

Panel 3: Management of Intellectual Property Rights in Standards Activity

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HP Activity in Standards Organization

HP is currently active in about 200 standards organizations, including:

- ISO (International Organization for Standardization);
- ECMA International (formerly the European Computer Manufacturers Association);
- W3C (World Wide Web Consortium);
- INCITS (International Committee for Information Technology Standards);
- IEEE (Institute of Electrical and Electronics Engineers);
- IETF (Internet Engineering Task Force); and
- OASIS (Organization for the Advancement of Structured Information Standards)

Overall Point of This Presentation:

During development of a standard there should be transparency as to the license terms that will be available for patents that are essential to the standard.

Transparency on License Terms

Suggestions On Possible Input By Patent Owners :

- Patent owners who provide RAND commitment to attach sample license agreements;
- Patent owners to provide irrevocable commitment;
- Patent owners to include maximum royalty rate achieved by patent owner, to support reasonableness of proposed royalty rate.

Transparency on License Terms

Suggestions On Possible Language in IP Policy :

- IP Policy to define the term “RAND“

For example: *“the royalties that the patent holder could obtain in open, up-front competition with other technologies, not the royalties that the patent holder can extract once other participants are effectively locked in to use technology covered by the patents”* (Shapiro & Varian, 1999).

- IP Policy to define what is not “RAND”

For example: inconsistent with RAND to threaten injunction, or to require licensee to disclose unrelated patents.

Transparency on License Terms

Suggestions On Possible SSO processes:

- Allowing technologists to decide on the best technical solution while setting up separate and independent meetings in which patent licensing issues could be considered.
- To set up and sponsor patent pools, though a pool is not a substitute for transparency in licensing terms.

“Put another way, transparency on price can increase competition among rival technologies striving for incorporation into the standard at issue. They may allow the “buyers” (the potential licensees in the standard-setting group) to get a competitive price from the “sellers” (the rival patentees vying to be incorporated into the standard that the group is adopting) before lock-in ends the competition for the standards.. .”

Chairman Deborah Platt Majoras
Federal Trade Commission
Stanford University, California, September 2005

Transparency on License Terms

Importance of Transparency to Participation

Openness and transparency for all to review and understand encourages participation.

- Success of the standard corresponds with the increase in participation by holders of essential patent claims that participate, and increase in implementers to ensure higher level of adoption.
- Government-initiated standard organizations should pay particular attention to ensure participation is not negatively impacted by perceptions (regardless real or unfounded) that policies are unduly influenced by nationalist interests.