



ITU-T Kaleidoscope Conference Innovations in NGN



Rethinking ITU Intellectual Property Right Policy in Response to Challenges of IPR Surrounding ICT Standards

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Outline

- Outline of ITU-T Patent Policy
- How effective ITU-T Patent Policy is?
 - Overall empirical study
 - Case Study: H.264
- Rethinking the ITU-T Patent Policy
 - Disclosure Rule
 - RAND

Groundwork: ITU IPR Policy 1

- ITU Patent Policy, Copyright Policy, and Mark Policy
 - ➔ Common Patent Policy for ITU-T/ITU-R/ISO/IEC
- Nature: Code of Practice
- Objective:
 - ➔ To ensure Recommendations, their applications, use, etc. are accessible to everybody

Groundwork: ITU IPR Policy 2

■ Disclosure Rule

- ▶ Any participating party should, from the outset, draw the attention, to any known patent or to any known pending patent application

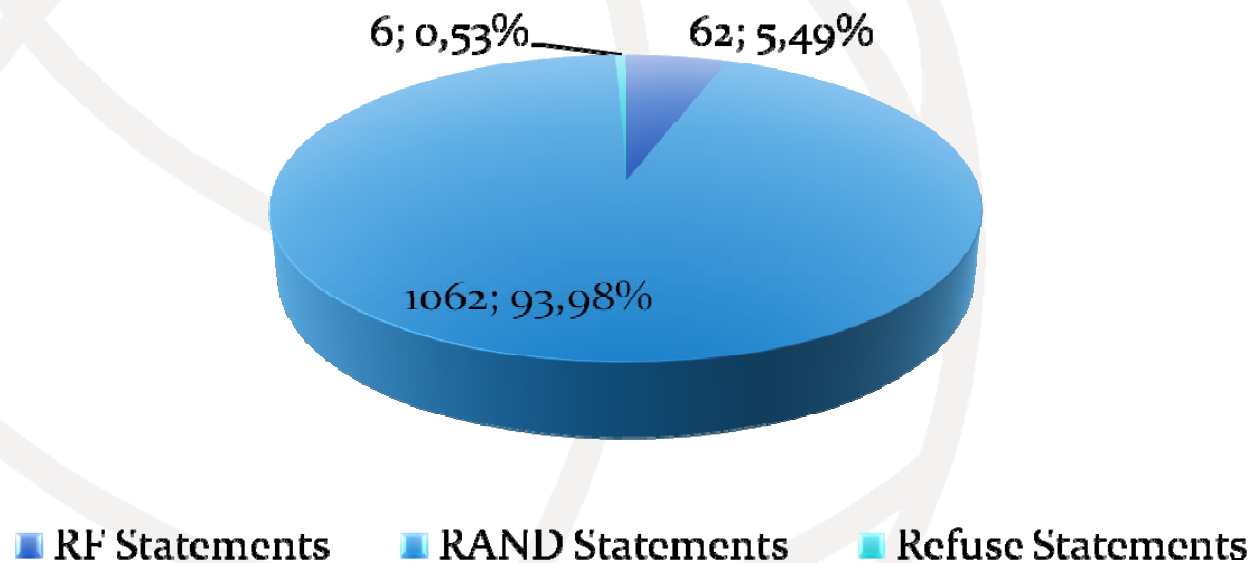
■ Licensing Declaration

- ▶ Royal Free(RF)
- ▶ Reasonable and Non-discriminatory (RAND)
- ▶ Refuse to License

How Effective ITU IPR Policy Is? 1

Licensing Declaration Distribution: Distribution of Statements

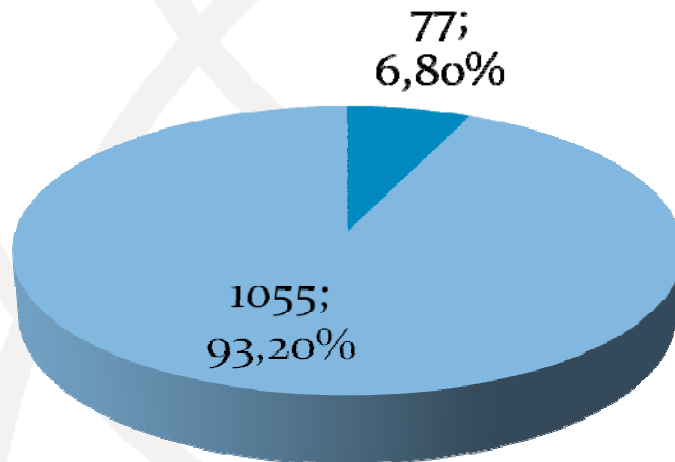
(Source: ITU-T Patent Information Database, as of April 20, 2008)



