

ITU/WIPO Symposium

Dispute Resolution at the Crossroads of Information and Communications Technologies and Intellectual Property

Interoperability and disputes

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(nb not necessarily views of Nokia Corporation)

Contents

- Interoperability and IP
 - interoperability standards: “essential” IP
 - Interaction between IP and competition law
- what does this mean for dispute resolution for essential IP disputes?

Interoperability of devices and networks

- more standards per product
- more patents
- industry of patent assertion

➔ new challenges



Where do patents and interoperability standards support each other?

- “Deal” at heart of the patent system is to reward the inventor for:
 - Innovation; and
 - sharing idea
- Both innovation and sharing are necessary for building tomorrow’s telco networks

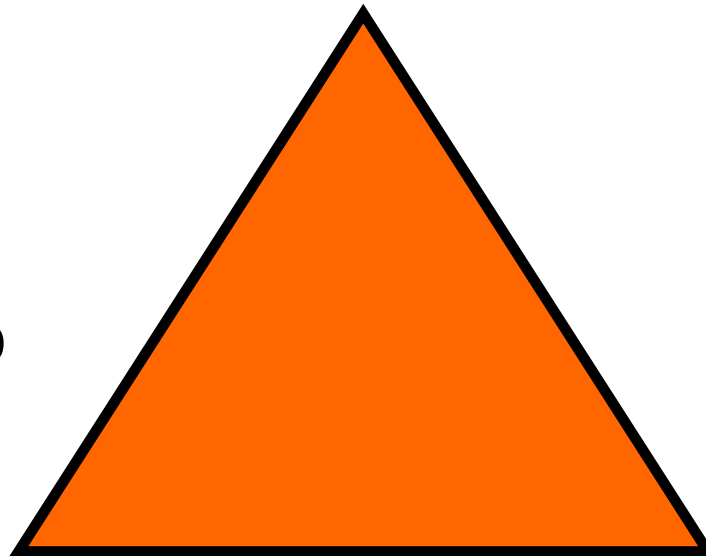
Where do patents and standards not support each other?

- Monopoly incompatible with open access
 - Concept of an “essential” patent
 - Potential to block entry into market
 - Artificially enhanced value of selected technology
 - Patent hold-up (demanding high royalties by threatening injunction)
 - Patent ambush (hide patent until standard adopted, later seek injunction)

Challenge of dispute resolution: Balancing interests

Patent owner: Incentive to innovate
and share

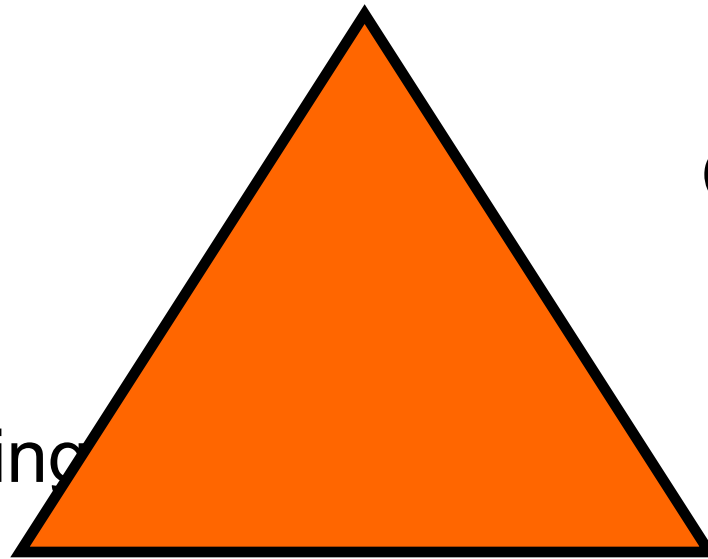
Third parties to
make and sell
interoperable,
competing
products



Interests of
consumer in
evolution of best
value products
(without high
royalty stack)

Legal framework underlying dispute resolution

Patent Law, remedies for infringement



Contract law,

Standards setting
body rules

Patent pool rules

Competition law

- Articles 81 and 82 Treaty of Rome
- Sherman Act
- China: Anti-Monopoly Law 2008

Rules of standards setting bodies

- Early disclosure of patents
- Promise to make licences available on terms
 - FRAND
 - RAND
 - RF
- “Green light” to implement the standard

Patent law and remedies

Key point: Discretionary nature of injunction

- UK: s. 61(6) Patents Act '77
- Enforcement Directive
- Equitable remedy: EBay inc –v- Merc Exchange LLC

Competition Law

- Art 81: prohibits anticompetitive agreements
 - Standards restrict competition between technologies
 - Art 81(3) exempts under certain situations
- Art 82: abuse of dominant position

Challenges for dispute resolution forum

- national rights/international industry
- competence of tribunal to address:
 - large numbers of patents
 - technical infringement arguments
 - IP validity
 - competition law
 - contract law and SSO rules
- reasonable cost and timescales

Conclusions

- Current system has flexibility to cope with disputes arising from inter-operability
- Injunction threat on standard essential IPRs gives potential for abuse
- Effective SSO rules and competition law necessary to temper