Japan
Japon
Japan

Report Q 157

by the Japanese Group

The Relationship between Technical Standards and Patent Rights

1. Basis for technical standards

1.1 What types of national and international standards exist in your country? By whom are these standards set up? Are there de jure and/or de facto standards?

(1) Technical standards are roughly classified into three types: **de jure standards**, de facto standards and consortium standards.

(2) The de jure standards are set up by standard-setting organizations, while the **de facto standards** and the consortium standards are set up by a single or a group of private companies.

(3) Both of the de jure and the de facto standards exist. The following are examples of the standards.

De jure standard

- MPEG 1/2/4 by ISO/IEC (international standard)
- PDC by ARIB (international standard)

De facto standard

- CD by Sony/Philips (international standard)
- VCD by Sony/Philips/JVC/Matsushita (international standard)
- MD by Sony/Philips (international standard)

Consortium standard

- 8mmVCR by Sony, Matsushita, etc. (international standard)
- DVC by Sony, Matsushita, JVC, etc. (international standard)
- DVD by Toshiba / Matsushita / Hitachi / Mitsubishi / JVC / Sony / Pioneer / Philips / Thomson / Time Warner (international standard)

1.2 Who is the addressee of the standards and in which technical field do standards apply? Are the Groups aware of any standards which explicitly refer to patents?

(1) The addressees of the standards are mainly manufacturers of products incorporating a technical standard concerned. In case of finished products such as PDC, CD and DVC, the standards are applied to the technical fields of those

products, while in case of standards concerning components such as MPEG, they are applied to the technical fields of DVD, DVB and STB where components concerned are used.

(2) In recent consortium standards such as Bluetooth and AMI-C (Automotive Multimedia Interface Collaboration) as well as de jure standards adopted up by ISO/IEC, ARIB and ITU, submission of a patent statement is requested during the standard-setting procedure. ITU discloses the patent statements received on its website.

For reference, the following are manners for dealing with patent problems in the case of standards listed in the answer of the Question 1.1.

De jure standard

- MPEG 1/2/4 patent pool
- PDC free license

De facto standard

- CD patent pool
- VCD patent pool
- MD patent pool

Consortium standard

- 8mmVCR bilateral agreement
- DVC bilateral agreement
- DVD patent pool

1.3 What is the legal effect of standards? Are they enforceable? If so, how are they enforced? The Groups are invited to distinguish between the types of standards involved according to question 1.1 above.

(1) In general, whether to use a technical standard is left on the discretion of users. The standard itself has no legal effect.

(2) Therefore, there are no concepts of enforcement in relation to the technical standards.

2. Possible conflicts between technical standards and IPR

2.1 What possible conflicts do the Groups see with regard to the relationship between patents and standards?

Under the recent propatent environment, patentees weigh the maximization of the profits accrued from their patents. To the contrary, members of the standard-setting groups tend to make the adopted standards spread widely in view of invested costs and labor. In other words, the technical standards for diffusion of technologies and the patent rights for protection of private properties are inherently to cause conflicts of interest. However, they also have a common goal: provision of technology to the society. In reality, therefore, the

interests of these two have to be adjusted to make a balance. Such adjustment should not be solely left on the parties involved because resolving conflicts promptly would become difficult. Common rules for such adjustment should be sought in order to formulate an adjustment system.

2.2 Which issues do the Groups find relevant with regard to confidentiality, concerning namely the relations between the parties involved in setting up a specific standard or the preservation of confidentiality? Should there be rules for the handling of information obtained during the period of setting up a standard? Likewise, should there be rules for the filing of patent applications during said period? If so, what should the rules be?

(1) During the period of standard setting, what the parties involved are allowed to disclose is information which can be laid open to public. No confidential information should be disclosed.

(2) In case of erroneous disclosure of confidential information, the party who has disclosed should be responsible.

(3) Before submission of information, a party should complete the filing of necessary patent applications beforehand. Otherwise, it would be a natural consequence that disclosure of information would be construed as abandonment of rights with respect to obtaining a patent.

2.3 Are there any issues with regard to the territorial aspect (scope of protection and application of the standard)? What differences do the Groups see with regard to patents of members of the standardization organisation and of non-members?

(1) It seems there are no territorial issues.

(2) With regard to patents, there are no differences between the members and non-members of the standard-setting organizations.

