Report

**World Café @ ITU Patent Round Table**

10 October 2012, Geneva

# Context, Goal and Participation

On 10 October 2012, ITU convened a high-level patent roundtable aimed at assessing the effectiveness of RAND (reasonable and non-discriminatory) – based patent policies. The purpose of this patent roundtable was also to provide a neutral venue for industry, standards bodies and regulators to exchange innovative ideas that can guide future discussions on whether current patent policies and existing industry practices adequately respond to the needs of the various stakeholders.

In the context of this patent roundtable, ITU organized a World Café to allow participants to actively exchange ideas and better understand each other’s perspectives on these sensitive issues.

Approximately 140 participants took part in the World Café:

|  |  |
| --- | --- |
| **Participants by category** | |
| Academic Institution | **8** |
| Industry | **54** |
| International Organization | **6** |
| Law / Consultancy Firms | **14** |
| Regulator / Patent Office | **22** |
| SDO | **25** |
| ITU not participating in World Café | **8** |
| ITU participating in World Café | **6** |
| Total | **143** |

# Outcome

|  |  |
| --- | --- |
| **Ideas that emerged from the World Café** | |
| Ideas on the effectiveness of (F)RAND commitments | **70** |
| Ideas for improvements | **61** |
| Ideas for next steps | **47** |
| Total number of ideas | **178** |

# Outcome by Topic Area

**Question 1**: How effective are (F)RAND commitments and how can we improve them? (Focus on effectiveness)

**Comments on the effectiveness of (F)RAND commitments**

|  |  |
| --- | --- |
| **Topic Area** | **No. of ideas** |
| No Consensus | 16 |
| Uncertainty | 12 |
| Money/ Rates | 9 |
| Injunctions | 9 |
| Transfers | 3 |
| Disclosure | 6 |
| SME | 5 |
| Forum | 8 |
| Context | 2 |
| **Total** | **70** |

**Question 2:** How effective are (F)RAND commitments and how can we improve them? (Focus on improvements)

**Proposals for improvement**

|  |  |
| --- | --- |
| **Topic Area** | **No. of ideas** |
| No Consensus | 5 |
| Cooperation | 5 |
| Money/ Rates | 12 |
| Injunctions | 7 |
| Transfers | 4 |
| Disclosure | 4 |
| SME | 1 |
| No discrimination | 5 |
| Transparency | 7 |
| Patent Office | 4 |
| Patent Pools | 3 |
| (F)RAND Effective | 4 |
| **Total** | **61** |

**Question 3:** How effective are (F)RAND commitments and how can we improve them? (Focus on next steps)

**Proposals for next steps**

|  |  |
| --- | --- |
| **Topic Area** | **No. of ideas** |
| Cooperation | 3 |
| Uncertainty | 4 |
| Money/ Rates | 1 |
| Injunctions | 2 |
| Transfers | 5 |
| Disclosure | 4 |
| Process | 6 |
| Do nothing/wait | 2 |
| Transparency | 2 |
| Forum | 7 |
| Other solutions | 11 |
| **Total** | **47** |

# Town Hall Interventions

|  |  |
| --- | --- |
| **Midway Town Hall** | |
| Speakers | 4 |
| Points & suggestions | 7 |
|  |  |

|  |  |
| --- | --- |
| Final Town Hall | |
| Speakers | 8 |
| Points & suggestions | 15 |

# Summary of Conversations

* **Summary of the output of Conversation 1 by Professor Barr:** 
  + Many people agreed that the standards ecosystem is basically working, but there is still room for improvement.
  + Others pointed out that current RAND system creates uncertainty, and some clarifications by SDOs would be appropriate. Clarifications would reduce the risk of SEP litigation.
  + Some argued that if changes to the standards system are introduced, then they should not have a retroactive effect.
  + There was consensus on the fact that RAND obligations should remain in force even if the SEP is transferred or assigned.
  + Patent quality and transparency needs to be improved.
  + Several participants mentioned that RAND royalty rates and cross-licensing strategies also raise a number of concerns that should be addressed.
  + Over-assertion of SEPs is a threat to the standards system.
  + No consensus was reached on the issue of the availability of injunctions for SEPs.
  + Some participants argued that only monetary compensation should be allowed for SEPs whereas others noted that damages lawsuits are not adequate to remedy market share obtained by the infringer.
  + The role of SMEs is essential for the development of the industry and for the standardization process and their input should be taken into consideration as well.
* **Summary of the output of Conversation 2 by Professor Blind:**
  + There was no clear consensus on how to improve RAND policies.
  + Some inputs indicated that the market currently works well.
  + Other inputs aimed at providing clarification over what RAND means.
  + Improved SEP database would be useful.
  + It was noted that countries apply national laws – different approaches between US and EU. Potential clarifications to SDO’s policies should take this into account.
  + Some participants restated that injunctions should not be permitted under certain circumstances, e.g. .when implementer is willing to pay RAND royalties.
  + It was suggested that escrow royalty payments may be considered as a *quid pro quo* to restriction on injunctive relief, until RAND terms are adjudicated.
  + There was consensus that cooperation with patent offices is necessary to improve patent quality.
  + Some stakeholders suggested that the “non-discriminatory” prong of RAND may need further clarifications – and not only the meaning of “reasonable”.
  + Most participants agreed that royalty stacking should be discouraged.
* **Summary of the output of Conversation 3 by Professor Barr:**
  + It is necessary to consider what is the right forum to consider these issues; all stakeholders (e.g. regulators, industry, SDOs) should be allowed to participate.
  + SDOs should investigate whether they can provide clarification about the consistent application of RAND, particularly with regard to RAND determination and availability of injunctive relief.
  + Issues to be considered include availability of injunction relief, patent disclosure and royalty rates.
  + Alternative Dispute Resolution mechanisms was mentioned as a possible solution to the current disputes.
  + Disclosure of licensing terms could be further encouraged to increase transparency.
  + Participation of SMEs in SDO IPR policy discussions should be encouraged.
  + Patent pools should be examined more closely, as an alternative to the bilateral licensing model.
  + Some participants noted that SDOs should wait for the outcomes of current litigation before considering any changes to their patent policies.

# Links

<http://www.itu.int/en/ITU-T/Workshops-and-Seminars/patent/Pages/default.aspx>

<http://www.flickr.com/photos/itupictures/sets/72157631743028314/show/>