



Information Technology Industry Council
Leading Policy for the Innovation Economy

June 14, 2011

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex X)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Federal Trade Commission Request for Comments and Announcement of Workshop on Standard-Setting Issues (Patent Standards Workshop, Project No. P11-1204)

To the Federal Trade Commission:

The Information Technology Industry Council, ITI, appreciates the opportunity to respond to the Request for Comments regarding the treatment of patented technology included in standards and the different ways that standards-setting organizations (SSOs) seek to minimize the risk of “patent hold-up.”

ITI is the leading voice, advocate and thought leader for the U.S. information and communications technology (ICT) industry. Our members are global leaders in innovation from all sectors of the digital economy – hardware, software, services and the Internet – and are strong advocates of a global, harmonized, consensus-based ICT standardization system that is market-driven and private sector-led.

ITI encourages the U.S. Government to embrace a variety of ICT standards and standards-setting processes, and avoid policy decisions that might discourage a broad diversity of approaches to ICT standardization. This diversity provides for choice, competition and flexibility that further enable the ICT sector to respond to a rapidly changing marketplace with new, innovative solutions.

There also is tremendous diversity with regard to standards bodies’ policies addressing the inclusion of patented technology in ICT standards. This diversity is healthy and should be encouraged, and any articulation of preferred approaches should be avoided.

In all industries, standards are important tools for interoperability, production efficiency and global deployment. Throughout the ICT sector, voluntary standards are important and pervasive.

They are used in hardware, software, and communications, and, though convergence has blurred the distinction, developers continue to advance the necessary standards in the most appropriate venue. Voluntary standards remain the foundations of the Internet and e-commerce. While industry business models may differ, which can influence how companies view standards issues, the development of technically sound, interoperable standards through existing, constantly adapting standards processes remain important for the ICT industry as a whole.

There has been much discussion and debate recently over the role of Intellectual Property (IP) in ICT standards and the nexus of standards, IP and innovation in the ICT industry. There is a wide range of views on how IP should be handled in the standards development process and individual SSOs have a variety of patent policies and procedures. Depending on a number of factors, including strategic and commercial concerns, companies have differing positions on how IP should be handled in SSOs and the standardization process – there is no singular industry position.

Standards drive growth:

- Standards can help establish the infrastructure for competing products to interoperate
- Standards can simplify development by defining a minimum set of common requirements
- Standards can enable new business opportunities and new markets, and
- Standards can allow innovation on top of common specifications.

Standards development processes respect IPR. The ICT industry recognizes the need for standards that address the global marketplace through open processes that include multiple stakeholders. Existing successful global standards development organizations (both *de jure* and consortia) have developed multiple frameworks for addressing IPR concerns. While patent owners may need to consider which body best meets their needs, the standards development processes of effective SSOs are based on recognized principles, including:

- Transparent, global, industry-led, consensus-based process, with open participation, resulting in voluntary standards
- Clearly defined technical scope and objectives
- IPR policies that balance the needs of patent owners and those of implementers and other stakeholders
- IPR policies that typically seek to establish commitments from patent holders that they will license to all implementers of the standard on reasonable and non-discriminatory terms and conditions whether for free or for a reasonable fee/royalty,¹ and

¹ Ideally, licensing commitments made to SSOs should apply to successors-in-interest of covered essential patent rights.

- Formal procedures that address the early disclosure of essential patents known by standards participants; however, standards bodies should not require patent holders to conduct searches of their patent portfolios.

Innovation is the lifeblood of the ICT industry. Innovation produces intellectual property and the protection of IP can provide a valuable incentive for continued innovation. In some cases inclusion of IP in standards may be necessary to provide the best solution given market requirements. Global standards development processes should seek to strike a balance among various stakeholders, while taking into account marketplace needs and incentives to innovate.

ITI would welcome the opportunity to provide additional information or to respond to any questions that you may have. Thank you for your consideration.

Sincerely,

Ken J. Salaets
Director