2.4 Are there rules for patent pools or discrimination against non-members which might constitute a conflict?

There are no rules to discriminate non-members of a patent-pool from its members.

3. IPR policies, Conflict Resolution Means

3.1 How and by whom should the relevant or "essential" IP rights be determined? Should the members of the respective organisation be required to reveal their relevant IP rights? What should be the consequences if a member does not reveal an IP right? How does this affect the disclosure of new inventions or technologies?

(1) When the parties address patent problems under a bilateral agreement, there are no needs to determine the issue of relevancy or essentiality. However, in case of a patent pool, it would be necessary to choose "essential" IPRs (intellectual property rights) to be pooled. Neutral third party experts such as attorneys should handle determination of whether the IPRs are essential.

(2) It would be necessary for the members to submit a patent statement in which they declare the availability of a license under the essential IPRs on fair, reasonable and nondiscriminatory conditions.

(3) When a member does not agree to licensing under an essential patent, a technical standard involving his patent should not be set up.

(4) The fact that a license under an essential patent is not available does not mean that it would adversely affect the creation of new inventions. However, without technical standards, there are concerns for the flood of technology which does not assure the availability of replacement or interconnection.

3.2 Can the owner of an IP right which has been detected as relevant be forced to let it be used for standardisation? If so, should this be done by way of licensing? Can the owner deny the use of the IP right?

(1) It is not possible to force an owner of IPRs to license his IPRs, but it is possible to confirm whether the owner is prepared to grant a license under its IPRs.

(2) In this case, the IPR owner can deny such licensing. In such an occasion, nobody can use the technical standard concerned, which makes it worthless.

(3) To be more specific, if denial by the IPR owner becomes clear during the standardization procedure, a technical standard at issue needs to be modified so as to curve out the scope of the concerned IPR. However, it would be a problem if the IPR owner denies licensing after the adoption of the technical standard. (This situation seems realistic because the determination of whether certain IPRs are essential may be possible only after the completion of standardization process.) In this case, the owner has to be persuaded for licensing. Otherwise, the standard would be a paper standard without value and effect.

3.3 What should be the consequences of such a denial for the standardization process? Can the membership or the participation in the standardization process be made subject to an undertaking to grant licenses or to make the technology protected by IP rights otherwise available?

(1) When the use of an essential IPR is denied, a modification of a technical standard concerned should be made so as not to use the IPR. If such modification is not available, the IPR owner has to be persuaded to change its mind. If persuasion is not successful, the announcement of the technical standard should be given up.

(2) As a condition for participation in standardization process, it would be possible to require owners of essential IPRs or technologies protected thereunder to grant licenses. In reality, a patent statement is submitted in many cases, in which announcement is made to the effect that licenses under essential IPRs are available on fair, reasonable and nondiscriminatory conditions. This is just the current practice and clearly unsatisfactory in order to resolve patent-related issues in connection with standardization. We have considered several progressive proposals and they are discussed in a separate paper. Conventional patent statements do have some effects in avoiding the denial of licensing under essential IPRs.

However, such effects do not extend to the non-member owners of the essential IPRs.

3.4 In which way and by whom should conflicts between a member and the organisation or between members be resolved? The Groups are invited to give their comments on the pros and cons of internal arbitration proceedings on the one hand and of national court proceedings on the other hand, as far as particular conflicts with regard to standards and patents are concerned.

(1) It depends on the type of conflicts. Essentially, the parties involved should remove conflicts.

(2) Internal arbitration proceedings allow the resolution of conflicts in a quicker and cheaper way but have no binding effect. Court proceedings, to the contrary, are legally binding but they require longer time, more efforts, and higher costs.

4. License Policies and Royalties

4.1 Who determines the conditions of a license agreement? What are reasonable royalties? How and by whom can the non-discriminatory character of conditions be defined? Is there any impact, and if yes, which impact does Art. 31 TRIPS have on this type of licenses?

(1) The owner of a patent right under which a license is sought should determine the conditions of a license agreement.

(2) Reasonable royalties should be determined taking into account the balance between the patentee who wants to maximize its patent value and the licensee who wants to receive a license less expensively. It should considers relevant factors such as the evaluation of value of the patent and the product and technical field to which the standard is applied. Therefore, there are no general figures to indicate the level of reasonable royalties. It should be determined on a case-by-case basis.

