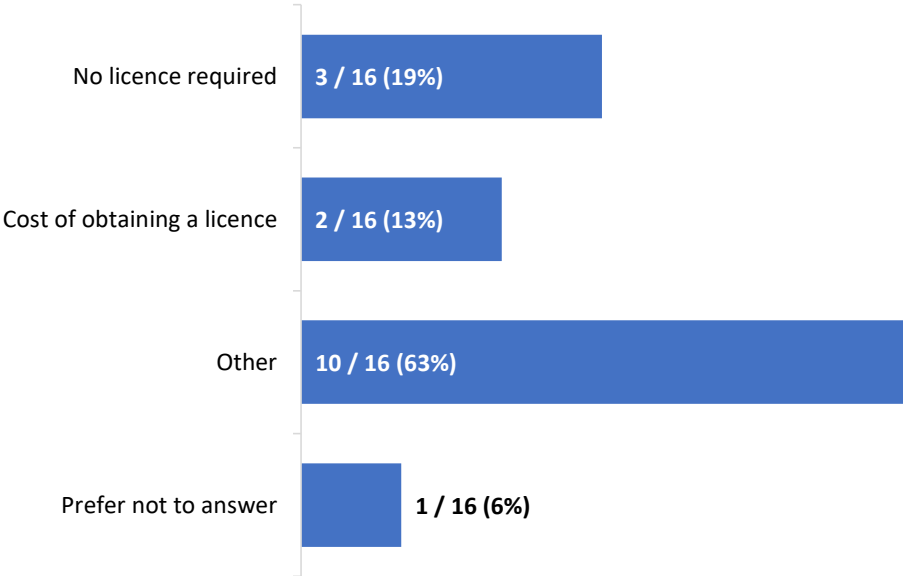
Section three: Licensing of Standard Essential Patents continued

Involvement in SEP licensing.

Indicate how you are involved in SEP licensing:



Indicate why you are not involved:

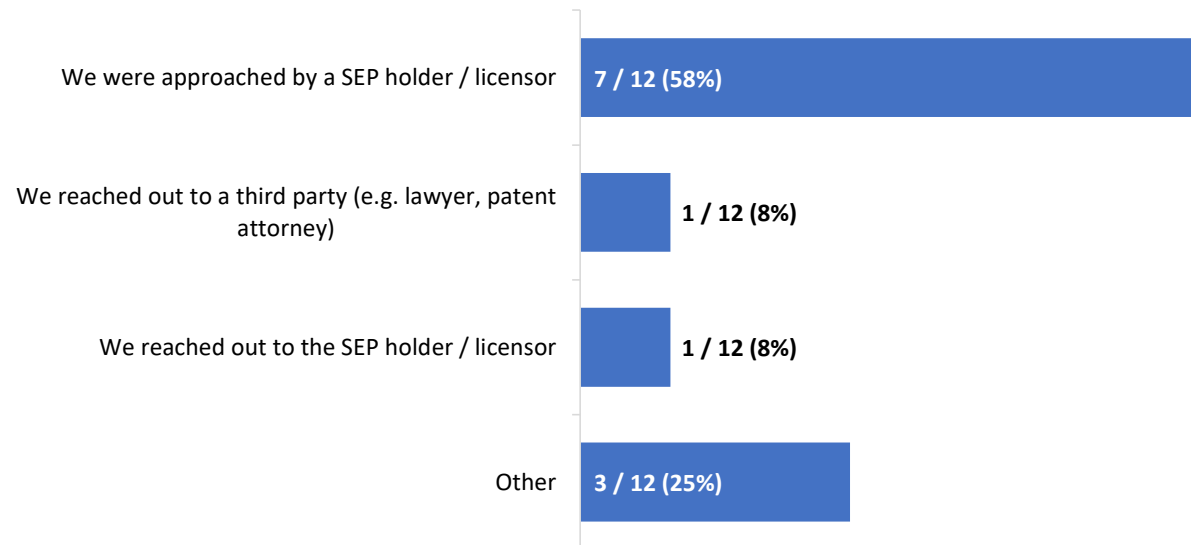


Section three: continued (need for a licence)

We heard: a number of respondents to the call for views claimed that, for various reasons, SEP holders do not approach SMEs to take licenses, while other respondents suggested that they were actually approached or proactively approached by SEP holders.

