

Standards related patent Quality

A view from a standardisation organization

(the views expressed are personal views of the author and not necessarily those of ETSI)

EC/EPO Workshop on “Tensions between intellectual property rights and standardisation: reasons and remedies” ▪ Brussels, 22 November 2010

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IPRs and Standards

- ❑ **IPRs and Standards both play an important role in innovation and competition**

- ❑ **IPRs and Standards have different focus :**
 - **IPRs are destined to protect private investments**
 - **Standards are intended for open collective use**

- ❑ **Interrelation between Standards and IPRs has grown over time**

- ❑ **Economic interest in Standards essential patents also growing**

- ❑ **Undisputed need for clear rules how to handle IPRs in Standardisation organizations**

CHALLENGES

- ❑ Inventions made during the standardisation process
- ❑ Documentation availability and usability for patent Examiners
- ❑ Transparency of claimed essential patents with regard to
 - Essentiality
 - Status of the patent
 - Value of patent for the standard

Inventions made during Standardisation

- Economic interest in Standards essential patents is growing
- Participants file patents based on the knowledge gained in standardisation meetings
- Increasing number of marginal patents
- Risk of complicating the solutions just for getting patented technology into the standard rather than to improve the standard

Documentation availability and usability for patent Examiners

Contradicting interests

- **Standardization organizations and their members want to protect their work during the standardisation process (Value of membership)**

versus

- **Determination of prior art and priority dates for patent examiners**

Wide range of current behavior (ISO, ETSI, 3GPP)

Cooperation of Standardisation organizations and patent offices needed in order to improve transparency and thereby the quality of patents

Transparency of claimed essential patents

Essentiality

- Companies sometimes declare patents in a vague way, not always identifying the relevant part of the standard

Status of the patent

- Once a patent or patent application is declared there is no mandatory follow up

Value of patent for the standard

- No mechanism exists to determine whether a patent claim brings a standard forward (real innovation) or just tries to get a patent into the standard in order to make money.

ETSI's approach

- ❑ EPO is an ETSI member → access to ETSI documents including contributions and drafts for EPO and National Patent Offices
- ❑ ETSI <-> EPO MoU
- ❑ Improve usability
 - Mandatory form sheets for IPR declarations
 - Clear dates on all ETSI documentation
 - Contribution Header Template containing the relevant information
- ❑ New ETSI database linked to the EPO database
- ❑ ETSI special committee for IPR related policy questions

CONCLUSION

- ❑ **Transparency is key for improvement**
- ❑ **Standardization organizations can help in bringing more transparency**
 - **Cooperate with patent offices**
 - **Increase transparency within own organization**
- ❑ **ETSI has done a lot to increase transparency, and is continuously improving in this respect**



World Class Standards

Thank you for listening

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