(3) As stated above, the patent owner should determine license conditions. Therefore, the patent owner should define the nondiscriminatory conditions. However, in case of patent pools, licensing frameworks will have to be reviewed by the enforcing authorities such as the FTC in US, DGIV in US and Fair Trade Commission in Japan (JFTC). They will be a position to finally decide whether the nondiscriminatory conditions are all right.

(4) There are no perceived impacts of TRIPS Section 31.

4.2 Do the Groups see general principles for license conditions? The Groups are invited to submit factual comments on the licensing policy involved in standards, i.e. in comparison to the policies for amicable license agreements.

(1) We do not believe that any general principles exist for license conditions.

(2) In case where problems associated with standard-related patents are addressed under a bilateral agreement, such agreement would not be any different from a

common license agreement. Therefore, the license policy should be the same. In case of patent pools, however, there are some differences as listed in the following:

Differences between a bilateral agreement and a patent pool:

Bilateral Agreement

Feature:

Flexibility

Advantage:

All patents relevant to a certain product can be covered by the agreement. Conditions for non-patent matters can be added.

Dis-advantage:

It takes time and labor as many agreements as the number of patentees may be required. Thus, accumulated royalties would be large in total.

Patent Pool

Feature:

One-stop shopping

Advantage:

One package license for standard-related, essential patents are available irrespective of how many patent owners exist. This reduces time and labor. Licenses for es-sential patents owned by various owners can be obtained, and thus a powerful license may result.

Dis-advantage:

With regard to non-essential pat-ents (not essential but likelihood of being used is fairly high), a sep-arate bilateral agreement has to be sought.

4.3 What are the consequences if an agreement cannot be reached between the patent holder and the licensee? How should royalties finally be determined?

(1) It simply means that the licensee cannot use the patent owned by the patent owner. As a result, the technical standard cannot be used.

(2) Initially, the licensor proposes the conditions. When the licensee does not agree on the conditions, the licensor will have to adjust the royalty taking the licensee's response into account.

4.4 What is the legal quality of the undertaking to grant licenses (e.g. third party beneficiary)? Are the rights of a member or of a third party to challenge the validity of the patent affected in any way by this undertaking? Does the patent holder retain the right to enforce the patent against third parties or the member and, if so, under which conditions?

(1) The legal effect of the undertaking to license is uncertain. However, once a license is committed, it would be difficult to change the attitude to deny the license at a later time. Requirements are met if the license conditions are fair, reasonable and nondiscriminatory. It does not guarantee royalties to be lower.

(2) We do not believe that the rights of a member or a third party to challenge the validity of the patent are affected by the undertaking to license.

(3) In our understanding, the patent owner can enforce its patent right.

(4) A patent can be enforceable in cases where a third party uses the patented invention without authorization by the patentee, he/she does not take any action to obtain a license, or he/she engages in action which constitutes abuses of rights.

5. Conclusion

(1) We answered each question in the foregoing.

(2) Essential requirements of the IP policy are as follows.
- To undertake to grand a license with regard to the patents essential for a technical standard.
- The license conditions should be fair, reasonable and nondiscriminatory.
- To agree to "reasonable royalties as a whole" provisions that are elaborated in the paper attached to this report.

(3) With regard to future IP policies and resolution of conflicts between IPR and standards, please see the separate proposals we have prepared as discussed in the next chapter.

Proposals for the Harmony between Technical Standards and Patent Rights

1. Recognition of Problems

The Japanese group of AIPPI does not believe that the patent system and the system of technical standards are inherently conflicting with each other. The patent system aims at affording the monopoly of certain technology to a patent holder in consideration for the disclosure of the technology, while the technical standard is to facilitate wider use of technology for the sake of convenience to users. There is an underlying philosophy that both serve to offer technology for the public to use, and that the two are different only in terms of how to materialize that philosophy. Therefore, those who are involved in setting up technical standards have to be responsible for securing an environment in which certain technology adopted as part of a technical standard is freely usable without undue restriction caused by patent rights. In other words, a patentee is responsible for allowing the use of its own patented invention for itself or through licensing, so as to offer technical benefits from the patented invention to the society.