We asked: We asked SMEs for the circumstances under which they took a licence

Our findings:



Section three: continued (transparency)

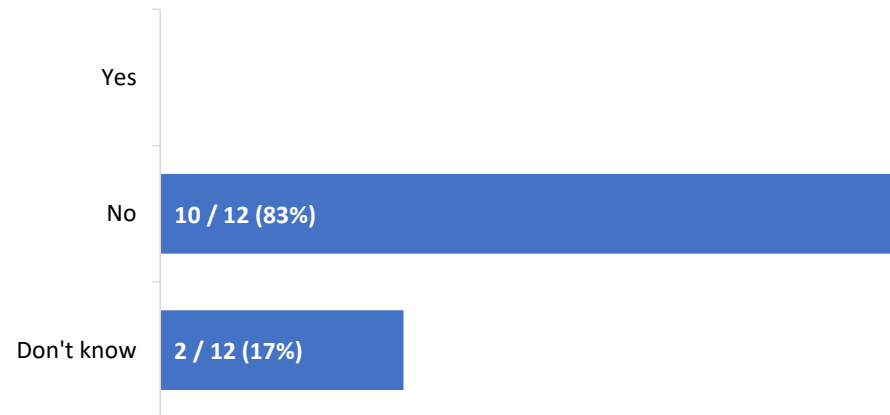
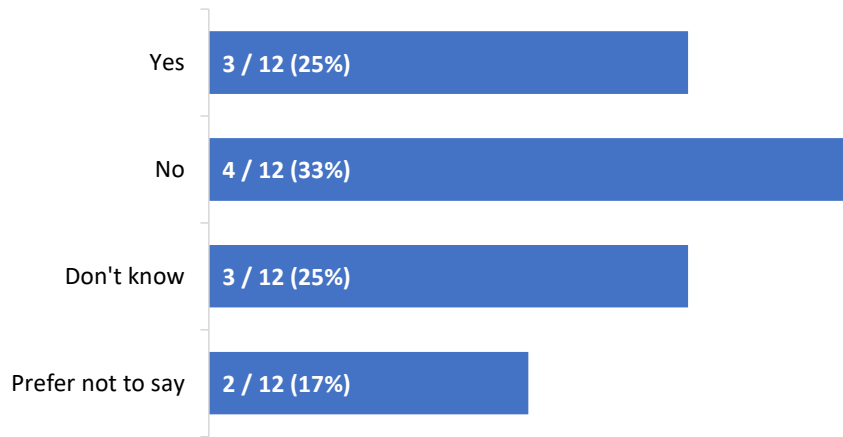
We heard: Some respondents stated that more information around the licencing of SEPs needed to be made available, including guidance to help overcome information concerns.

We asked: Whether there is sufficient information in relation to the innovation that is relevant to the SEP being offered and whether sufficient information was available in respect of pricing.

Our findings:

Sufficient information in relation to the innovation that is relevant to the SEP:

Sufficient information available in respect of pricing:



Section three: continued (transparency)

We heard: some respondents said that there was a lack of transparency around the technologies that were being declared during the standardisation process, and the issues this created for SMEs implementing standards that they were locked in to.

We asked: whether there is sufficient information on whether the patent(s) you are licensing is essential to the technical standard relied on?

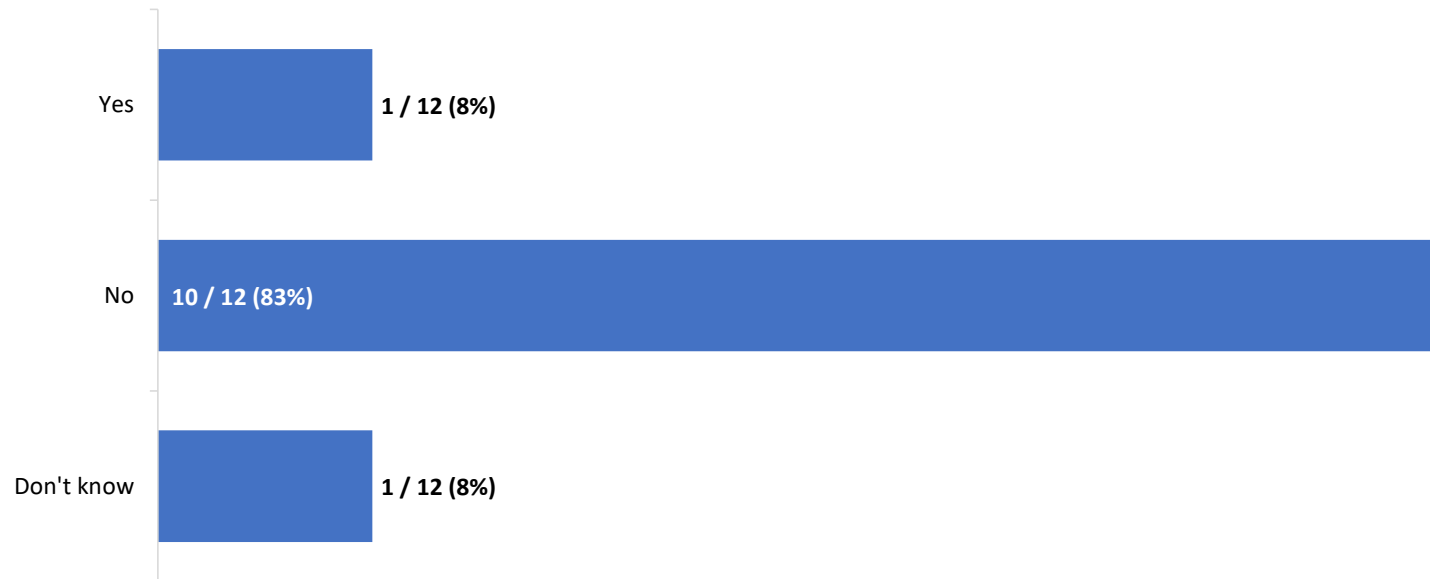
Our findings:



