

IP MANAGEMENT IN ICT STANDARD SETTING

Catherine McCarthy

Director, Standards Governance
Sun Microsystems, Inc.

Road Map

- The Patent–Standard Unease
- Patent Policies In Action
- Antitrust Enforcers Speak Out
- The New Paradigm: Transparency In Standard Setting
- Conclusion: A Challenge

The Patent – Standard Unease

- Tension Between Patents and Standards
 - > Patents – Owner’s Right To Exclude
 - > Standards – Groups Right To Use
- Patent Policies Affect Tension

Patent Policies In Action

- Patent Policies Establish Rules For Standards Development
 - > SSO Participants/IP Owners Write the Policies
- Patent Policies Based On RAND Principle
 - > RAND Assurance Only
 - > No Information on Patents, Royalties or License Costs
- Changes To Patent Landscape Affect Patent Policies
 - > New Technology Markets
 - > Patent Laws Strengthened and Broadened
 - > New Standards Participants

Patent Policies In Action, cont.

- Incentive To Exploit Patent Policies Impact Tension
 - > Patent Thickets
 - > Royalty Stacking
 - > Submarine Patents
 - > Patent Hold Up
- Legal Path To Ease IP – Standards Tension
 - > Patent Law
 - > Antitrust and Competition Law

Antitrust Enforcers Speak Out

U.S.	European Union	China
<ul style="list-style-type: none"> U.S. Dep't of Justice & Fed. Trade Commission, Antitrust Enforcement and IPR: Promoting Innovation and Competition (April 2007) 	<ul style="list-style-type: none"> Anthony Whelan, DG Competition, EU Commission, Remarks at the High Level Workshop on Standardization, IP and Antitrust (Jan. 2007) 	<ul style="list-style-type: none"> CESI* Formulates ICT IPR Template: Encourages Disclosure of License Details
<ul style="list-style-type: none"> DOJ Business Review Letter – IEEE (April 2007) 	<ul style="list-style-type: none"> Nicholas Banasevic, Deputy Head of Unit DG Competition, C3, EU Commission, Remarks at Informa/IBC Advanced Competition Law (Nov. 2006) 	
<ul style="list-style-type: none"> DOJ Business Review Letter – VITA (Oct. 2006) 	<ul style="list-style-type: none"> EU Commission Press Release Re ETSI (Dec. 2005) 	
<ul style="list-style-type: none"> FTC Chairman Majoras, Speech: Procompetitive Potential of Royalty Discussions In Standard Setting (Sept. 2006) 	<ul style="list-style-type: none"> EU Commission Guidelines on the Application of Article 81 of the EC Treaty to Technology Transfer Guidelines, § 225 	
<ul style="list-style-type: none"> DOJ Asst. AG Hew Pate, Speech: Competition & IP (June 2005) 		<ul style="list-style-type: none"> * CESI is not an antitrust enforcer but the research arm of MII

The New Paradigm: Transparency In Standard Setting

- Transparency Defined
- Goals
 - > Mitigate Patent Hold Up
 - > Stimulate Competition
 - > Consumer Cost Savings
- Elements Of Transparency
 - > Early Disclosure of Patents, Royalties
 - > Sample License Or Agree to Default License Terms
 - > Information Disclosed Contractually Binding
 - > Disclosures Enforceable by Users & Implementers
 - > Pre-Agreed Resolution For Failure To Comply With Patent Policy
 - > Internal Arbitration To Settle Disputes

In Conclusion: A Challenge

- Competition Authorities Have Provided Guidance
- The Challenge
 - > Spread the Word
 - > Work With SSOs To Adopt Transparent Patent Policies

Thank You

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