However, balancing the patentee's rights and the wider use of standards may be difficult, or become impossible sometimes, if it is left solely on patentees and those who are involved in standardization. Such difficulties hinder wider use of valuable technologies that have cost substantial investments and thus result in a waste of enormous social costs. In the age of economic globalization, such concerns would easily be shared on a worldwide scale.

The issues to be addressed can be summarized as follows.

(1) How far are technical standards organizations including consortia or fora (hereinafter called "standardization bodies") responsible for patent problems?

(2) A patentee is requested to submit a patent statement expressing the availability of a license under his patent relating to a technical standard. What are the legal implications of such patent statement?

(3) Is such license available for anyone who desires it? Is it substantially assured?

(4) What happens if a patent right of a third party who is irrelevant to standardization activities becomes known to exist? Is there any effective and sufficient measure to be taken in such case?

These issues and problems have been discussed on various occasions. It seems that they will be conspicuous in the field of information and communication technology (hereinafter called "IT") than in any other fields. At the Okinawa Summit Meeting of G8 held in June 2000, an Okinawa charter was adopted on the global information society. In the charter some suggestions were made on how to resolve issues related to IT. We quote some of the phrases from these suggestions, as they should give some guidance to reviewing the issues of technical standards: "No one should be excluded from the benefit of the global information society." "To foster an appropriate policy and regulatory environment to stimulate competition and innovation." "To advance stakeholder collaboration to optimize global networks."

2. Viewpoints for Solving Problems

It goes without saying that in order eliminate the above-mentioned concerns and resolve the issues, it is necessary to establish a framework in which fruits of technical development can be utilized promptly in the global IT society. There are numerous types of standardization activities such as de jure, consortium or forum. Strong monopoly is afforded through the patent system under the national law of each nation. In our view, it would be most effective to adopt the following approaches when smooth adjustment is sought between the patent and standardization systems:

Firstly, while recognizing the independence and variety of standardization activities, we should secure the prompt provision of technical benefits to the society. For that reason, unified formalities of standardization activities should be adopted for the adjustment of conflicting interests between standardization activities and patent rights.

Secondly, based on the common recognition that a patent provides monopoly, there should be a systematic arrangement for the adjustment of conflicting interests in connection with standardization activities, because inappropriate enforcement of a patent right would jeopardize the expected function of technical standards. Specifically, we recommend to introduce to Patent Law a certain kind of system which restricts patent rights under certain conditions from the viewpoint of facilitating the use of technology in the interests of the public.

3. Proposals

Proposal 1: Establishment of Unified Formalities in Standardization Activities

(1) Basic view

Any standardization body or member engaged in the activities is fundamentally responsible for indicating patents that would be related to technical standards and the availability of a license thereunder. A holder of patents relating to technical standards, regardless of whether or not it is a member of the standardization body, should assume social obligations for responding to the inquiry for the availability of a patent license. For the purpose of creating an environment where technical standards, if once adopted, can be smoothly utilized worldwide, it is necessary and significant to establish unified formalities enabling a smooth adjustment between patent holders and those who wish to use patented technology under the standard.

(2) Thorough Patent Searches

Standardization bodies need to conduct patent searches to examine the existence of any patents relating to technical standards at every stage of standardization activities. As long as a patent search is carried out at the request of a standardization body, it can actually be done by a member of the body. This does not mean an imposition of obligations on standardization bodies to assure the completeness of the patent searches.

(3) Submission of Patent Statements and Licensing Declarations

(i) General Patent Statements and Licensing Declarations

A member participating in standardization activities shall submit a statement that it will grant licenses on its patents on a royalty-free basis or a fair, reasonable and nondiscriminatory basis when the technical standard that covers its patents is adopted in the future. This is to create an environment in which the patent holder is dissuaded from refusing patent licenses in the final stage of standardization efforts or after the standard is established.

(ii) Patent Statement and Licensing Declaration

A member who owns patents relating to a to-be-adopted technical standard shall submit a statement in which it commits itself to a grant of licenses under its patents on a royalty-free or a fair, reasonable and non-discriminatory basis.

A concept of reciprocity is included in the conditions for licensing so as to leave some room for taking countermeasures against unreasonable enforcement of patents owned by other patentees who are not participating in standardization activities.

