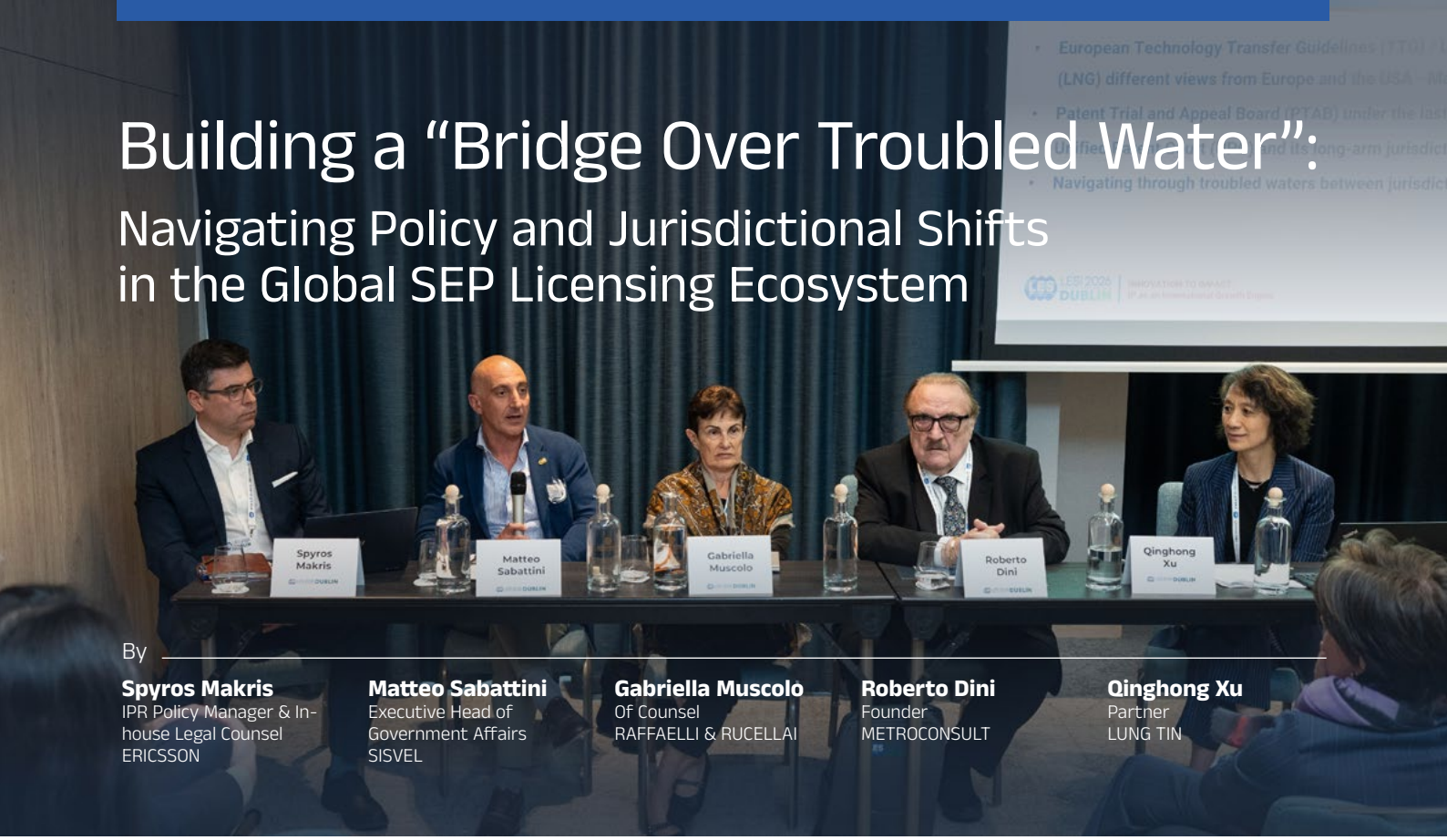
Building a "Bridge Over Troubled Water":

Navigating Policy and Jurisdictional Shifts in the Global SEP Licensing Ecosystem



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At the 2026 LES International Annual Conference in Dublin, a panel of experts discussed one of the most pressing challenges in today's intellectual property landscape: how to ensure stability and predictability in the increasingly complex ecosystem of standard essential patents (SEPs).

