**PATENT ROUNDTABLE**

 ITU Headquarters, Geneva
 10 October 2012

Submitted by: **WIPO**

Contact point: **Phillipe Baechtold**

 The World Intellectual Property Organization (WIPO) is one of the specialized United Nations agencies and its mandate is to foster the use of intellectual property as a means of stimulating innovation and creativity. WIPO's mission is to promote innovation and creativity for the economic, social and cultural development of all countries, through a balanced and effective international intellectual property system.

 WIPO and international standard-setting organizations can look back to a long-standing cooperation as far as intellectual property is concerned, in particular, with the International Telecommunication Union (ITU) and the International Organization for Standardization (ISO). WIPO is committed to continue and deepen that cooperation with a view to working towards achieving the common goal of the patent system and the standardization system, i.e., to support innovation and the dissemination of technology.

 Indeed, as an important input to the standardization process, the patent system provides an incentive to develop new products in the first place, and accelerates further innovation by others through the mandatory disclosure of inventions to the public. A patent right is not a monopoly right, since it only allows a patent owner to prevent others from using the patented invention without his consent. Further, the fact that a patented technology is part of a technical standard does not necessarily confer market power. The legal framework gives the patent owner various options to exploit his patent, including licensing or allowing others to use the patented invention freely, depending on his business model and the market environment. In order to address potentially harmful effects of patenting, many states have established certain exceptions and limitations to patent rights, and have also relied on competition law. Indeed, the policies of standard-setting organizations and competition law have played an important role in striking a balance among various stakeholders involved.

 Considering the changing ways innovation occurs at the national and international levels, the patent system today faces challenges in areas such as the quality of patents, the pendency period (between the filing of a patent application and its grant), the cost of obtaining and maintaining patents internationally, as well as dispute resolution. Such challenges may be especially acute in the field of information and communication technologies (ICT), and particularly for patents which are essential for the implementation of technical standards. According to a recent study, patenting activities have grown especially fast in the area of so-called complex technologies, including most ICTs.[[1]](#footnote-1) In addition, so‑called patent portfolio races have been documented for ICTs in general, and more recently, for smartphones and tablet computers in particular.[[2]](#footnote-2) Another study found that most patents that were essential for implementing standards related to communications and consumer electronics products.[[3]](#footnote-3) It further observed that the distribution of patents in standards was skewed, such that a few standards are relevant to a large number of patents, while most standards are relevant to only a few patents or no patents at all, and a relatively small group of companies own a large number of essential patents.

 Against this backdrop, the interplay between the patent system and the standardization system has also been on WIPO's agenda. This issue was discussed in the WIPO Standing Committee on the Law of Patents (SCP) during its 13th to 15th sessions between March 2009 and October 2010, based on a preliminary study prepared by the WIPO Secretariat (“Patents and Standards”[[4]](#footnote-4)). The debates held in the SCP highlighted the complexity and cross-cutting nature of the issues relating to the topic of intellectual property rights (IPRs) and standards. The discussions held by WIPO Member States were nuanced, and many noted the importance of striking a balance between the interests of patent holders, standard implementers (manufacturers) and end users, and the different implications of IPRs in respect of different types of standards - thus implying that a one-size-fits-all solution was not advisable. Member States also suggested a better collaboration between WIPO and international standard setting-organizations, such as ITU and ISO.

 At a more practical level, one of the areas where IP bodies and standard-setting organizations may collaborate is the sharing of information between the two communities. Certain by-products of the standardization process – draft specifications and other technical information made available to the public through the standardization process – may be useful for patent offices in examining the patentability of claimed inventions contained in patent applications. Ensuring high quality patents is one important pillar of a well-functioning patent system. Similarly, patent information owned by IP offices can add value to patent databases of standard setting organizations. WIPO provides a free searchable database called “PATENTSCOPE”, which includes information relating to over two million published international applications filed under the Patent Cooperation Treaty (PCT) as well as growing patent collections from around 30 national and regional patent offices.

 WIPO has also been addressing issues arising from the interaction between intellectual property (IP) and competition law. Under one of the Development Agenda thematic projects, WIPO has conducted research concerning the relationship between competition/antitrust and IP.[[5]](#footnote-5) Currently, this research focuses on, in particular: (i) IP, competition and the smartphone industry; (ii) joint R&D and competition; (iii) patent pools, competition and IP issues; and (iv) international technology transfer, IP and competition.

 The WIPO Arbitration and Mediation Center[[6]](#footnote-6) has been offering alternative dispute resolution (ADR) procedures since its creation in 1994. International patent court litigation often involves a multitude of procedures in different jurisdictions with a risk of inconsistent outcomes. Mediation, arbitration and other ADR procedures allow parties to sidestep these problems and resolve private disputes in a simpler and more cost-effective manner. The arbitration, mediation and expert determination procedures offered by the WIPO Arbitration and Mediation Center are particularly suited to cross-border intellectual property disputes. Parties using WIPO mediation and arbitration can choose arbitrators, mediators or experts with specific legal and technical expertise. If the parties cannot agree on such appointment, the WIPO Center will propose candidates from its database covering over 1,500 independent neutrals from 70 countries. The parties can also choose to use the WIPO Electronic Case Facility (WIPO ECAF) to facilitate communications between the parties and the mediators/arbitrators particularly when they are based in different jurisdictions. The WIPO expert determination procedure is particularly suitable for the determination of technical and scientific issues, such as the interpretation of patent claims, the extent of the rights covered by a license or the establishment of royalty rates, including RAND issues. About one quarter of the mediation and arbitration cases administered by the Center are in the area of ICT.

 In the face of the increasing complexity, specialization and rapid evolution of technological, business and legal conditions, the WIPO Center also provides ADR services adapted to specific sectors, such as the ICT sector, accommodating parties’ particular needs and interests. Such targeted adaptation of the standard WIPO ADR framework, reflecting legal and business practices and needs of the relevant area, can limit the disruption caused by disputes.

 The patent system has undergone a number of changes throughout its history, reflecting social, economic and technological developments. What has not changed, however, is its importance in providing a framework that supports innovation and dissemination of technology to the mutual advantage of innovators and technology users, with a view to maximizing the innovation output for society at large. As the patent system does not exist in a vacuum, it is essential to understand the interplay with other systems, and to optimize the collective benefits through supportive operations of various systems. Although strengthening the cooperation between the IP community and the standard-setting community has been suggested in many fora, both within the IP community and within the standard-setting community, such cooperation has been implemented only to a limited extent so far. In view of WIPO’s working relationship developed with both IP authorities and standard setting organizations, WIPO can play a unique and helpful intermediary role in facilitating that cooperation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. WIPO Intellectual Property Report 2011 – The Changing Face of Innovation, Chapter 2.2.2 [↑](#footnote-ref-1)
2. *Ibid* [↑](#footnote-ref-2)
3. Study on the Interplay between Standards and Intellectual Property Rights (IPRs), commissioned by the European Commission (April 2011) [↑](#footnote-ref-3)
4. Document SCP/13/2 [ <http://www.wipo.int/meetings/en/details.jsp?meeting_id=17448> ] [↑](#footnote-ref-4)
5. [www.wipo.int/ip-competition/en/](http://www.wipo.int/ip-competition/en/) [↑](#footnote-ref-5)
6. <http://www.wipo.int/amc/en/> [↑](#footnote-ref-6)