How Effective ITU IPR Policy Is? 2

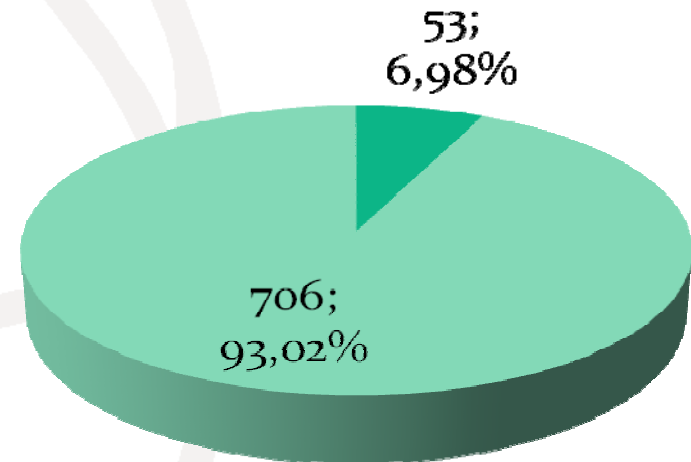
How Patent Licensing Declaration are Distributed?

RF v RAND
(Identified Patents)



■ RF ■ RAND

RF v RAND
(Granted Patents)

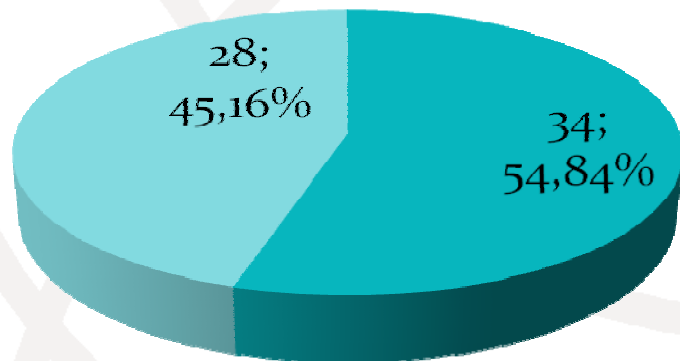


■ RF ■ RAND

How Effective ITU IPR Policy Is? 3

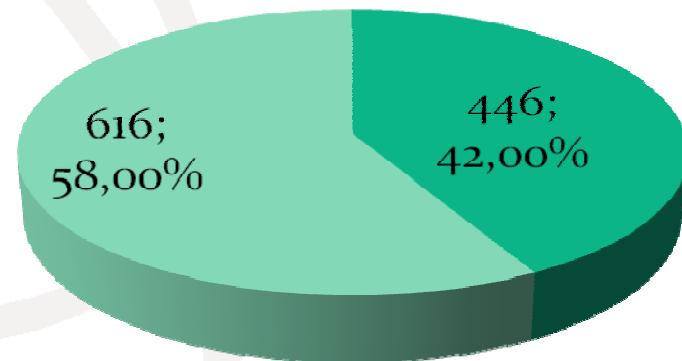
How Many Patents Have Been Identified?

RF Statements



- Statements with Patents Identified
- Statements without Patent Information

RAND Statements



- Statements with Patents Identified
- Statements without Patent Information

How Effective ITU IPR Policy Is? 4

Case Study: H. 264

Patent Disclosed via ITU

- 49 Statements made by 9 patent holders
- 34 statements identifying no patent information
- Covering 32 patent numbers
- All committing RAND

Essential Patent Claimed via H.264 Patent Pool

- Claiming 232 essential patents
- 24 patent holders
- Licensing via MPEG LA H.264 patent pool

How Effective ITU IPR Policy Is? 5

Case Study: H. 264

- Patent holders are eager to claim essential patents than to disclose patent information via ITU
- Large portion of the statements disclose no patent information
- Those disclosed patents most via ITU, namely IBM and Nokia, have not joined the H.264 Patent Pool
- Those who have large share of patents in H.264 Patent Pool did not disclose the patents via ITU

Rethinking ITU Patent Disclosure Rule

Disclosure as an Obligation(1)

■ Qualcomm v. Broadcom

- Southern District of California, found Qualcomm intentionally organized a plan of action to **shield** the his two patents from consideration by the Joint Video Team **with the anticipation**
 - the resulting H.264 standard would infringe those patents and
 - Qualcomm would then have the opportunity to become an indispensable licensor to anyone in the world seeking to produce H.264-compliant products.

■ The court ordered that Qualcomm patents be unenforceable

Rethinking ITU Patent Disclosure Rule

Disclosure as an Obligation(2)

- Disclosure rule is a independent obligation
- Patent disclosure enable ITU-T to develop standard in an informed way
- Intentional non-disclosure may implicate strategy to dominate market, even if a RAND Licensing declaration is made

Rethinking RAND

Is RAND Really Blessing ITU-T Standards?

- RAND as an open term is helpful for developing standards, but is not helpful for implementing standards.
 - ➔ Standard developing: Compromise Making
 - ➔ Standard Implementation: Market Confidence
- A clarified RAND and the success of ITU Recommendation

Rethinking RAND

Possible Improvement

- Optional Ex Ante RAND (e.g., VITA)
 - disclose patents and patent application information early in the standard's development
 - make known ex ante the maximum licensing terms
- Optional declaration to license via patent pool (e.g., AVS)



Thanks for Kind Attention!

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