

Report Q 157

by the Bulgarian Group

The Relationship between Technical Standards and Patent Rights

The Bulgarian National Group of AIPPI shares the opinion that both technical standards and IPR are needed and that one cannot be given up for the sake of the other.

1. Basis for technical standards

- 1.1 A new Law on Standardization setting up the European principle of standardization, so called module principle, is in force in Bulgaria. According to the law the national organization which sets up the national standards is the Agency for Standardization. Bulgarian national standards are harmonized according to the requirements of the EU Directives. Very few de facto standards exist due to the transitional period of the market economy.
- 1.2 All standards are addressed to the manufacturers and they apply them in the field of technical security, labor protection and safety, under pressure vessels etc. There no standards which refer explicitly to a patent.
- 1.3 Bulgarian national standards are not enforceable. Market Control Administration gives permission for selling the standardized goods on the grounds of declarations given by the manufacturers, but the production may be examined. According to the Law the standardized goods need to be certified, but for the time being the licensed laboratories for certification of goods are in the process of establishing.

2. Possible conflicts between technical standards and IPR

- 2.1 The Bulgarian National Group is of the opinion that the possible conflicts between patents and standards can arise at every stage of preparation and setting up of standards. Some of them are the following. Public discussion of draft standards may affect novelty. On the other hand the owner of standardized IPR could take a privileged market position, have a monopoly to control the competition.
- 2.2 The Group finds that rules for handling information obtained during the period of setting up standards should be set regarding confidentiality, terms for filing patent application etc. The rules should be protective for the IPR.
- 2.3 The Group does not find any particular issues with regard the territorial aspect of application of standards. The members of the standardization organization may ignore from discussion the patents of non-members. A conflict may, however, arise

taking as standards certain technical achievements, and the marketing of other patents in this field which do not exactly the standards.

3. IPR policies, conflict resolution means

- 3.1 The relevant "essential" IP rights should be determined by the standardization organization. The members of the respective organization should be invited to reveal their relevant IP rights depending on the importance of the standard. The disclosure of new inventions or technologies should be protected.
- 3.2 The owner of IP right which has been detected as relevant can be forced by way of licensing to let it be used for standardization only in compliance with explicit provisions of the law.
- 3.3 The IPR owner must be compensated for the denial. The membership or the participation in the standardization process could be made subject to an undertaking to grant licenses or to make the technology protected by IP rights otherwise available.

4. License policies, royalties

This will depend on the legal regulation and explicit provisions regarding p. 2 and p.3.

Zusammenfassung

Gegenwärtig sind die Gesetzgebungen für die Standardisierung einerseits und für den Schutz von Erfindungen andererseits, mit den europäischen Gesetzgebungen über diese Fragen harmonisiert. Die bulgarische Nationalgruppe der APPI ist völlig der Meinung, dass sowohl die technischen Standarde, als auch die Rechte über das gewerbliche Eigentum wichtige Attribute bei der Entwicklung des technischen Weltfortschrittes sind. Da die Frage von Weltwichtigkeit ist, sollte eine gründliche Untersuchung über alle möglichen Konflikte durchgeführt werden. Angesichts der kontinuierlichen Globalisierung der Handelsbeziehungen zwischen den einzelnen Ländern, die zu einer freien Bewegung von Waren auf dem Markt führt, halten wir für noetig, die Loesungen der Probleme maximal zu unifizieren.