SERIES EDITORIAL

THE STANDARDIZATION ECOSYSTEM: POLICY AND PATENTS

This is the third series under the topic of “The Standardization Eco-system: Policy and Patents.”

The first article in this Series, “Evolving Technologies and Intellectual Property Landscapes: Developing IPR Policies to Avoid Confusion and Chaos within Development Communities,” continues the theme of an article in the December 2017 issue on how SDO IPR policies may need to evolve with the emerging technologies. While the previous article discussed the intermixing of open source software with traditional standards development, Herman’s article explores the impact of emerging technologies such as fifth generation (5G) wireless and the Internet of Things (IoT) on the need for standards organizations to evolve their respective IPR policies. In addition to interoperability specifications and related test materials, some organizations are developing full proofs of concept and end-to-end solutions. In such cases, a software implementation developed by the organization may precede or may even be in lieu of the development of a specification. As a result of these trends, standards organizations may need to expand and evolve their IPR policies to make sure clear rules are understood by:

1. The participants who collectively develop the work products
2. The users of such work products of what rights they may exercise and the resulting IP risks, if any

The second article in this issue, “Non-Discrimination Prong of FRAND: Methodologically in Contrast to WTO Non-Discrimination Principle and with Special Reference to China’s Related Judicial Practice,” starts a discussion on one aspect of the fair, reasonable, and non-discriminatory (FRAND) licensing term. “Non-discrimination” is much less written about in the literature compared to what “fair and reasonable” means. While the term itself may be deemed as common sense by some, Yu explores the comparison of non-discrimination toward “similarly situated firms” in the IPR licensing arena to “like products” in the World Trade Organization (WTO) dispute settlement mechanism. Then Yu elucidates how recent judges in China deal with this subject and specifically, in the case of Huawei v. InterDigital (2013), he provides his interpretation of the part of the judgement containing a relatively detailed analysis of the application of the non-discrimination principle. As in most litigated cases, there are multiple viewpoints. I hope that this article will lead to further contributions on this subject.

Biography

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