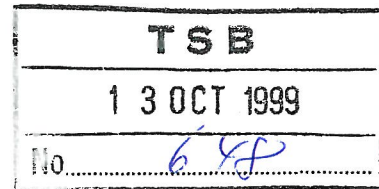


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Stuttgart-Zuffenhausen

International Telecommunication Union
Place des Nations
CH - 1211 Geneva 20
Switzerland

September 23, 1999
VI-

Subject: General Patent and Copyright Statements of Alcatel

Ladies and Gentlemen,

1. ... Many employees of Alcatel and its subsidiaries provide technical contributions to ITU-T Standards or other Standards and are requested to give specific IPR declarations, like the Patent Statement and Licensing Declarations revised by TSAG-R 22-E.
Such employees are technical experts and no legal experts. They will always have difficulties in checking if all legal conditions are met for signature.
2. We learnt from the Report R 22 of the Telecommunication Standardization Advisory Group (TSAG-R 22-E) on its 4th meeting (Geneva, April 12-16, 1999) of its ongoing activity with the Patent Statement and Licensing Declaration as well as a pertinent proposal relating to copyrights.
3. In this situation Alcatel wants to support the ITU TSAG activity
 - a) by giving a General Patent Statement (Encl. 1) as requested in Appendix III (to Annex B) of the Report with some additional declaration and broadening to make the wording applicable to the situation of the IPR holders in Alcatel,
 - b) by giving a pertinent General Copyright Statement (Encl. 2) as expected to be issued after adaptation work on available drafts in TSAG. Alcatel is prepared to revise this Statement after a check of the result of the Ad hoc-Group.
4. Further, Alcatel wants to support the ITU TSAG activity by giving some explanation to pertinent IPR-aspects (Encl. 3). This Alcatel position paper is based on pertinent explanations given in a 1998 proposal made by the Federal Republic of Germany

for a "Code of Practice" regarding "Copyright". From our point of view those 1998 explanations require some modification and addition, as indicated in Encl. 3 by underlining.

5. In principle, Alcatel has no problem to sign the individual Patent Statement and Licensing Declaration of ITU TSAG for individual Standards in case the patents are identified.

However, the problem with this individual Statement is that it is not possible from a legal point of view to decide at an early point in time (when the standard is only a draft and only patent applications are available) on the question if and where a final standard will be covered by the scope of protection of finally granted patents as "Essential Patents" (some years later after individual patent examination processes country by country).

Thus, it would be a great simplification for all involved, if the individual Statements can be replaced by a reference to the availability of a "General Patent Statement and Licensing Declaration" which provides the same or even a broader legal commitment for the Patent holder.

6. As a principle, Alcatel is not prepared to grant "free" licenses under its patents. However, Alcatel accepted as a present policy, that such licenses will always be available for reasonable royalties under "Essential Patents" if

- pertinent contributions to the standard are submitted by Alcatel (or its subsidiary), or if
- pertinent contributions to the standard are submitted by a third party and on request Alcatel does not object in writing to such proposal before its final recommendation by ITU (or Alcatel may expressly support such proposal).

Thus, Alcatel has chosen the Number 2 text of Appendix III (to Annex B) of the ITU General Patent Statement and Licensing Declaration.

7. Alcatel appreciates the intention of ITU to collaborate with other standardization bodies like ISO and IEC, and we hope that uniform patent and copyright declarations may also be a result thereof. For the time being we have to handle the IPR declarations separately for each such standardization body since there are some differences in the requirements.
8. A general problem with the declaration relating to copyrights seems to be that it has to cover at least two totally different aspects in copyright protection (any copyright in Software which may be necessary for the implementation and exploitation of the Standard, as well as the copyright for printing and distribution of the specification of a Standard by ITU). This fact has not yet been taken into account by most of the requested standard declarations of several standardization bodies. We hope

that our wording of the attached General Copyright Statement and Licensing Declaration in connection with the attached position paper is sufficiently clear in this respect. As stated above in 3., Alcatel is prepared to check its Declarations for adaptation to the expected results of the Advisory Group.

9. Please check the enclosed documents and inform us if Alcatel shall support ITU otherwise in this subject matter.

Kind regards

B. Villinger

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Senior Licensing Counsel
Tel.: + 49 (711) 821-44 514
Fax: + 49 (711) 821-44 587

3. encl.

