

February 5, 2013

ORIGINAL

Donald S. Clark
Secretary of the Commission
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580



Re: *In the Matter of Motorola Mobility LLC, a limited liability company, and Google Inc.,* FTC File No. 121 0120

Dear Mr. Clark:

IEEE respectfully submits this comment on the proposed consent order in FTC v. Google Inc. et al. IEEE does not comment on the merits of the proceeding or the general appropriateness of the relief. IEEE does offer, however, two technical comments to improve the consent order's wording in order to avoid ambiguities.

1. Section II.A.1 would permit Respondents to revoke a FRAND commitment if a "Standard" has been "rejected or withdrawn." A "Standard" is defined as having been "published" by an SSO. The use of "withdrawal" is appropriate in this context, because a published standard can be withdrawn. The use of "rejected" is ambiguous. Within IEEE, "publication" of a standard means that the standard has been approved by the IEEE Standards Association Standards Board, and thus by definition, a Standard (defined as "published") can never be "rejected." If the definition of "Standard" includes drafts of standards, however, then a standard can in some sense be "rejected" a number of times during the standards development process and still be published. (For example, a standard could be "rejected" on a working group ballot or a sponsor group ballot and sent back for further work, and then approved on a subsequent ballot.) Therefore, IEEE suggests that this paragraph be changed to read "all Standards for which such FRAND Commitment was made have been withdrawn or the development project terminated without final approval of such Standard."

2. Section II.A.2 would permit Respondents to revoke a FRAND Commitment if Respondents "no longer have any interest in any FRAND Patents covered by such FRAND Commitment." This paragraph either contradicts or at least is in tension with paragraph V.B, which permits the transfer of a FRAND patent as long as the buyer agrees to become the successor to the FRAND Commitment and to similarly bind future assignees. If Respondents are permitted to revoke the FRAND Commitment,

then what obligation does the assignee have as successor to a revoked commitment? IEEE suggests that II.A.2 be deleted. If the FTC and respondents do not believe the resulting order is sufficiently clear, then a fourth clause could be added to the proviso paragraph that concludes paragraph II.A as follows: "or (iv) to offer or grant a license under a FRAND Patent in which Respondents no longer have an interest."

IEEE appreciates the FTC's consideration of these comments. Thank you for the opportunity to make this submission.

Very truly yours,

☪ Eileen M. Lach

cc: Karen Bartleson, IEEE-SA, President
Konstantinos Karachalios, Managing Director, IEEE Standards Association