**PATENT ROUNDTABLE**

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Microsoft’s statement in support of our commitment to industry standards is reflected at the conclusion of these comments. The statement sets forth Microsoft’s long-standing approach to patents that are essential to industry standards: we license them to other firms. We don’t seek to block other firms from shipping products on the basis of these patents. Our approach is shared by many other companies in the industry.

Why are “standards essential patents” so important to the industry and to consumers?

You may not realize it, but anytime you use the Internet, your cell phone or a computer, you are benefitting from international technical standards. Watching a video? You’re probably using a standard called H.264. Connected to a wireless network? You’re using another standard called 802.11. These and other standards enable a wide variety of devices and websites to work well with one another. In fact, the whole Internet is built on standards like these.

Standards are developed in a collaborative process. Engineers from a variety of firms (and other stakeholder groups) come together over the course of months, or years, contributing ideas on how best to define new standards. Those ideas often include patented inventions—new and better ways to perform various functions. Firms benefit from having their ideas included in new standards, and in exchange for this, firms usually make a promise: that if they have any patents that are “essential” to implementing a standard, they will make these patents available to all. In particular, these firms typically promise that they will make these “standard essential patents” available to any firm that wishes to implement the standard on reasonable and nondiscriminatory terms. That way every firm can build products based upon the standard, secure in the knowledge that it can obtain a license to any essential patents. And it means that every consumer can reasonably expect to be able to watch videos or connect to a wireless network regardless of the device they are using.

This system works really well, almost all of the time. For example, a typical personal computer implements dozens of standards established through various international standard-setting bodies in software and hardware. These standards are available for implementation by any firm. Every firm building on the standard relies on the fact that a license is available, if needed. For example, Microsoft has contributed patented technology to hundreds of standards, yet we are seldom asked to provide a license for our standard essential patents, and we rarely seek such licenses from other contributors.

In other cases, firms that contribute to standards may proactively seek to obtain royalties for use of their standard essential patents. They are entitled to do so under the policies of most standard setting organizations. This usually works out fine, too. In nearly all cases, firms work out reasonable royalty rates and other license terms so that standards can be built upon without fear of patent infringement litigation. In a few cases, firms with standard essential patents may join together in a “patent pool” to offer all their patents to other firms for a single, reasonable fee. For example, the cost to implement the thousands of patents that are offered in the H.264 patent pool when building a personal computer is typically less than 20 cents, and often much less.

Every now and then a patent holder may break its promise to make its standards essential patents available on reasonable and nondiscriminatory terms. These outliers create a lot of trouble for the international standards ecosystem. Once a standard like H.264 or 802.11 is widely adopted, firms have no choice but to implement the standard in their products. Would you buy a smartphone, an iPad or a personal computer that couldn’t play video or connect to wireless networks? Probably not. This is why antitrust enforcers have taken a keen interest recently in patent acquisitions and attempts by patent holders to block their competitors from shipping products that implement industry standards.

Microsoft is one of several firms that have been discussing these concerns with antitrust enforcers over the past few months. In these discussions, we have offered our view that any patent holder that promises to make its standard essential patents available on reasonable and nondiscriminatory terms should do just that. That means that such patent holders should not seek to block shipments of competing products just because they implement an industry standard— a license on reasonable terms is always available. That also means that such patent holders should not require other firms to license back their patents, except for patents that are essential to the same standard. And if a patent holder sells its patents, it should contractually require the buyer to live up to these points. A promise to license patents on reasonable and nondiscriminatory terms, absent these three points, is an empty promise.

Microsoft’s Support for Industry Standards

Like other leading high-tech firms, Microsoft regularly contributes to the development of industry standards. Industry standards are vitally important to the development of the Internet and to interoperability among mobile devices and other computers. The international standards system works well because firms that contribute to standards promise to make their essential patents available to others on fair, reasonable and nondiscriminatory terms. Consumers and the entire industry will suffer if, in disregard of this promise, firms seek to block others from shipping products on the basis of such standard essential patents.

Microsoft’s approach is straight-forward:

1. Microsoft will always adhere to the promises it has made to standards organizations to make its standard essential patents available on fair, reasonable and nondiscriminatory terms.
2. This means that Microsoft will not seek an injunction or exclusion order against any firm on the basis of those essential patents.
3. This also means that Microsoft will make those essential patents available for license to other firms without requiring that those firms license their patents back to Microsoft, except for any patents they have that are essential to the same industry standard.
4. Microsoft will not transfer those standard essential patents to any other firm unless that firm agrees to adhere to the points outlined above.