Further, the statement should include a provision to the effect that all the patent owners who submit the statement shall agree with other owners of patents relating to the technical standard to include into the provision a phrase "reasonable royalty as a whole." In this statement, it should be made clear what this phrase "reasonable royalty as a whole" means shall be determined based on commercial viability. Here, discussions may take place among the parties concerned as to what specifically commercial viability means. Commercial viability may be judged, for example, considering whether a potential licensee can still keep business running in a competitive environment after paying the royalty.

The following is an example of a provision incorporating above philosophy:

> The Patent Holder is prepared to grant - on the basis of reciprocity for the XXX (Name of Standardization Body) Recommendations - a license to an unrestricted number of applications on a worldwide, non-discriminatory basis and on reasonable terms and conditions to manufacture, use and/or sell implementations of the above XXX Recommendations. Such negotiations are left to the parties concerned and are performed outside the XXX.
>
> The above reasonable terms and conditions are determined on condition that the aggregate compensations to each of Patent Holder are allowable in view of the economical market scale (volume) to be implemented by the XXX Recommendations.

A participating member shall report to the standardization body any kind of information which comes to its attention with respect to the existence of any patents owned by non-participating members in the technical standards.

(4) Treatment of a patents owned by a non-participating member
When it becomes clear that a third party that does not participate in the standardization efforts owns a patent relating to a technical standard, the standardization body shall immediately give the third party patent owner a notice together with details of standardization activities and, in the earliest possible stage, confirm with the patent owner whether it is prepared to grant a patent license on a royalty free basis or fair, reasonable and non-discriminatory terms and conditions. Further, when the patent owner expresses a willingness to grant a patent license upon receiving a notice, then the standardization body urges it to turn in a statement to the same effect as mentioned in the above subsection of (ii) "Patent Statement and Licensing Declaration".

When the third party patent holder does not agree with these conditions, no standards will be established.

Proposal 2: Creation of Patent Pools

(1) Basic view
When the unified formalities are established, it is important to create an environment in which the provision of "reasonable royalty as a whole" is realized in actuality. We recommend the creation of patent pools for this purpose.

(2) Creation of patent pools
Patent owners concerned shall create a patent pool within a given period of time, say two years, after the adoption of a technical standard and make efforts to remove adverse interference of patent rights against the technical standard.

Patent pools have two types: a one-stop-licensing type in which a prospective licensee negotiates with a representative contact concerning a license on all patents related to a technical standard, and a platform type in which each patent owner negotiates with each prospective licensee under certain licensing conditions which are agreed beforehand among all patent owners.

No matter which type of patent pools are sought, it is most advisable to incorporate into the statement to be submitted under the Proposal 1, a provision declaring that the parties concerned shall join the patent pool once any patents related to a technical standard are known or revealed.

Further, it is to be remembered that in the course of creating patent pools, neutral patent experts should certify essential patents and only those who retain essential patents should determine the licensing framework of patent pools. Thereafter, licensing of pooled patent rights shall start.

(3) Measures to be taken in case where a patent pool is unsuccessful
Should a consensus for creating patent pools not be reached, then patent-related issues with respect to the technical standard shall be resolved by arbitration at a public arbitration organization. It will be necessary to obtain a prior consent from members at the time of their participation in the patent pool that arbitration by such arbitration organization shall be binding.

(4) Others
We recommend that the patent pool arrangement shall be sought particularly for technical standards adopted by formal standards organizations or governmental agencies.

Proposal 3: Preparations of Provisions for Adjustment of Conflicting Interests

(1) Basic view
As long as Proposal 1 and Proposal 2 autonomously function, many problems will be resolved. In view of the fact that a patent provides powerful rights providing monopoly, it would be necessary to incorporate in the Patent Law a provision to make it possible to adjust the interest of a patentee in view of public interest, in case the patentee cohesively asserts its patents.

On the other hand, a patent is a privately owned property. It is important to eliminate arbitrary restrictions over the private property under the name of technical standardization. One practical way is that such restriction should be allowed only when a technical standard is adopted by a public standardization organization.

(2) Outline of a provision for adjustment

(2-1) Introduction of a system of compulsory license for public interests
In order to adjust the extent of monopoly provided under a patent when it interferes with a technical standard, a compulsory license system should be incorporated in the patent law as a general system. To be specific, when a patent license is considered necessary for the public interests, the system should entitle those who desire a license to request negotiations with the patent owner for licensing conditions. Should such negotiation end up in failure, a competent authority should have power to award a compulsory license. The patent law should have provisions to allow for such compulsory licensing.

