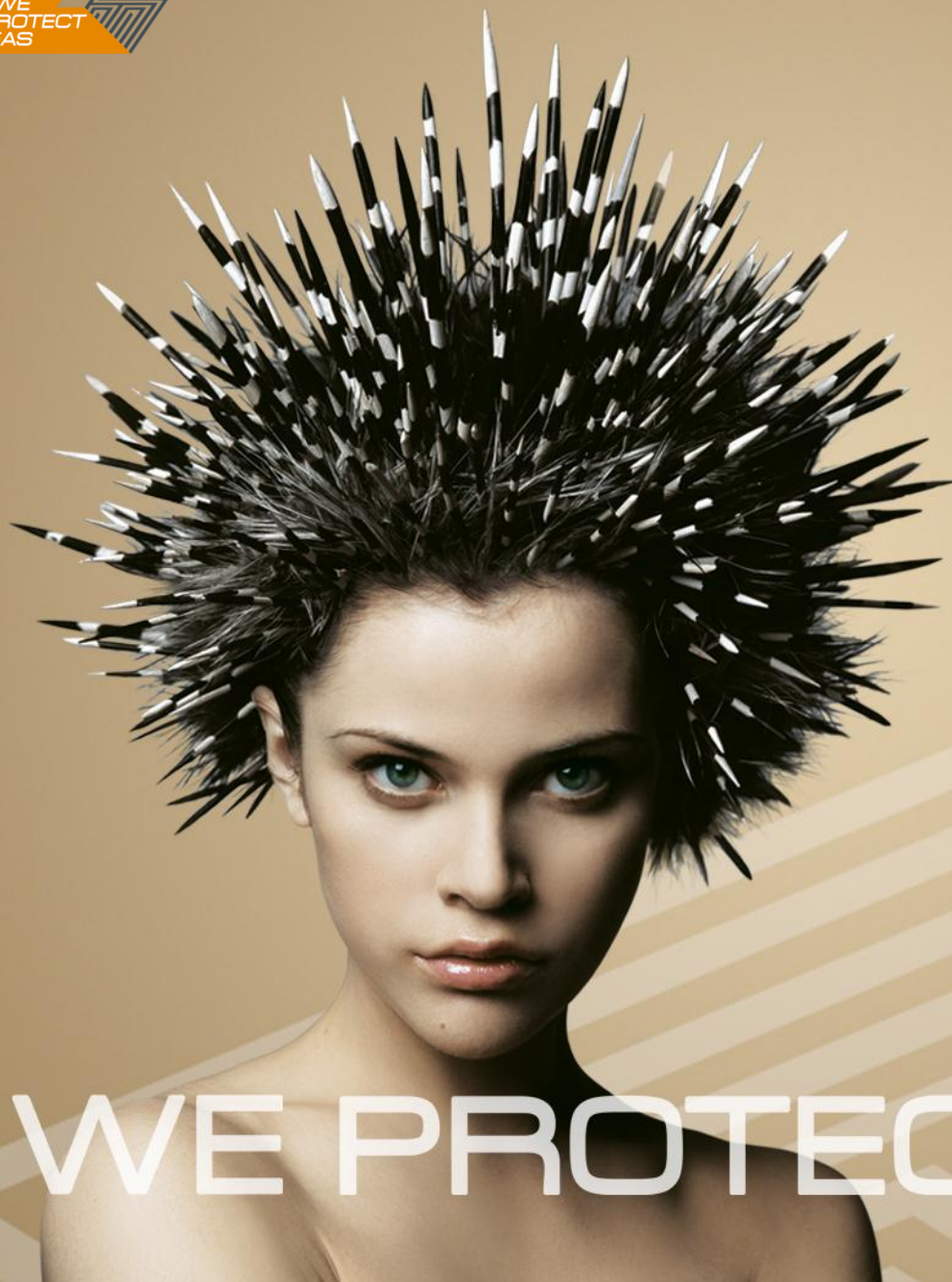




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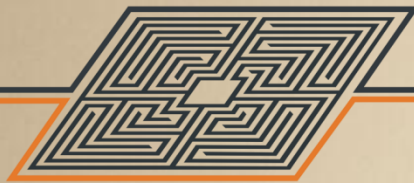


