



# **IPR issues and ITU's standardization activities**

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# ITU in brief

- ITU is the leading UN Agency for information and communication technologies
- ITU's work spans three core sectors:
  - Radiocommunication
  - Standardization
  - Development
  - ... and ITU TELECOM Events
- ITU's membership includes 192 Member States and more than 700 Sector Members and Associates

# ITU's Legal Framework



- Treat-based organization
- The Plenipotentiary Conference (PP) is the top policy-making body of the Union
  - Meets every four years
- ITU Council acts on behalf of the Plenipotentiary Conference in between PPs
  - Meets annually
  - Composed of 48 Member States



# Our Mission

- Help bridge the digital divide
- Manage radio spectrum
- Develop international standards

# Global Standards: Supporting Innovation



- ITU standards' work done mostly in Study Groups
- Produce "recommendations" (i.e. international non-binding standards)
- Partnership between private sector & government
- Consensus-based approach, flexible process
- Fast, transparent, equitable procedures

## ITU's Patent Policy

- Since 2007, ITU, ISO/IEC have a common patent policy
- Purpose: To ensure that patents embodied in ITU Recommendations (standards) are accessible to everyone without undue constraints.

# ITU's Patent Policy

- No technical limitations on the inclusion of patents in ITU standards.
- Disclosure rule:

“...any party participating in the work of ITU, ISO or IEC should, from the outset, draw the attention of the Director of ITU-TSB, the Director of ITU-BR or the offices of the CEOs of ISO or IEC, respectively, to any known patent or to any known pending patent application, either their own or of other organizations...”

# Current issues debated

- Most IPR issues arising in ICT standardization are very complicated
- IPR policies of major ICT standardization organizations (“SDOs”) are similar
- SDOs believe their IPR policies are effective
- General belief that RAND policies work well because they reflect a balanced approach
- Commercial motivations often underline some of the more contentious debates in ICT standardization



# Current issues debated

- Transfer of the patent
- Definition of RAND
- Ex Ante debate
- Open Standard

## Transfer of the patent

- Is the licensing commitment made by the original patent holder binding on later owners of the patent ?
  - Depends on specific legal jurisdiction
- US: FTC v. N-DATA Complaint
- FTC believed that N-Data violated Section 5 of the FTC Act by engaging in unfair methods of competition and unfair acts or practices regarding its enforcement of patents essential to implement a computer network standard
- N-Data reneged on a prior licensing commitment to a standard setting body not to increase the price of its technology

## How is RAND determined and by whom ?

- No uniform definition of RAND
- The licences and their prices are generally negotiated on a bilateral basis between the patentee and each licensee, outside the SDOs
- The licensor and the licensee may not agree whether the offered terms and conditions are in compliance with the patent policy of the SDO
- Disputes are settled outside the SDOs between the parties concerned based on the applicable law

## ***Ex ante* debate**

- The *ex ante* term may involve several things
- Most SDOs support *ex ante* disclosure of:
  - Patents likely to have essential claims
  - Commitment to offer a license to essential claims
  - Voluntary disclosure of licensing terms
- Almost no SDOs mandate the discussion of licensing terms or authorize group discussion of the proposed licensing terms

# *Ex ante* debate

- Some believe that:

The *ex ante* disclosure of licensing term may facilitate informed decisions by the participants in the standard-setting process, and enables competition based on both technology and price when deciding on a standard

It may avoid disputes over the licensing terms after the standard has been adopted and facilitate rapid implementation of adopted standards

# Open Standards

- No universally accepted definition of this term
- ITU definition:

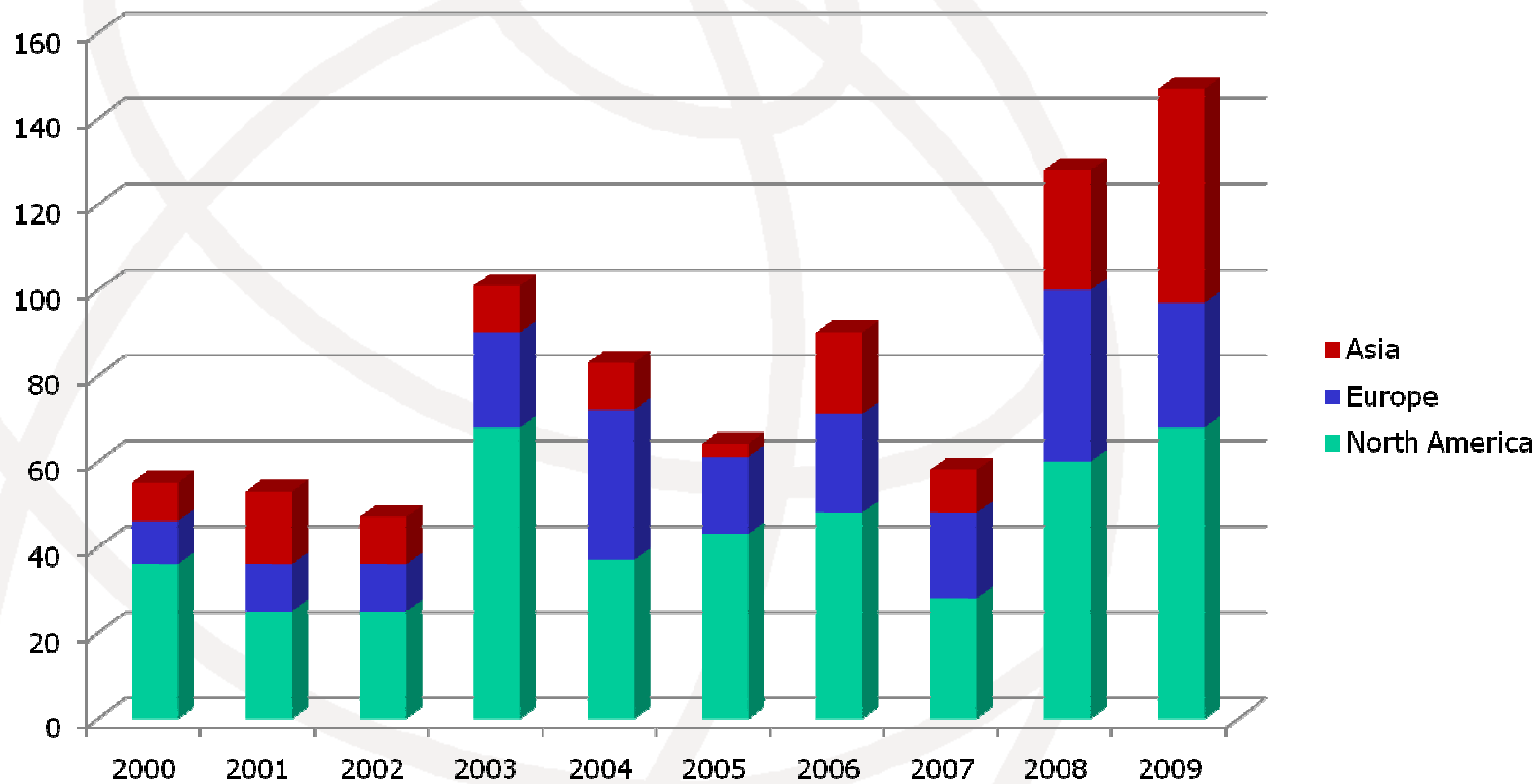
Standards made available to the general public and are developed (or approved) and maintained via a collaborative and consensus driven process;

Other elements of "Open Standards" include, but are not limited to: reasonably balanced; due process; IPRs ("RAND" policies); quality and level of detail; publicly available;