Titled *"The Need of Building a 'Bridge Over Troubled Water' – Recent Policy and Regulatory Changes Affecting the Global Licensing Ecosystem, with a Focus on SEPs,"* the panel explored how policymakers, enforcers and industry stakeholders can reconcile diverging legal frameworks and commercial interests. The overarching objective was clear: to identify practical pathways to bridge conflicting approaches and avoid fragmentation across jurisdictions.

A System Under Pressure

The current SEP landscape is increasingly shaped by regulatory intervention, overlapping jurisdictions, and growing complexity — conditions aptly described as "troubled waters." While SEPs have become a cornerstone of modern innovation ecosystems, their governance sits at the intersection of patent law, contract law and competition policy, making them particularly sensitive to policy shifts and regulatory recalibration.

Diverging Policy Approaches: LNGs, TTG, and Antitrust Concerns

Recent developments in Europe — particularly regarding the Technology Transfer Guidelines (TTG) and licensing negotiation groups (LNGs) — illustrate the challenges of maintaining balance in the licensing ecosystem.

Recent "comfort letters" issued by the European Commission and the German Bundeskartellamt concerning auto licensing negotiation groups (ALNGs) were intended to provide guidance. However, questions have been raised about the robustness of the underlying analysis. In particular, the lack of a clearly defined relevant market and the absence of stakeholder consultation raised concerns about the reliability of these assessments.

Importantly, LNGs should not be treated as the mirror image of patent pools. While pools aggregate complementary patents and are structured to facilitate licensing under FRAND principles, LNGs bring together downstream competitors - often with aligned incentives that may raise antitrust risks and result in coordinated "hold-out" strategies rather than efficient licensing negotiations.

A notable regulatory asymmetry further complicates matters: while patent pools have been widely tested and face increasing compliance requirements under the revised TTG, no equivalent experience exists for LNGs. This creates uncertainty and raises broader questions regarding balance and incentives within the licensing ecosystem.

Furthermore, unlike joint purchasing groups, where tangible goods are at stake, LNG participants are already using the technology, *i.e.*, an intangible asset, at the time of negotiation, free riding and potentially weakening incentives to conclude licences and increasing the risk of artificially depressing FRAND rates.

Further concerns relate to the novelty of LNGs and the still limited real-world experience with these structures. There is limited experience of how LNGs would operate in practice and what their actual market impact might be, as well as a lack of market failure justifying intrusive regulation or lenient treatments.

This makes any broad endorsement premature from a competition policy perspective. While targeted guidance could prove helpful, it would require a more robust analytical and empirical foundation. In this respect, it is positive that regulators have so far refrained from introducing a formal safe harbour for LNGs.

From a commercial standpoint, the expected efficiencies of LNGs also remain uncertain. Agreements reached with an LNG at the collective level shall not be binding on all LNG members, meaning that bilateral negotiations may still be required. This calls into question whether LNGs can deliver meaningful reductions in time and costs for either patent owners or implementers.

Finally, the global nature of SEP licensing makes an aligned treatment of LNGs across jurisdictions particularly important. Yet current approaches appear fragmented, with differing perspectives emerging among the European Commission, the German Bundeskartellamt, and the U.S. Department of Justice. This lack of convergence creates additional complexity and uncertainty, as well as compliance challenges for market participants operating internationally.

PTAB Developments: Procedural Tightening and Geopolitical Influences

Turning to the United States, recent developments at the Patent Trial and Appeal Board (PTAB) illustrate how procedural changes are reshaping patent disputes.

A key shift has been the centralization of institution decisions under the USPTO Director, aimed at ensuring greater consistency and efficiency in America Invents Act (AIA) proceedings.

More significantly, the precedential *Tianma v. LG Display* decision has tightened requirements around identifying the "real party in interest" (RPI). The ruling extends existing limitations to foreign government entities, shifts the burden of proof to petitioners when RPI is challenged, and integrates national security considerations into PTAB review. As a result, cases may be dismissed on procedural grounds without reaching the merits, while parties with complex or state-linked ownership structures face increased scrutiny and compliance burdens.

Additional guidance issued in 2026 also introduced discretionary factors favouring U.S. economic interests, including protections for domestic manufacturing and small businesses. While this strengthens the defensive position of U.S.-based patent owners, it may reduce the effectiveness of PTAB challenges for foreign or offshore entities. Overall, these developments reflect a broader alignment between patent procedures and industrial and geopolitical policy objectives.