Those who are not satisfied with the decision made by the above-mentioned authority should be able to appeal.

(2-2) Conditions for a compulsory license on a patent related to technical standards

The award of a compulsory license in connection with technical standards would limit the effectiveness of patents. It is therefore critical to make sure that such compulsory license provisions are applied fairly with procedural transparency. Conditions for compulsory license awards would be: 1) that the standardization body should express its intention to seek adjustment under the patent law; 2) that the standardization body satisfies certain responsibilities; and 3) that a public and neutral standards organization certifies that such responsibilities are satisfied.

More specifically, the requisite conditions can be determined for the following cases:

(i) In case where patent statements have been submitted
   1) The standardization body has conducted a patent search.
   2) The patent statements were submitted as discussed in Proposal 1.
   3) A standardization body has declared its intention to seek legal proceedings in case of failed negotiations.
   4) A public standards organization certifies that the above steps 1), 2), and 3) have been taken.

(ii) In case where a patent statement was not submitted
   1) The standardization body has conducted a patent search.
   2) A standardization body has obtained from the patent owners written confirmations of their intention to grant a license as discussed in Proposal 1.
   3) The standardization body has declared its intention to seek legal proceedings in case of failed negotiations.
   4) A public standards organization certifies that the above steps 1), 2), and 3) have been taken.

(2-3) Guarantee of options for adjustment provisions
If the above adjustment provisions are applicable to all standardization bodies, activities of standardization bodies may become unduly rigid and sluggish from time to time. For this reason, it is recommended that whether or not to adopt the above adjustment provisions should be left to the discretion of each standardization body.

By giving a standardization body such an option, freedom for standardization activities may be guaranteed, whereas arrangements with the owners of patents relating to a technical standard may be made more systematically.

4. Summary

The proposals we discussed here may be considered bold and drastic, containing views and suggestions that might restrict patentees' rights to some extent. We hope that our proposals will stimulate arguments for and against. However, we propose our views on adjustments of conflicting interests between technical standards and patents as we believe that constructive proposals would be worth in the era of information technology.

To sum up, the salient points of our suggestions are:

(1) Introduction of a concept of "reasonable royalty as a whole" in a license agreement for pooled patents. It will be functioning as a guideline and facilitate smooth licensing negotiations.

(2) Establishment of a system for compulsory licensing when an inter-parte negotiation ends up in failure. A standardization body should be provided with an option to choose this approach.

Any of these proposals are likely to invoke arguments. The most important point in this context is to avoid the waste of wisdom and investment expended for technical achievements and to utilize the technology widely in our society. Our proposals should hopefully be understood as an attempt to realize such desire. We also wish that our proposal will offer a base for further reviews and discussions by many people concerned and lead to an outstanding achievement on this subject in the near future.

Our proposals represent ideas for the resolution of problems arising in connection with the relationship between technical standards and patent rights. In some occasions, more than one technical standard becomes attached to particular goods or services available to users' hands. There might be problems involving what we may call "a chain of overlapping technical standards" in addition to those discussed in this paper. Under such circumstances the problems arising out of the relationship between technical standards and patents could be more complicated and more difficult to tackle with. Our proposals here do not cover such problems. We expect that those who are concerned will address these problems separately in the future.

Summary

The patent system allows the monopoly of a technical invention for its inventor in consideration of the dissemination to the public. The system of technical standards, to the contrary, aims at enhancing users' convenience through the propagation of standard technologies. Two systems have a common goal: provision of useful technology to the society.

In recognizing the variety and self-determination of standardization activities, the Japanese group of AIPPI feels the necessity of assuring speedy standardization process. We also recognize that irrational enforcement of patent rights would spoil the merit of technical standards. Based on such recognition and in view of reducing the adverse effect of the patent rights against the technical standards, we would like to propose the following three proposals.

First: Establishment of unified formalities in standardization activities

This will include thorough patent searches, submission of the patent statements in which a provision of "reasonable royalties as a whole" should be included for essential patents, and the verification of license availability from non-member who owns patents relating to technical standards.

Second: Creation of patent pools

As a means for realizing the provision of "reasonable royalties as a whole," patent pool arrangements shall be sought for certain period of time.