Section three: continued (FRAND terms)

We heard: a number of respondents claimed that they did not accept licensing offers as they did not think they were FRAND.

We asked: whether you believe you were offered a licence on FRAND (Fair, Reasonable And Non Discriminatory) terms?



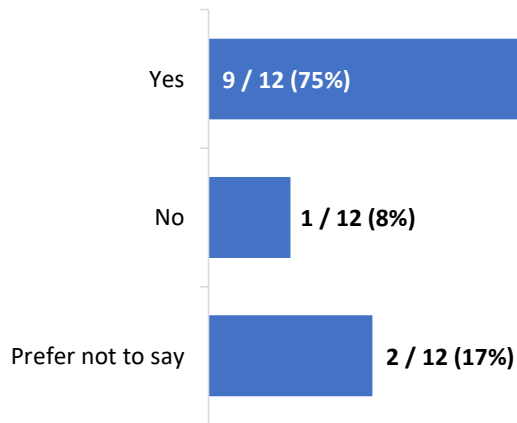
Section three: continued (FRAND terms)

We heard: a number of respondents claimed that they did not accept licensing offers as they did not think they were FRAND.

We asked: whether there had been disagreement with the terms of a licence or the offered rate.

Our findings:

Have you disagreed with the licensing terms:

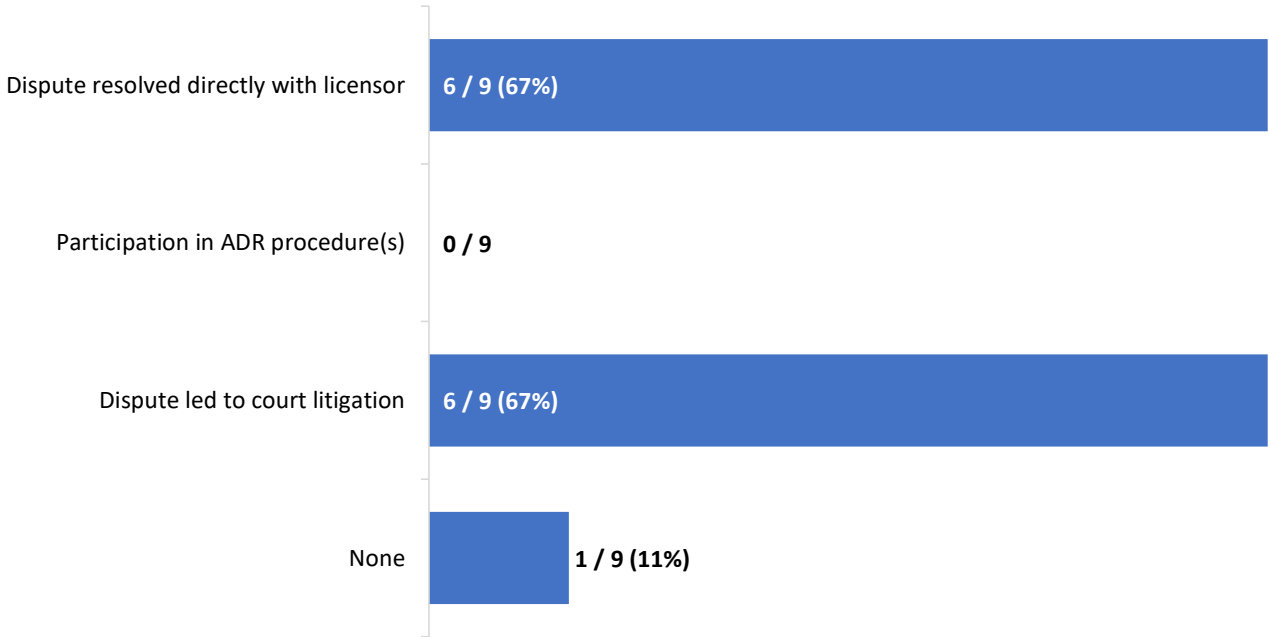


When asked if the licensing disagreement has been resolved:



Section three: continued (Dispute resolution)

We also asked: whether In the process of resolving a licensing disagreement, have you or your business experienced any of the following?



