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STUDY GROUP 15 - CONTRIBUTION

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TITLE: ITU-TS Patent Policy and MPEG-2 follow up

In Doc. No. 487 (Melbourne AVC meeting, April 1993) it was pointed out that in case of MPEG-2 (ITU-T H.26x) §1 of the ITU-TS (former CCITT) patent rules were not followed.

Since then we have had some further discussions with the ITU-TSB about their "code of practice" patent rules. With regards to the above mentioned §1, the ITU-TSB Director explained that indeed at the time when the proposal for standardization of a technical solution is made first all relevant pending and filed patents have to be made known to the standardization body in question (thus SG15 and its relevant Rapporteurs Groups).

In order to find a solution to the above problem - which has led to a likely very complex patent situation - we hope that the following proposal might be an acceptable and fair solution to all parties:

- The AVC Rapporteur Group starts - without any further delay - to fulfill §1 of the patent rules (thus information of all pending and filed patents shall be disclosed and collected). At least a list of the pending and filed patents - including dates, number, patent holder, title, country - shall be prepared.

- The AVC Rapporteur Group declares its desire that all patent holders claiming patents shall strictly follow (at least for ITU applications) §2.1 of the ITU-TS patent rules. If all patent holders understand the above desire and declare to follow §2.1 for ITU applications - we believe - there will be a consensus in ITU-TS to accept the above remedy to the patent situation of MPEG-2.

The latest version of the ITU-TSB patent policy is attached for information.

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ANNEX 2
(to TSB Circular 6)

Statement on TSB patent policy

Over the years, the TSB has developed a "code of practice" regarding intellectual property rights (patents) covering, in varying degrees, the subject matters of ITU-TS 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.

ITU-TS 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 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 Recommendation must be excluded. To meet this requirement in general is the sole objective of the TSB 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 TSB 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 ITU-TS member organization putting forward a standardization proposal should, from the outset, draw the TSB attention to any known patent or to any known pending patent application, either their own or of other organizations, although the TSB is unable to verify the validity of any such information.

2. If an ITU-TS 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 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 ITU-TS.

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 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 TSB. 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.

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* Formerly CCITT Recommendations.