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After contributing as part of the group providing the CIPA response to the UKIPO consultation on standard essential patents, AA Thornton's Geoff Hussey recently took part in panel discussion on SEPs and IP at the delayed "CIPA Computer Technology Spring Seminar", chaired by Simon Davies. The impressive list of speakers included M Jorge Cardoso of Kings College London, who gave an extremely interesting talk on the technicalities of AI, and Dr Nicki Curtis of the UKIPO, who spoke about the UKIPO's response to the recent consultation on AI and IP. Kevin Fournier then provided his experience in patent licensing for IBM. Adrian Howes, Head of IP and Standards, IP Regulatory Affairs at Nokia, provided a summary of recent developments in SEPs before joining Geoff in the panel discussion chaired by Rachel Free.

Geoff shared the following insights: "Both the response to the consultation and the panel discussion focussed on a number of the key issues relating to SEPs that have generated criticism in recent years, namely transparency, over-declaration, patent volume, licensing dynamics and barriers to entry for new entrants. With telecoms being the largest industry in which SEPs play a crucial role there is a tendency to focus on that sector, but the issues that arise are perhaps more contentious in other industries or perhaps for those sectors who want to make the most of the potential of internet access connected with their products (so called internet-of-things, IoT). Recent disputes have moved away from pure telecoms fights to disputes between telecoms companies and those in the automotive industry concerning FRAND licences.

It has to be recognised that SEPs appear to have worked well in the telecoms industry to incentivise investment and development of standardised technology. It also appears to have worked well for consumers with the speed of technological advancements. However, it cannot be known whether a different system could or would have been even better. It is with these thoughts in mind that there have been suggestions of changes that could be made to the system. One example of these is some kind of check on essentiality for self-declared patents to reduce the number of incorrectly declared SEPs, and if so, who should carry out and pay for those checks. Another is the possible requirement for FRAND royalties to be made publically available to remove the unknown element behind the 'fair' and 'non-discriminatory' aspects of the FRAND licence. There is also the idea of some kind of international tribunal for FRAND disputes, which may resolve the forum shopping issues and anti-suit injunctions that are becoming more common. Whether or not any of these ideas, or others, would prove to be beneficial cannot be certain, but the debate and discussion continues. It will be interesting to see the UKIPO's findings from the SEP consultation, which is due to be published shortly.