Third: Preparation of provisions for adjustment of conflicting interests

With regard to patent rights relating to technical standards, a system to allow compulsory license in view of public interest should be included in the patent law. The system should provide standardization body with an option to use such statutory compulsory license.

Résumé

Le système des brevets autorise le monopole d'une invention technique pour son inventeur en prenant en considération sa divulgation dans le public. Le système des standards techniques, au contraire, a pour but d'améliorer la commodité des utilisateurs grâce à la propagation des technologies standards. Les deux systèmes ont un but commun : fournir à la société une technologie utile.

En prenant en compte la variété et l'autodétermination des activités de standardisation, le groupe japonais AIPPI ressent la nécessité d'assurer un processus de standardisation accéléré. Nous savons également que l'application irrationnelle des droits des brevets gâcherait l'intérêt des standards techniques. Sur la base d'une telle constatation, et en ayant en vue la réduction de l'effet néfaste des droits des brevets sur les standards techniques, nous aimerions faire les trois propositions suivantes.

Premièrement : Etablissement de formalités unifiées dans les activités de standardisation

Ceci comprendra des recherches exhaustives dans les brevets, une soumission des mémoires des brevets dans lesquels une clause de "redevances raisonnables dans l'ensemble" serait incluse pour les brevets essentiels, et la vérification d'une possibilité de licence de la part de non-membres qui possèdent des brevets se rapportant aux standards techniques.

Deuxièmement : Création de Regroupements de Brevets

En tant que moyen pour obtenir la clause de "redevances raisonnables dans l'ensemble", des dispositions de regroupements de brevets devront être recherchés pendant un certain intervalle de temps.

Troisièmement : Préparation de Clauses pour le Règlement d'Intérêts Conflictuels

En ce qui concerne les droits de brevets se rapportant à des standards techniques, un système pour autoriser une licence obligatoire au vu d'un intérêt public devrait être inclus dans la loi sur les brevets. Le système donnerait à l'organisme de standardisation l'option d'utiliser une telle licence obligatoire réglementaire.

Zusammenfassung

Das Patentsystem erlaubt ein Monopol auf eine technische Erfindung für ihren Erfinder unter Berücksichtigung der Verbreitung gegenüber der Öffentlichkeit. Das System der technischen Standards zielt im Gegensatz dazu auf eine Verstärkung der

Zweckmässigkeit für den Nutzer durch die Verbreitung von Standard-Technologien. Zwei Systeme haben ein gemeinsames Ziel: Bereitstellung von nützlicher Technologie für die Gesellschaft.

In Erkenntnis der Verschiedenheit und Selbstbestimmtheit der Standardisierungsaktivitäten fühlt die japanische Gruppe der AIPPI die Notwendigkeit, schnelle Standardisierungsprozesse zu gewährleisten. Wir erkennen auch, dass eine irrationale Durchsetzung von Patentrechten die Verdienste von technischen Standards verderben würde. Basierend auf dieser Erkenntnis und mit Blick auf die Verringerung des negativen Effektes von Patentrechten gegenüber technischen Standards möchten wir folgende drei Vorschläge unterbreiten.

Erstens: Einrichtung von vereinigten Formalitäten bei Standardisierungsaktivitäten

Dies beinhaltet gründliche Patentrecherchen, Vorlage der Patentdarstellung in welcher eine Bereitstellung von "vernünftigen Lizenzgebühren als ein Ganzes" für wesentliche Patente eingeschlossen sein sollten, und die Bestätigung der Lizenzverfügbarkeit von einem Nichtmitglied, das Patente mit Bezug zu technischen Standards besitzt.

Zweitens: Schaffung von Patent-Pools

Als ein Mittel zur Realisierung der Bereitstellung von "vernünftigen Lizenzgebühren als ein Ganzes" sollen Vereinbarungen für bestimmte Zeiträume angestrebt werden.

Drittens: Vorbereitung von Bestimmungen zur Beilegung widerstreitender Interessen

Unter Berücksichtigung der Patentrechte, die mit technischen Standards zusammenhängen, sollte mit Hinblick auf die öffentlichen Interessen ein System, das die Vergabe von Zwangslizenzen erlaubt, in das Patentrecht eingeschlossen werden. Das System sollte der Standardisierungskörperschaft eine Option auf den Gebrauch solcher gesetzlichen Zwangslizenzen bereitstellen.