The Role of Government in Standards and IPR Policy Issues

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The Key to Patent and Standard Issues

Patent Holders vs Standards End-users

Patented Technology vs Standards

SSOs

Are the stakeholders able to achieve the aim by themselves?
The Role of Government in Standards and IPR Policy Issues

- To give a direction and support to the SSOs to adopt reasonable IPR policies.

- To amend the Patent Law, Antitrust law as well as the Law Against Unfair Competition in order to give a legal relief to the related disputes.

- To hold open forums enabling all the stakeholders have a thorough discussion about this issue and supporting the relative international symposium.
Giving a Direction and Support to the SSOs’s IPR Polices

- **Basic Principles of SSO’s IPR Polices**
  - (1) Due Process and Openness of Membership in the Standardization
  - (2) Openness of the SSOs’ IPR policies
  - (3) Openness of the of IPR Information Involved in the Standardization
  - (4) Predictive Cost of utilizing IPRs in the standards
Giving a Direction and Support to the SSOs’s IPR Policies

- (1) Due Process and Openness of Membership in the Standardization
  - Everyone has access to the process
  - Actions and relative information are publicly available
  - All the interested and affected parties are included in the setting of standards
  - Avoid the risk of antitrust situation
  - *Eg: Allied Tube & Conduit Corp. v. Indian Head, Inc (1998)*
  - *GOLDEN BRIDGE TECHNOLOGY, INC., Plaintiff vs. NOKIA, INC. (2006)*

The Thing that Government Can Do:
- Establish Relative Regulations and Give Directions to Restrict the SSO’s behaviors.
Giving a Direction and Support to the SSOs’s IPR Polices

- (2) Reasonable SSO’s IPR polices
  - There is no “one-size-fits-all” solution
  - Transparent
  - Encourage the disclosing of IPR information as well as the cost of using patented technology in the standard
    - *Eg: Business letters from the DOJ to VITA and IEEE.*
Giving a Direction and Support to the SSOs’s IPR Polices

- Task for the Chinese Government:
  - Reforming Chinese Standardization System
  - The Standardization Law of the People’s Republic of China (1989)
  - Regulations for the Implementation of the Standardization Law of the People’s Republic of China (1990)

- Four Levels of Current Chinese Standards:
  - National standards
  - Industry standards
  - Local standards
  - Enterprise standards
Amend the Relative Legal Regulations

- **Amending Patent Law**
  - (1) Compulsory License and Corporation between PTO and SSOs
  - (2) Refusal Giving Injunctions in the Related Cases

- **Amending Antitrust law**
  - “The Antimonopoly Law of the People’s Republic of China” was eventually adopted on August 30, 2007. (Effective in August 1, 2008)
  - USA: Antitrust Guidelines for the Licensing of Intellectual Property
  - EU: Technology Transfer Block Exemption Regulation (TTBER)
  - Japan: Guidelines for the Regulation of Unfair Trade Practices with Respect to Patent and Know-how Licensing Agreements
  - **Essential Facility Doctrine (EFD)**

- **Amending the Law Against Unfair Competition**
Hold Open Forums and Support the International Symposium

- Openness + Communication + Understanding

- IPRs Issues in Standardization (Beijing) International Symposium (held by MOFCOM and SIPO in 2007)

- Cooperation is the best way to work out problem.
Thank you

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