ITU’s perspective on patents and standards

Antoine Dore,
Senior Legal Officer, ITU
Outline

• Background information:
  • Who we are
  • What we do
  • Interplay between the standardization and patent systems
  • What are the main challenges?
  • How do we address them?
• Statistics

UNECE Conference, Geneva, 21-22 June 2012
ITU in Brief

• The leading UN Agency for ICTs.
• Three core sectors:
  – Radiocommunication
  – Standardization
  – Development
• Membership includes 193 Member States and more than 700 Sector Members (private companies) and Associates.
ITU’s Legal Framework

- Treaty-based organization
- The Plenipotentiary Conference (PP) is the supreme organ of the Union
  - Meets every four years
- ITU Council acts on behalf of the Plenipotentiary Conference in between PPs
  - Meets annually
  - Composed of 48 Member States
IPR Ad Hoc Group

- Members: participation is open to Member States, Sector Members (private companies), Associates and invited guests.
- Mandate: to provide advice to the TSB Director on IPR issues that arise in the context of ITU’s standardization activities. The IPR AHG is an advisory body.
Interplay between the standard and patent systems

UNECE Conference, Geneva, 21-22 June 2012
The Challenges

**Standard system**
- Standards promote innovation
- The scope of ICT standards is global
- Standards are meant to be used by all without undue constraints

**Patent system**
- Patents promote innovation as well
- Generally speaking, the scope of patents is national
- Patents are private monopolies

UNECE Conference, Geneva, 21-22 June 2012
Policy Documents

- Four policy documents help ITU manage the challenges relative to the interplay between the standard and patent systems:
  - Common Patent Policy
  - Common Patent Guidelines
  - Software Copyright Guidelines
  - Trademark Guidelines
- The rules contained in these documents are regularly up-dated and are applicable to all participating members.
Patent Policy/Guidelines

- The purpose of the common Patent Policy is to ensure that patents incorporated into ITU standards are available to everyone without undue constraints.
Patent Policy/Guidelines

- The Patent Policy helps ITU manage the risks associated with the inclusion of patents in its standards.
- By requiring early disclosure of essential patents and licensing commitments, ITU ensures that no IPR Holder is placed in a position to stop others from complying with its standards, and mitigates patent hold-ups and other similar behaviour.
Review of the Patent Guidelines

• Four main changes have been introduced in the revised Patent Guidelines:
  – Definition of Patent has been clarified to address the “essentiality” issue.
  – The status of the licensing commitment in case of assignment/transfer of patent rights has been clarified.
  – The general understanding to the effect that a licensing commitment cannot be withdrawn or amended (unless more favourable licensing terms are offered) has been reflected in the Guidelines.
  – To increase legal certainty and transparency, the definition of Patent was also added to the licensing commitment.
ITU-EPO Collaboration Agreement

- Closer collaboration between patent offices and standards bodies also reduces the tensions between the patent and standard system.
- EPO and ITU have a long history of collaboration.
- EPO became a member of ITU in 2003.
- Over the years, this collaboration has developed in scope and intensity.
- In 2011, the collaboration between ITU and EPO took on a new dimension by the signing of an agreement principally aimed at easing the tensions between the patent and standardization systems.
ITU-EPO Collaboration Agreement

• Specific projects aimed at increasing the transparency of the system and the quality of patents being granted will be implemented:
  – ITU and EPO patent databases will be linked to increase transparency relative to the identity and status of claimed patents.
  – ITU and EPO will continue to collaborate on ITU document format definition and dissemination policies to align them as much as possible on EPO prior art search needs.
  – ITU and EPO will work together on capacity building activities on IPR and standardization issues.
Collaboration with other Standards Bodies

- Standards landscape can also be improved through active collaboration between standards bodies.
- ITU has more than 40 formal partnerships with other standards bodies.
- GSC provides a venue to participating SDOs and ITU to exchange information on subjects of common interest, including the interplay between standards and IPR.
- GSC members recognize the need for SDOs and PTOs to collaborate with a view to reducing the tensions between the standard and patent systems (See GSC Resolution 16/23 - www.gsc16.ca).
New challenges

- Do current RAND-based patent policies adequately respond to the current needs of the various stakeholders?
  - Reasonable royalty rate on standards-essential patents
  - Common royalty base
  - No injunctive relief

UNECE Conference, Geneva, 21-22 June 2012
Action taken by ITU to address the new challenges

- IPR Round table on 10 October 2012 (http://www.itu.int/en/ITU-T/Workshops-and-Seminars/patent)
- Purpose: to assess the effectiveness of RAND-based patent policies and to provide a neutral venue for industry, standards bodies and regulators to exchange innovative ideas that can guide future discussions on whether current patent policies and existing industry practices adequately respond to the needs of the various stakeholders.

UNECE Conference, Geneva, 21-22 June 2012
Trends and statistics

- Japan, China and Korea: among the top 5 patenting nations.
- In 2009, Asia submitted more Patent Declaration Statements than Europe for the first time over the last decade.
- Asia’s engagement in international standardization activities is steadily increasing.
Trends and statistics

- Over the past 5 years, there has been a 5-fold increase in the number of input documents submitted to ITU-T by China.
- Since 2008, the number of Chinese delegates in ITU-T SG meetings has more than doubled.
- For the study period 2009-2012, Chinese representatives have been elected to 9 Study Group Management Teams.
- At WTSA-08, the Chinese delegation was among the largest. (Of the 10 largest delegations, 5 were from Asia).
- 2009 was the first year in which China had the second highest number of Patent Declaration Statements.
Trends and statistics

- Since 2002, Korea has been in the top 10 countries submitting Patent Declarations annually.
- Bridging the standardization gap: Africa and South America have submitted no Patent Declaration Statements over the last decade.
Trends and statistics

[Bar chart showing data for Asia, Europe, and North America from 2000 to 2009]
Trends and statistics

Refuse RF or RAND

UNECE Conference, Geneva, 21-22 June 2012
Standards against which Patent Declaration Statements have been made