



ANSI's Submission to the Global Standards Collaboration GSC-18 IPRWG Meeting

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ANSI



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This submission captures the major new items added since the ANSI Contribution to GSC-17 until early September 2014.

Background



- ANSI has historically contributed to the Global Standards Collaboration initiative (“GSC”) and appreciates being an invited Observer
- Three ANSI-accredited SDOs that participate as members of the GSC are the Alliance for Telecommunications Industry Solutions (“ATIS”), the Telecommunications Industry Association (“TIA”), and Institute of Electrical and Electronics Engineers (“IEEE”)
 - Other ANSI-accredited SDOs have also participated in past GSC meetings as Observers, e.g., CEA, SCTE
- ANSI Administers a Policy Committee, the ANSI Intellectual Property Rights Policy Committee (“ANSI IPRPC”), that formulates ANSI’s positions on standards-related intellectual property issues in domestic, regional, and international policy areas and is responsible for the drafting of the “Patent Policy” for incorporation into the *ANSI Essential Requirements*.

ANSI's Contribution to the GSC-18 IPRWG Meeting Reflects an Update on:



- ANSI's role in the U.S. voluntary consensus standardization system and its activities in the area of intellectual property rights.
- ANSI's views on issues relating to the inclusion of patents, copyrighted software or trademarks in standards, and issues relating to the assertion of copyright in the standards themselves.
- An update on recent United States developments related to essential intellectual property in Standards, including actions by the U.S. executive branch, speeches by DOJ and FTC Officials, and recent case law developments concerning standards essential patents.

Standards Incorporated by Reference

- The issue of standards incorporated by reference (“IBR”) has arisen in connection with the process by which federal agencies publish regulations in the *Federal Register*. Under the publications rules of the Federal Register, 5 U.S.C. Section 552, information may be incorporated by reference into, and thereby “deemed published” in, the Federal Register if made “reasonably available to the class of persons affected thereby.”
- In the past few years, concerns have been raised about whether the “reasonably available” requirement should be changed in light of expectations of free online access.

Standards Incorporated by Reference (cont'd)

- ANSI's position on IBR is that the text of standards and associated documents that have been incorporated by reference should be available to all interested parties on a "reasonable basis," but that does not necessarily mean "for free" and could include appropriate compensation as determined by the SDO/copyright holder.
- Recently, the Office of the Federal Register, agreeing with ANSI's position, published its conclusion that "reasonably available" does not mean "for free."

ANSI IBR-Related Activities

- In October 2013, ANSI launched an IBR portal, which provides an online tool for free, read-only access to select standards that have been incorporated by reference into federal laws and regulations.
- In January 2014, ANSI provided testimony before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Courts, Intellectual Property, and the Internet, on the topic of Incorporation by Reference.

Recent Developments at US Antitrust Enforcement and Executive Agencies Concerning Standards-Essential Patents

1. *FTC Google MMI Final Consent Order, (July 24, 2013).*
2. *Letter from Ambassador, United States Trade Representative, to Chairman, United States International Trade Commission re ITC exclusion order in Samsung-Apple ITC case (Aug. 3, 2013).*
3. *The U.S. Contribution on injunctive/exclusionary relief, to the ITU-T Telecommunication Standardization Advisory Group (TSAG) (June 2014).*

Department of Justice (“DoJ”) and Federal Trade Commission (“FTC”) Speeches

1. FTC Commissioner Joshua Wright, *“SSOs, FRAND, and Antitrust - Lessons from the Economics of Incomplete Contracts”* (September 12, 2013).
2. DOJ Deputy Assistant Attorney General Renata Hesse, *“Art of Persuasion”* (November 8, 2013).
3. FTC Chairwoman *Edith Ramirez, Testimony before House Judiciary Committee (November 15, 2013).*
4. FTC Commissioner Maureen Ohlhausen, *“A Pragmatist’s Approach”* (December 4, 2013).

DoJ and FTC Speeches (cont'd)

5. FTC Commissioner Joshua Wright, *“Does the FTC Have a New IP Agenda?”* (March 11, 2014).

6. DOJ Deputy Assistant Attorney General Renata Hesse, *“A Year in the Life of the Joint DOJ-PTO Policy Statement on Remedies for F/RAND Encumbered Standard-Essential Patents”* (March 25, 2014).

U.S. Case Law Developments

1. *In re Innovatio IP Ventures* (N. Dist. of Illinois, July 26, 2013).
2. *Ericsson v. D-Link Systems* (E. Dist. of Texas, August 6, 2013).
3. *In re Innovatio IP Ventures* (N. Dist. of Illinois, September 27, 2013).
4. *Samsung v. Apple* (International Trade Commission, Inv. 337-TA-794, July 5, 2013).

U.S. Case Law Developments (cont'd)

5. *Apple v. Motorola* (U.S. Court of Appeals for the Federal Circuit, April 25, 2014).
6. *InterDigital v. Nokia and ZTE*, (International Trade Commission Inv. 337-TA-868, June 13, 2014).
7. *RealTek Semiconductor Corporation v. LSI Corporation* (N. Dist. of California, June 16, 2014).
8. *Commonwealth Scientific and Industrial Research Organisation (CSIRO) v. Cisco Systems* (E. Dist. of Texas, July 23, 2014).

Other

- National Academy of Sciences Report, "Patent Challenges for Standard-Setting in the Global Economy: Lessons from Information and Communications Technology."
- In May 2014, ANSI provided input to the OMB on proposed revisions to Circular A-119.
- In February 2015, ANSI provided a response to a European Commission Questionnaire on Patents and Standards.

Thank You!!

- These slides were prepared by the co-chairs of the ANSI IPRPC GSC-18 Task Force and ANSI Staff, for the purposes of summarizing ANSI's Contribution to the GSC-18 IPRWG Meeting. They were reviewed and approved by the ANSI IPRPC GSC-18 Task Force.
- ANSI's GSC-18 IPRWG Contribution (GSC_IPR(15)01_007) and not these slides, represents the official ANSI IPRPC contribution.



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