The UPC and the Expansion of Jurisdiction

The panel also examined the evolving regulatory and judicial landscape surrounding SEPs in Europe, emphasizing a preference for case-by-case *ex post* enforcement over broad *ex ante* regulation. While legislative initiatives on SEPs remain uncertain - particularly in light of institutional tensions between the European Commission and the Parliament - no clear market failure has yet been identified that would justify intrusive regulatory intervention.

The Unified Patent Court (UPC), conceived as a "common court" within the EU legal framework, represents a significant step toward greater harmonization and efficiency in patent enforcement. However, recent case law suggests that its reach may extend beyond traditional territorial limits, raising important questions about legal certainty and the risk of jurisdictional overreach.

In particular, the 2025 *BSH Hausgeräte v. Electrolux* judgment of the Court of Justice of the EU (CJEU) confirmed that, under certain conditions, European courts may adjudicate the infringement of foreign patents, reinforcing a shift toward a more effects-based approach to jurisdiction. The *BSH v. Electrolux* ruling is already influencing UPC practice, where jurisdiction has been asserted in disputes involving non-EU patents and parties.

At the same time, the boundaries of this "long-arm" jurisdiction remain unclear, as the case law is still developing. The UPC has shown a degree of caution - particularly regarding the jurisdiction based on the notion of "anchor defendants" - referring key questions to the CJEU. Moreover, it has highlighted potential practical limitations to the reach of the "long-arm" jurisdiction, noting that enforcement measures may depend on recognition of UPC judgments by foreign courts.

Beyond jurisdictional issues, practical challenges also arise. Courts may be required to apply foreign patent law when dealing with non-EU rights, requiring expertise that must regularly be obtained through external experts. This may increase both the duration and cost of proceedings, potentially offsetting the efficiency gains associated with broader jurisdiction.

Such an approach contrasts with the UK model, where courts retain a fundamentally territorial

jurisdiction but can influence global outcomes by setting worldwide FRAND rates and leveraging injunctions. In this context, the global dimension operates more at the contractual and remedial level, rather than through a formal extension of jurisdiction.

These diverging approaches highlight a central challenge: while courts seek to provide effective remedies in global disputes, any expansion of jurisdiction must be carefully balanced against the need for legal certainty, predictability, and respect for territorial principles.

Navigating Jurisdictional Conflicts: Risks and Alternatives

Given the global nature of SEP disputes, parallel proceedings across multiple jurisdictions are increasingly common, often leading to tensions regarding the boundaries of national courts' authority. This has been reflected in the use of anti-suit injunctions (ASIs), anti-anti-suit injunctions (AASIs), and, more recently, anti-interim-licence measures.

The debate has now extended to the "long-arm" jurisdiction of European courts and the UPC, prompting reactions from other jurisdictions, including countermeasures by U.S. courts.

While the idea of an international tribunal for SEP disputes is occasionally discussed, it remains unlikely in the current geopolitical environment. Instead, alternative dispute resolution (ADR) - especially mediation and arbitration - is gaining traction as an already existing practical solution.

Institutions such as WIPO have tailored offerings in this field, and new initiatives such as the Patent Mediation and Arbitration Centre (PMAC) may offer additional structured mechanisms. Standard-development organizations, *e.g.*, ETSI, are also exploring ways to encourage ADR, although consensus among stakeholders is still evolving. Industry-led initiatives, such as the WIPO IoT Mediation Pledge, further demonstrate how private actors can contribute to greater efficiency.

Conclusion: Toward a Stable Bridge

The global SEP licensing ecosystem is at a crossroads. Regulatory divergence, expanding jurisdictional claims, and geopolitical dynamics are increasing complexity and uncertainty.

Greater reliance on ADR, clearer and more consistent policy guidance, and a balanced recognition of the interests of both innovators and implementers could help build the "bridge" needed to navigate these troubled waters.

Ultimately, licensing remains a critical mechanism for supporting innovation by ensuring fair remuneration for patent holders while enabling broad access to standardized technologies. Striking the right balance will be essential - not only for the effective functioning of the SEP ecosystem, but for the broader innovation ecosystem it sustains. ■

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Panelists and audience at LESI 2026 Annual Conference, Dublin