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Title: **CCITT Patent Policy and MPEG-2 patent status**

Purpose: **For discussion**

The latest version of the CCITT patent policy is attached in the Appendix to this contribution.

Paragraph 1 clearly defines that *"any CCITT Member organization putting forward a standardization proposal should, from the outset, draw the CCITT's attention to any known patent or to any known pending application, either their own or of other organizations, although CCITT is unable to verify the validity of any such information"*.

Even if the current MPEG-2 standardization work is a joint effort with ISO/IEC the above patent policy shall be applied. (As an example, in the past this was successfully applied between CCITT SGVIII and ISO/IEC JTC1/SC29 on the joint CCITT T.81 | ISO/IEC 10918-1 (JPEG) and CCITT T.82 | ISO/IEC 11544 (JBIG) recommendations|standards.)

As far as we can judge in case of MPEG-2 the above CCITT Patent policy rule was not obeyed. Neither at the time when MPEG-2 technical proposals were put forward (as it should have been), not at the writing of this contribution (March 31, 1993) was the above stated patent policy point fulfilled.

In the light that at this point in time about 30 companies are claiming that they have an unknown number of MPEG-2 related patents, we see problems in not adhering to the CCITT patent policy rules, because now the patent situation is likely that complex that the chance of not finding an acceptable solution to the patent problems is a real danger. If the CCITT patent rules were correctly applied than we would have a much clearer patent picture on MPEG-2 and likely also less companies claiming having relevant patents.

Appendix $

Patent policy of CCITT

Source: Annex 7 of CCIR Doc 10-2/TEMP/10-E, 1992, page 35

STATEMENT ON CCITT PATENT POLICY

Over the years, the CCITT has developed a "code of practice" regarding intellectual property rights (patents) covering, in varying degrees, the subject matters of CCITT Recommendations. The rules of this "code of practice" are simple and straightforward - Recommendations are drawn up by telecommunications and not patent experts; thus, they may not necessarily be very familiar with the complex international legal situation of intellectual property rights such as patents, etc.

CCITT Recommendations are non-binding international standards. Their objective is to ensure compatibility of international telecommunications on a world-wide basis. To meet this objective, which is in the common interests of all those participating in international telecommunications (network and service providers, suppliers, users) it must be ensured that CCITT Recommendations, their applications, use, etc. are accessible to everybody. It follows therefore that a commercial (monopolistic) abuse by a holder of a patent embodied fully or partly in a CCITT Recommendation must be excluded. To meet this requirement in general is the sole objective of the CCITT code of practice. The detailed arrangements arising from patents (licensing, royalties, etc.) are being left to the parties concerned, as these arrangements might differ from case to case.

This code of practice may be summarized as follows (it should be noted that ISO operates in a very similar way):

1. The CCITT Secretariat is not in a position to give authoritative or comprehensive information about evidence, validity or scope of patents or similar rights, but it is desirable that the fullest available information should be disclosed. Therefore, any CCITT Member organization putting forward a standardization proposal should, from the outset, draw the CCITT's attention to any known patent or to any known pending patent application, either their own or of other organizations, although CCITT is unable to verify the validity of any such information.

2. If a CCITT Recommendation is developed and such information as referred to in paragraph 1 has been disclosed, three different situations may arise:

2.1 The patent holder waives his rights; hence, the CCITT Recommendation is freely accessible to everybody, subject to no particular conditions, no royalties are due, etc.

2.2 The patent holder is not prepared to waive his rights but would be willing to negotiate licenses with other parties on a non-discriminatory basis on reasonable terms and conditions. Such negotiations are left to the parties concerned and are performed outside the CCITT.

2.3 The patent holder is not willing to comply with the provisions of either paragraph 2.1 or paragraph 2.2; in such case, no CCITT Recommendation can be established.

3. Whatever case applies (2.1, 2.2 or 2.3), the patent holder has to provide a written statement to be filed at the CCITT Secretariat. This statement must not include additional provisions, conditions, or any other exclusion clauses in excess of what is provided for each case in paragraphs 2.1, 2.2 and 2.3