

## **Report Q 157**

by the Venezuelan Group

### **The Relationship between Technical Standards and Patent Rights**

#### **1. Basis for technical standards**

- 1.1 There are several Standards in the country:  
The Official Standards are issued by COVENIN (Comité Venezolano para Normas Industriales). These are de jure standards.

If there are no Standards COVENIN, there may be other recognized standards, such as those issued by interest groups. The National Electrical Code, issued by the participating different electrical engineering and power generating corporations, is one example.

Also, there are certain entities like PDVSA that have their own Standards.

If none of the aforementioned Standards apply, then the Standard most used are the standards of a Foreign Country that is most prevalent.

As a general rule, Venezuelan Standards differ little from those at the US.

- 1.2 Determining standards is the responsibility of COVENIN. Venezuelan standards are basically industrial in nature. None of these standards refer explicitly to patents.
- 1.3 The legal effect of the standards is that they must be applied used by the different technically oriented sectors. There are legal provisions that are applicable if the standards are not followed, which makes the standards enforceable.

Generally as foreign or private sector standards are followed, and as these standards tends to be more rigorous than national standards local standards are rarely infringed.

#### **2. Possible conflicts between technical standards and IPR**

- 2.1 Conflicts between patents and standards could arise once the patent is exploited.
- 2.2 Confidentiality and forwarding industrial secrets is a matter for the parties involved. However, if a disclosure becomes necessary it must be subject to specific rules for the handling of information disclosed during the period of creating a standard. Rules

for the filing of patent applications during said period should not exist, since there is no retroactive application of the law. If a Patent is granted during the process of establishing a standard should not be subject to said standards.

2.3 Since patents are territorial, the standards of other countries or organizations will not affect non-members. On the contrary, there will be issues regarding patents of non-member countries, such as discrimination or prohibition of use of the developed invention; otherwise patents have to be adapted to the standards of the member organizations.

2.4 See 2.3

### **3. IPR policies, conflict resolution means**

3.1 Essential or relevant IP rights should be determined by the corresponding Patent Office. If the IP rights have been established as a patent, there should not be a problem in revealing them. This is not the case if the rights have not been established as a patent, or if they are in the form of trade secrets, in which event the member should not reveal the IP rights.

3.2 Only under the principles of compulsory licensing.

3.3 See 3.2

3.4 The best way to resolve conflicts between a member and the organization and/or between members is through arbitration, which will be the most expeditious.

### **4. Licence policies, royalties**

4.1 The conditions of a license agreement is determined by the negotiating parties.

Reasonable royalties has always been a sensitive issue. Reasonable royalties are those that one party is willing to pay without jeopardizing its business and the other party will accept. Any intervention or imposition should be avoided. Regulations in this respect should only exist for extreme situations when governmental intervention is required.

The non-discriminatory character of conditions should be defined by the corresponding governmental authority

There is no impact of Art.31 TRIPS on this type of licenses.

4.2 Some regulations are established in the context of governmental rules.

4.3 Business principles should rule. As a last resort royalties could be submitted to arbitration.

4.4 There is no experience in this case.

## **5. Conclusion**

A new Intellectual Property Law is to be promulgated in the near future, which may affect a number of aspects.