To: Director
Telecommunication Standardization Bureau
International Telecommunication Union

Place des Nations

CH - 1211 Geneva 20, Switzerland

General Patent Statement and Licensing Declaration

Corporation: Alcatel (covering all its Subsidiaries)

Contact for license
application: Director Intellectual Property

Address: 30, Avenue Kléber
75116 Paris

Tel.: 0033.1.4067.6384

Fax: 0033.1.4067.6489

E-mail:

A. General Licensing Declaration

In case part(s) or all of any proposals contained in contributions submitted by Alcatel are included in any ITU-T Recommendation(s), and the included part(s) contain items that have been filed and whose use would be required ("Essential Patents") to implement the ITU-T Recommendation(s), Alcatel hereby declares, in accordance with the Statement on TSB Patent Policy (WTSC-96, Resolution 1, Appendix I to Section 8), that:

Alcatel is prepared to grant – on the basis of reciprocity for any relevant ITU-T Recommendation(s) – a license under such Essential Patents to an unrestricted number of applicants on a worldwide, non-discriminatory basis and on reasonable terms and conditions.

B. Additional Alcatel Declarations

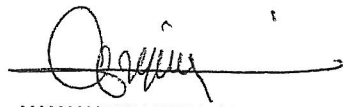
1. The Declaration as under A binds also any Subsidiary of Alcatel (as defined below).
2. The Declaration is applicable to any contribution submitted through any employee of Alcatel or any of its Subsidiaries.
- ✓ 3. The Declaration is also applicable to any proposal made by a third party if Alcatel is requested for consent and does not object in writing to ITU before final approval of such ITU-T Recommendation.
4. The Declaration is applicable to any Essential Patent owned by Alcatel or any of its Subsidiaries, for any country where such ITU-T Recommendation(s) are applicable and an Essential Patent grants pertinent protection to Alcatel or any of its Subsidiaries.

C. Definition of Subsidiaries

"Subsidiaries" of Alcatel shall mean all companies controlled by Alcatel, "to control" within the meaning of this declaration means to have, directly or indirectly, a controlling interest in such company, at any time after this declaration has been given and as long as such an interest exists, by owning a majority of the voting stock or equivalent voting rights.

Alcatel

Paris, Oct 1, 99
(Date)


.....
Director Intellectual Property

To: Director
Telecommunication Standardization Bureau
International Telecommunication Union

Place des Nations

CH - 1211 Geneva 20, Switzerland

General Copyright Statement and Licensing Declaration

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A. General Licensing Declaration

In case part(s) or all of any proposals contained in contributions submitted by Alcatel are included in any ITU-T Recommendation(s), and the included part(s) contain items that are protected by copyright and whose use would be required ("Essential Copyrights") to implement the ITU-T Recommendation(s), Alcatel hereby declares, in accordance with a (draft) TSB Software Copyright Policy of 29.06.99, that:

Alcatel is prepared to grant – on the basis of reciprocity for any relevant ITU-T Recommendation(s) – a license under such Essential Copyright to an unrestricted number of applicants on a worldwide, non-discriminatory basis and on reasonable terms and conditions.

B. Additional Alcatel Declarations

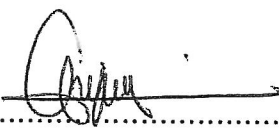
1. The Declaration as under A binds also any Subsidiary (as defined below) of Alcatel.
2. The Declaration is applicable to any contribution submitted through any employee of Alcatel or any of its Subsidiaries.
3. The Declaration is also applicable to any proposal made by a third party if Alcatel is requested for consent and does not object in writing to ITU before final approval of such ITU-T Recommendation.
4. The Declaration is applicable to any Essential Copyright on computer programs owned by Alcatel or any of its Subsidiaries, for any country where such ITU-T Recommendation(s) are applicable.
5. Alcatel grants to ITU a royalty-free license under such Essential Copyright on computer programs for evaluation and test purposes.
6. In case Alcatel holds the copyright for any contribution of an employee of Alcatel or any of its Subsidiaries to any documentation of an ITU-T Recommendation, other than an Essential Copyright on a computer program for implementation or exploitation of the ITU-T Recommendation, Alcatel hereby grants to ITU a royalty-free license under such copyright to print, copy, publish, translate and distribute such contribution as an ITU-T Recommendation, subject to Alcatel retaining the right to print, publish, translate, modify and distribute the contribution as such for own purposes. The license granted to ITU is applicable whether the pertinent contribution is presented to ITU as a printed document, as a computer program in whatever code, or otherwise.