Section three: continued (Injunctions)

We heard: Some respondents stated that there were issues in respect of threats of an injunction if SEP licensing terms were not accepted.

We asked: whether the threat of a court imposed injunction is a concern

Our findings:

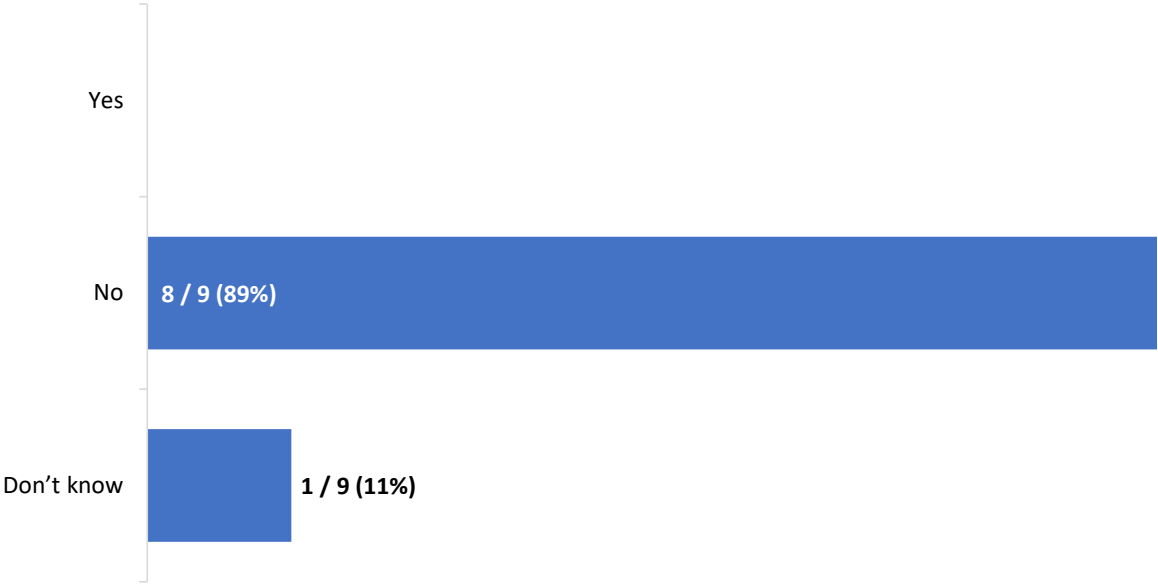


Section three: continued (Litigation)

We heard: Some respondents said that licensees had to remove their products from the market as a result of legal action taken against them by a SEP holder.

We asked: whether a product had to be removed from the UK market due to a legal action

Our findings:



Section four: Changes required to SEP licensing landscape

- **We asked:** Are you aware of any limitation to your company's success in the current SEPs licensing framework?
- **One or more responses suggested:**
 - ❖ A lack of knowledge on the existence of standards and their scope
 - ❖ Lack of financial funds e.g., to engage with the relevant standard and its SEP holders
 - ❖ Hold-up claimed to be a problem
 - ❖ The SEPs licensing system puts SMEs at a competitive disadvantage

Section four: continued (improvement in transparency)

- **We heard:** Suggestions from respondents (including representatives of smaller businesses) on ways to improve the licensing system.
- **We asked:** What, if anything, could improve transparency in SEPs licensing, or otherwise make SEPs licensing more efficient?
- **One or more responses suggested:**
 - ❖ There needed to be improvements made in respect of transparency around licensing of SEPs, including clarity around the FRAND meaning
 - ❖ A role for the competition authority to enforce FRAND obligations
 - ❖ More transparency around “license to all” to make licensing more efficient
 - ❖ Consideration of legislative changes, including legislative changes to clarify when injunctions should not be available and further changes in respect of notice to parties of court applications to help reduce litigation.

Next Steps

- Finalise the review evidence to inform our policy development
- Continue engagement with colleagues across UK government to ensure the IP framework strikes the right balance for the maximum benefit to UK innovation
- Continue to engage with international partners on SEP policy developments
- Present our policy findings in respect of SEPs ecosystem to Ministers by end of 2023
- Any significant policy recommendations/interventions subject to public consultation next year

Questions?