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GSC-16bis Meeting: Recent US IP Developments

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Rights Policy Committee**

Incorporation of Standards by Reference in Legislation, Rulemakings, and Other Government Action

- [Report](#) issued by the Administrative Conference of the United States (“ACUS Report”).
- ANSI [Response](#) to a Federal Register notice provided by the National Archives and Records Administration (“NARA”).
- ANSI [Response](#) to the Office of Management and Budget (“OMB”) Federal Register Notice.
- Workshop held by the Department of Transportation Pipeline and Hazardous Materials Safety Administration (“PHMSA”) on July 13.
- ANSI will be hosting a Legal Issues Forum: Incorporation by Reference, Reasonable Availability, and Copyright on Wednesday, October 10, 2012 in Washington, DC.

Standards Essential Patents – Notable Developments

- [Statement](#) issued by the Antitrust Division announcing the closing of its investigations into:
 - Google Inc.’s acquisition of Motorola Mobility Holdings Inc.
 - the acquisitions by a number of companies of certain Nortel Networks Corporation patents, and
 - the acquisition by Apple of certain Novell Inc. patents
- The Antitrust Division determined that each acquisition “is unlikely to substantially lessen competition.”
- The Nortel transaction involved the transfer of patents in a bankruptcy case.
- Hearings by U.S. [House of Representatives](#) and [Senate](#) regarding “Oversight of the Impact on Competition of Exclusion Orders to Enforce Standard-Essential Patents.”

Standards Essential Patents – Notable Developments (cont'd)

- U.S. International Trade Commission is considering cases in which importation exclusion orders are sought for infringement of alleged SEPs, including the ITC Investigations in Game Consoles and Wireless Devices. Several companies, organizations and officials (including FTC) filed comments in these cases (see [Comments](#)).
- Judge Posner in Apple v. Motorola Mobility, Case 1:11 cv-8540, N.D. Ill. June 22, 2012, refused to grant an injunction on standards essential patents citing several grounds (see [opinion](#)). The case is under appeal.
- The Ninth Circuit in Microsoft v. Motorola, Case 12-35352, U.S. Court of Appeals for the Ninth Circuit, September 28, 2012, stated that injunctive relief against infringement is arguably a remedy inconsistent with a FRAND licensing commitment.

Standards Essential Patents – Notable Developments (cont'd)

- General Instrument Corp v Microsoft Corp. And Microsoft Dseutschland GmbH, Docket nos 7 O 373/11 and 7 O 376/11 Ruling of 9 December 2011 by the Landgericht Mannheim (District Court Mannheim) – Motorola obtains injunction against Microsoft in Germany on patents for ITU-T H.264 video codec standard.
- Microsoft Corp. v Motorola Inc. et. al., Case 2:10-cv-01823-JLR U.S. District Court for the Western District of Washington at Seattle - Rulings of 11 April 2012 and 7 May 2012 – Microsoft obtains anti-suit restraining order to prevent Motorola from enforcing the Mannheim Court's injunction. This case had been filed before the Mannheim Court's rulings by Microsoft on the alleged ground that Motorola was charging unreasonable rates for IEEE and ITU-T SEPs.

Standards Essential Patents – Notable Developments (cont'd)

- June 2012 – Federal Trade Commission (FTC) opened a formal antitrust investigation on Motorola Mobility to assess whether Motorola Mobility has complied with its FRAND commitments.

Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ ISO/IEC contained in the ISO/IEC Directives, Part 1, Annex I (www.iso.org/directives)

- The ANSI IPRPC recommended the following revised language to the ISO/IEC/ITU Guidelines document that was approved by the ISO Technical Management Board (TMB) and the IEC Standardization Management Board (SMB):
 - *“Patent Declarations in ISO, IEC and ISO/IEC Deliverables apply only to the ISO and/or IEC documents indicated in the Declaration Forms. Declarations do not apply to documents that are altered (such as through national or regional adoption). However, implementations that conform to identical national and regional adoptions and the respective ISO and/or IEC Deliverables, may rely on Declarations submitted to ISO and/or IEC for such Deliverables.”*

Other Subjects of Interest

- The National Academy of Sciences / Patent and Trademark Office study on standards and Intellectual Property Rights (October 3-4, 2012).
- ANSI's contribution to GSC-16
- Leahy-Smith America Invents Act which makes some basic changes to U.S. Patents Law:
 - First to file (from first to invent)
 - New opportunities to seek USPTO review of granted patents
 - Stricter limits on when patent holder can file action against multiple dependents (e.g. common facts and issues)