

Tensions between IPR & standardisation: reasons & remedies

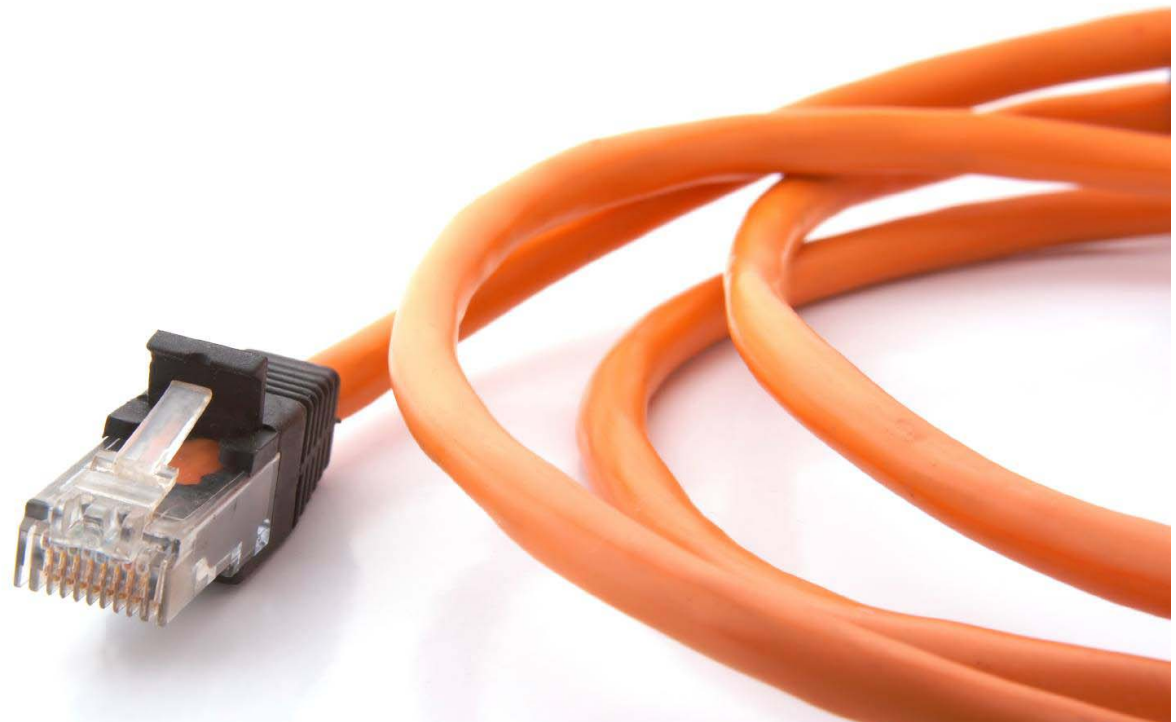
Ex-Ante Commitments to Licensing Terms

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IEEE & IEEE Standards Association

IEEE: nonprofit professional association

- over 400,000 members
- technical interests include aerospace systems, computers, telecommunications, biomedical engineering, electric power, and consumer electronics

IEEE Standards Association

- more than 1000 standards established
- 400 standards currently in development
- Patent policy since the early 1990s
- Significant revision to policy in 2005-2006

IEEE-SA Patent Policy

- ◆ Participants' obligations to disclose identity of holders of potentially essential patent claims
 - must identify if holder is self, employer, or affiliate
 - strongly encouraged to disclose third-party holders
- ◆ IEEE-SA then seeks "Letter of Assurance" (LOA) from identified holders

IEEE-SA Letter of Assurance

- ◆ Submitter can decline to respond, deny any potentially essential patents, decline to offer licensing assurance, or commit that it will
 - ▶ Not assert, or
 - ▶ Grant royalty-free license, or
 - ▶ Grant license on “RAND” terms, or
 - ▶ Grant RAND license on “not to exceed” terms
 - Disclosure of terms is optional
 - ◆ IEEE-SA prohibits “coercion” in seeking assurances

Discussion Within IEEE-SA Standards Development

- ◆ IEEE-SA standards development meetings are intended to be technical
- ◆ IEEE-SA recognizes cost as a relevant consideration:
 - ◆ A sensible comparison of technical alternatives may involve an understanding of whether or not the technical differences would justify the cost differential
 - ◆ Permit sufficient discussion to enable an understanding of the relative cost differentials
 - ◆ Discussion of IP costs, like other costs, is limited to relative comparisons
 - ◆ standards development meetings are not intended to devolve into joint negotiations

Promoting Competition and Innovation: What You Need to Know about the IEEE Standards Association's Antitrust and Competition Policy (Mar. 22, 2007) (available at <http://standards.ieee.org/resources/antitrust-guidelines.pdf>)

Thank You

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