

Patents and Standards

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KEI Briefing on Patents and Standard

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The issue: IPR in standards

standards regime

ICT: interoperability

environment: trade protection

TBT/SPS: trade protection: lighters, food

IPR regime

IPR in itself: broken, gridlock.

Technical transfer and South-North conflicts

Core issue of IPR in standards: IPR misuse

balance=control on IPR misuse

causes:

A great number of IPRs in one standard
difficulties of patent search

results:

hold up and royalty stacking (ambush,
submarine)

refusal to license

Progress and limits (1)

Patent policies of SSOs:

disclosure requirements

valid contract? easy to be circumvented

remedies?

RAND: too vague and subject to arbitrary interpretations.

Progress and limits (2)

Competition policy:

refusal to license: exceptional case

patent pools

joint discussion on licensing in SSOs

IP law:

data information (EPO),

prior art,

pricing of patent: intrinsic or strategic value of IPR in standards

open standard: Denmark WTO notification

open source: make it work

Adverse effect

fair competition and industrial development

exorbitant royalties: DVD, 3G mobile

exclude competitors (refusal to license and others means): WINDOWS v. Linux

consumers: mobile and access to Internet

innovation: follow up and paradigm change

social development

infrastructure

e-government/commerce

on-line service delivery and information for development

national security

Policy Recommendations

SSO: international priority

substantial clarifications: what, when, who...

unilateral ex ante disclosure

joint discussion on licensing in SSOs

competition policy

refusal to license: from exceptional case to EFD

patent pools

joint discussion on licensing in SSOs

TRIPs flexibilities: interoperability ,public interest

exclusion, exemption and limitation

a declaration on interoperability

Anti-trust Remedies (EFD and CL)

IP office: patent data, prior art, IP value

sharing litigation information?

open standards and open source

Strategic considerations:

The North: Policy dilemma

The South:

take the lead

international priority

internal coordinations: IP, ICT, standardization, trade

Cooperation among the South: aggregated market and policy leverage

WIPO and beyond to avoid forum shifting

South-North cooperations

interoperability, open ICT system and fair competition

patent data

prior art

value of IPR

WIPO document "Standards and Patents"

good description of current situation and good base for further discussions

some technical points

joint licensing discussion in SSOs and Patent pool

VITA patent policy omitted

infrequency of IPR problems

scare away the technology holders from the standardization

volunteer participation of technical expert

the use of ex ante mechanism in practice

**Thank you &
Further discussions**