

European IP Standardization Policies

Key messages: *The standard development system in Europe is vibrant. It supports innovation and yields significant benefits for industry and consumers alike. Strong patent protection is needed to continue incentivizing innovators, among which figure many leading European companies, to maintain and increase their R&D and standardization efforts in technologies that will improve the life of citizens.*

In a world dominated by rapid technological change, it is essential to ensure that innovators engaged in standardized and non-standardized industries are compensated for their investments and efforts. There are no reasons why large manufacturers based in Asia or the United States should be allowed to acquire for free innovative technologies developed at great costs by our industry leaders.

Standardization is a major global success for Europe with, for example, GSM and UMTS. European innovators, such as Ericsson and Nokia, have led the path to the mobile communication industry with many international companies successfully adopting their European standards to the benefit of consumers worldwide.

As an illustration of these benefits, a recent Boston Consulting Group study¹ evidenced that globally the cost per megabyte of data has declined 99% from 2005 to 2013 (demonstrating both innovation to make data transmission more cost efficient as well as the healthy state of competition) and that global average selling prices for smartphones decreased 23% from 2007 through 2014 with prices for the lowest-end phones falling 63% over the same period.

Yet and contrary to the evidence showing significant decreases in the price of the devices and services implementing standards, some of the most successful companies using such European standards are criticizing standardization on the grounds that it allows standard essential patent holders to engage in an alleged “hold-up”. These calls are generally made by large US-based companies which would like to use standardized technologies from leading European innovators at low costs. Interestingly, none of the IP intensive US companies in the manufacturing sector seems to support these initiatives.

Among the measures regularly proposed to weaken the patent system in standardized industries, are:

- injunctive relief should not be available to holders of essential patents who have made a FRAND or RAND commitment. This is, however, a moot subject as the European Court of Justice detailed in its decision (in the *Huawei v. ZTE* case²) the conditions and circumstances under which such patent holders can seek and enforce injunctions in compliance with EU competition law.
- royalty rates should be based on the “incremental value” of the standard essential patent in suit compared to its *ex-ante* alternatives, an obscure and complex methodology that leads to very low rates failing to compensate innovators for their R&D efforts; and
- an arbitrary imposition of “cumulative royalty caps” on the ground that they are necessary to control the total level of royalties (pejoratively referred to as the “royalty stack”) faced by implementers.

Some of the above theories have recently led to a controversial changes in the IP Policy of the US-based Institute of Electrical and Electronics Engineers (IEEE),³ in which implementers of standardized technologies teamed up to weaken the ability of innovators to monetize their standard essential patents and restrict the ability of holders of essential patents to seek injunctive relief.

¹ The Boston Consulting Group Jan. 15, 2015) Julio Bezerra et al. The mobile revolution: how mobile technologies drive a trillion dollar impact

² C-170/13, *Huawei Technologies Co. Ltd* : <http://curia.europa.eu/juris/documents.jsf?num=C-170/13>

³ See <http://standards.ieee.org/develop/policies/bylaws/sect6-7.html>

The truth of the matter is that, despite the criticisms that are regularly voiced, the standard development system is vibrant in Europe and that it continues to yield significant benefits for industry and consumer alike. It is therefore key that strong patent protection be maintained to incentivize innovators, among which figure many leading European companies, to maintain and increase their R&D efforts in technologies that will improve the life of citizens. There are no reasons why large non-European manufacturers should be allowed to use for free innovative technologies developed at great costs by European industry leaders.

In a world dominated by rapid technological change, it is essential to ensure that innovators engaged in standardized and non-standardized industries are compensated for their investments and efforts. The patent system is of paramount importance in protecting and stimulating innovation and the EU should guarantee that innovators would continue to be able to enforce their IPs.