# Open Standards

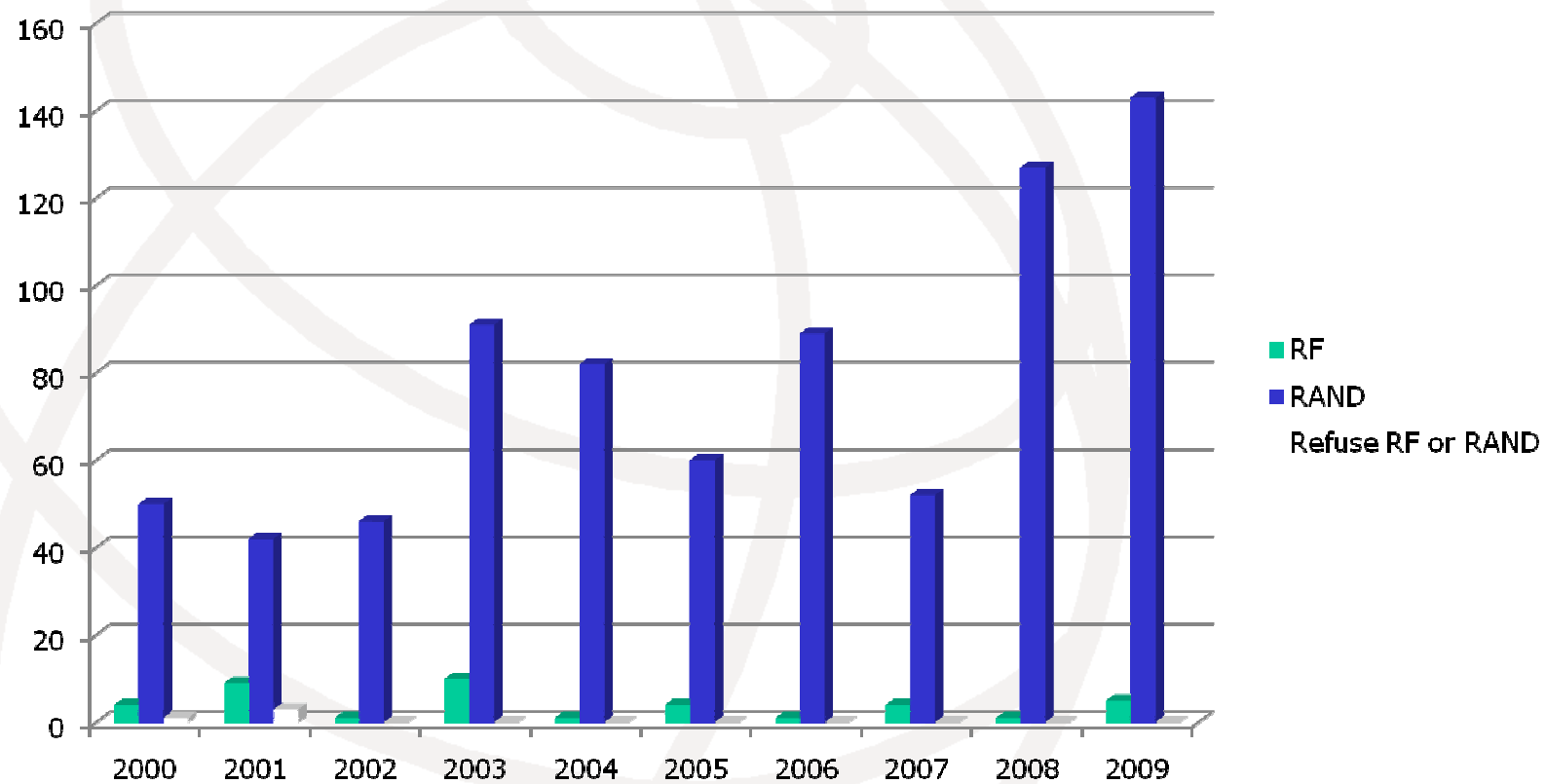
- A minority believes that “open standards” should be « free to use »
- This new definition can have negative effects
  - On SDOs that have “RAND” policies
  - On patent holder participation in SDOs
  - On innovation

# Number of Patent Declaration Statements received by region





# Declared Licensing options over the last decade



# Patent Declaration Statements per area of standardization

- 8 of the 23 areas of standardization have received no Patent Declaration Statements
- The areas of standardization that receive most Patent Declaration Statements relate to voice over IP and multimedia codecs (G & H Series).

## Useful links

- ITU home page: [www.itu.int](http://www.itu.int)
- History and landmarks:  
<http://www.itu.int/net/about/history.aspx>
- ITU-T home page (ITU's standardization activities): <http://www.itu.int/ITU-T/index.html>
- Patent Policy: <http://www.itu.int/ITU=T/ipr>
- Patent database:  
<http://www.itu.int/ipr/IPRSearch.aspx?iprtype=PS>