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Alcatel

Paris, Oct 1, 1999
.....
(Date)


.....
Director Intellectual Property

Alcatel position relating to Patents, Copyrights and Standards

This paper takes into account a proposal of the Federal Republic of Germany to ITU for a "Code of Practice" regarding "Copyrights" and "Standards". Major amendments and additions are marked by underlining.

1. Introduction

"Intellectual property" comprises two main branches:

- industrial property (patents and other rights in technological inventions, trademarks, industrial designs, appellations of origin , etc.); and
- copyright (in literary, musical and artistic works, in films, performances of performing artists, phonograms, computer programs, etc.)

Patents protect the technical idea (invention), copyrights in general protect the work according to its presentation form. Copyright in computer programs specifically prohibits the unauthorized use, copying, translation, distribution of the computer program.

With respect to standardization only patents and similar rights in technical inventions are of relevance whereas, e.g. trademarks are of no relevance.

With respect to standardization copyrights are of relevance in two different aspects.

2. Legal Specifics of "Patents" and "Copyrights"

2.1 Patents

A patent is a government grant securing to an inventor or his / her successor in title the right to exclude others from making, using, selling or offering to sell any new, useful and non-obvious process, machine, manufacture or composition of matter, or any improvement thereof, for a fixed period of time (usually 20 years, subject to payment of annual fees).

Patents are granted under national laws, and the rights are national in scope and geographically limited to a given country. However, most countries that grant patent protection have adopted similar basic requirements. There is some simplification by filing with the European Patent Office (EPO) or under the Patent Cooperation Treaty (PCT) with the World Intellectual Property Organization (WIPO) for several countries. In general, to be patentable, an invention must be novel, useful and non-obvious. Mostly the scope of protection of a patent can only be estimated after a long examination procedure.

The Standardization body shall not finally agree on a Standard which requires use of "Essential Patents" without a pertinent declaration of the patent holder. The declaration for an Essential Patent has to offer rights under reasonable and non-discriminatory conditions for an unrestricted number of licensees having also signed a pertinent declaration (reciprocity).

2.2 Copyrights in literature, and similar works

Authors (literature, science and art) and their successors in title enjoy protection of their work according to several national laws on copyright and related rights. A copyright is an exclusive right conferred by law for a specified period of time (at least 50 years) to reproduce an original literary or artistic work fixed in any tangible medium of expression.

There is no protection from copyright for the ideas (the contents of such work), but there may be such protection for the technical contents from patents which are filed in parallel to creation of the copyrighted work.

The copyright of a work does not hinder other authors to create independently later on the same work a second time. Thus, copyright does not grant an absolute right to forbid the exploitation of works created later (as patent law does !).

The copyright is a nearly worldwide protection for a pertinent work, which is available since creation of the work without any requirement for national application, material examination, and mostly without registration.

Thus, any contribution (that will totally or partly be included in the specification of a future Standard) is subject to copyright protection by the creation of this work, independent of the language or mode in which this work is drawn up. The copyright of such a contribution to the specification is established regardless of whether it is composed as a printed text or as a computer program (also program draft, source code, object code, data file, etc.), and appropriate rights have to be assigned to the standardization body for its purposes.

The implementation of a Standard has to be free without paying license fees for copyrights of such type as described hereabove.

2.3 Copyrights in computer programs for exploitation of a Standard

There can be Standards and proposals requiring for their exploitation the use of a specific computer program ("Essential Computer Program"). The specification of the Standard has sufficiently to identify a pertinent computer program, but it may

not necessarily disclose the computer program or it may be disclosed in an Annex to the Standard. Such computer program enjoys copyright protection, and similar to patent protection, the standardization body requires a declaration by the owner of such copyrights, that appropriate rights are available for exploitation of the Standard by using such computer program. The declaration is not necessary if the specification of the Standard sufficiently discloses an alternative solution for exploitation of the Standard without using the computer program (non-essential computer program).

The declaration for an "Essential Computer Program", similar to patent protection, has to offer rights on the basis of reciprocal applicability under reasonable and non-discriminatory conditions for an unrestricted number of licensees.