Patenting, standardisation and licensing

Roberto Dini

March 17, 2015
Joint Research Centre
of the European Commission

WE PROTECT IDEAS



SISVEL IN NUMBERS

Sisvel is a world leader in fostering innovation and managing IP



30+ YEARS
OF EXCELLENCE
IN LICENSING



100+ ENGINEERS,
LICENSING AND LEGAL
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8 OFFICES IN
3 CONTINENTS



110+ SISVEL GROUP'S
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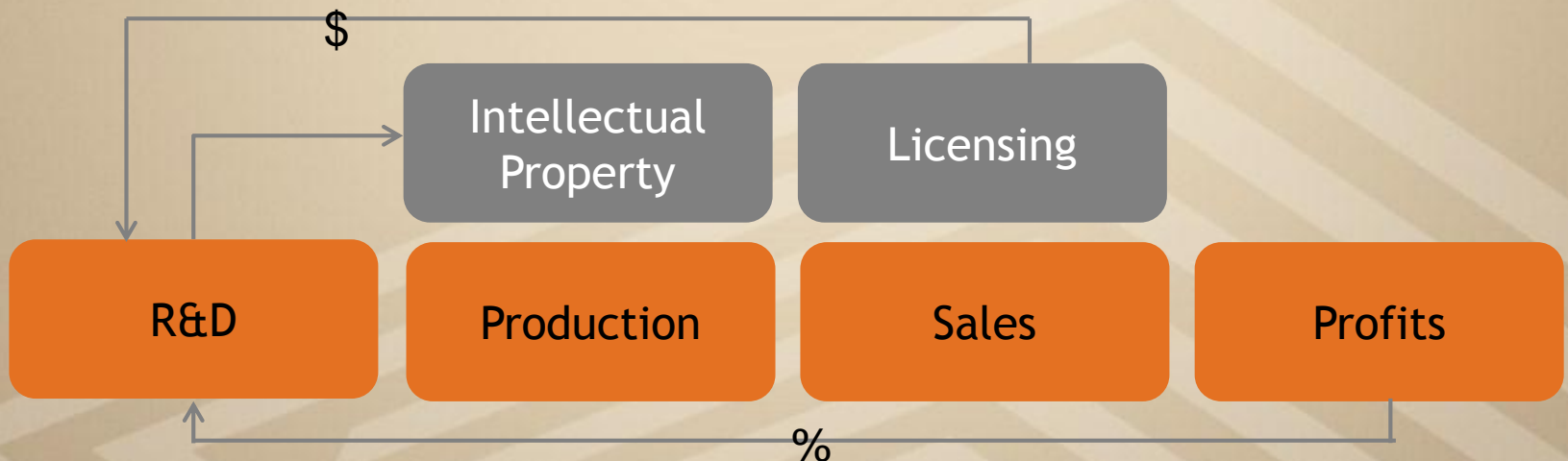


1500+ LICENSE
AGREEMENTS



SISVEL'S MISSION

The Group identifies, evaluates and maximizes the value of IP assets for its partners around the world, providing firms with a revenue stream which can be reinvested in innovation for the generation of future revenues.



IPRs, STANDARDS & FRAND Terms

A balance of Interests



IPRs

vs

Standards



IPRs are destined for private exclusive use



Standards are intended for collective use



Patent Pools

The most effective way to reward the inventor and benefit the market as a whole is to license the relevant patent rights by way of a Patent Pool under FRAND Terms

IPRs, STANDARDS & FRAND Terms

A balance of Interests



- Standardization costs are not paid by SSOs, but by the innovators who decided to make their technology available to everybody, even if it is a patented technology.
- Royalty income is the only way to reward innovators who renounce their rights to have a monopoly on a certain innovation.
- The total cost (innovation + standardization) for the development of the following standards is estimated to approximately:



190 million €



96 million €



PATENT POOLS ARE PRO-COMPETITIVE

Patent pools, joint licensing programs and other forms of IP aggregation have significant pro-competitive effects, including:

- Defining FRAND licensing terms and conditions in a context where **both licensors and licensees** are present;
- Avoiding royalties stacking by establishing a single royalty rate thereby reducing the likelihood of litigation;
- Providing more certainty and predictability to the market with regards to IP costs;
- Reducing transaction and administrative costs.



SSOs & PATENT POOLS

How could they work together?

- Ex ante disclosure of royalty rates doesn't solve the issue.
- It results in all POs disclosing rates which, if summed, are too high.
- In reality it seems that the organization of patent pools immediately after standardization could address this point more effectively.
- SSOs could encourage POs to meet under the supervision of an **independent patent facilitator to set royalty rates**, make them public, and quickly start a patent pool.

HOW TO DEFINE A FRAND ROYALTY RATE

Some considerations



- **FRAND royalties should be based on the value of end products**
- The cost of IP should be related to the portion that this IP covers as a function of the product.
- The royalty fee should only be related to SEP's
- The royalty fee should not be related to ex ante estimations because, nobody can forecast the size of the market until the standard is deployed.
- It should be a **win-win solution** between the benefit that the producer has on the market in selling new patented features and the cost born by the innovators.



ENFORCEMENT & COMPLIANCE

- Enforcement and compliance strategies are not only in the best interest of patent owners, but also in the interest of all licensees to ensure that others do not gain an unfair advantage in the marketplace.
- To avoid distortions in the market, injunctions should be available when a the potential licensee is an **“unwilling” licensee**.
- An **independent administrator** can also ensure that enforcement is conducted in an even-handed manner.



ENFORCEMENT & COMPLIANCE

Willing or Unwilling?

- The European Commission declared that SEP-based injunctions should be available against unwilling licensees.
- It should be determined on a case by case basis if a company should be considered a “willing licensee”.
- For example, they must **demonstrate that they are willing licensees by agreeing, that in the case of disagreement on royalty rate, an arbitrator adjudicates the FRAND terms.**
- WIPO has a special panel in mediating & arbitrating FRAND terms



CONCLUSION

TAKE AWAY POINTS

- Patent Pools and similar forms of IP Aggregations are the most effective tool to address the FRAND issue.
- SSOs could encourage POs to meet under the supervision of an independent patent facilitator to set royalty rates, make them public, and quickly start a patent pool.
- Enforcement is a useful tool to avoid market distortions.
- SEP-based injunctions should be available against unwilling licensees.
- Potential licensees can demonstrate that they are a willing licensees for instance by agreeing that a mutually agreed arbitrator adjudicates the FRAND terms.



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THANKS FOR THE ATTENTION

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