



GLOBAL STANDARD SETTING 2007
An Interactive Discussion



Discussion Topic One: Intellectual Property Rights and Global Standards Setting

Presented by

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Open Forum for Standards Developers

June 20, 2007

Overview

□ Agenda

- Panel Introductions
- IPR in perspective
- Range of IPR Issues facing SSOs
- Discussion Topic: Ex-Ante disclosure of terms

Panel Introductions

□ **Gil Ohana**

- Counsel, Antitrust and Competition Department
- Wilmer Cutter Pickering Hale and Dorr LLP

□ **Scott Peterson**

- Senior Counsel
- Hewlett-Packard Company

□ **Chuck Powers**

- Director, Standards Strategy
- Motorola's Corporate Standards Department

□ **Richard Taffet**

- Co-chair of the Intellectual Property Litigation and Patent Prosecution Group
- Bingham McCutchen LLP

IPR in perspective

- **While IPR may complicate our lives, bear in mind that**
 - Appropriate use of Intellectual Property Rights can help
 - Simulate the creation of innovative technologies that facilitate the adoption and longevity of standards; and
 - Promote market development and competition in products and services that implement standards.
 - Successful SSOs typically strive to balance the interests of the stakeholders by using reasonable rules to efficiently select technologies that facilitate the timely adoption of the standard.
 - Due to the wide range of business models and environments, there is no “one-size-fits-all” solution.

Some* IPR Issues currently facing SSOs

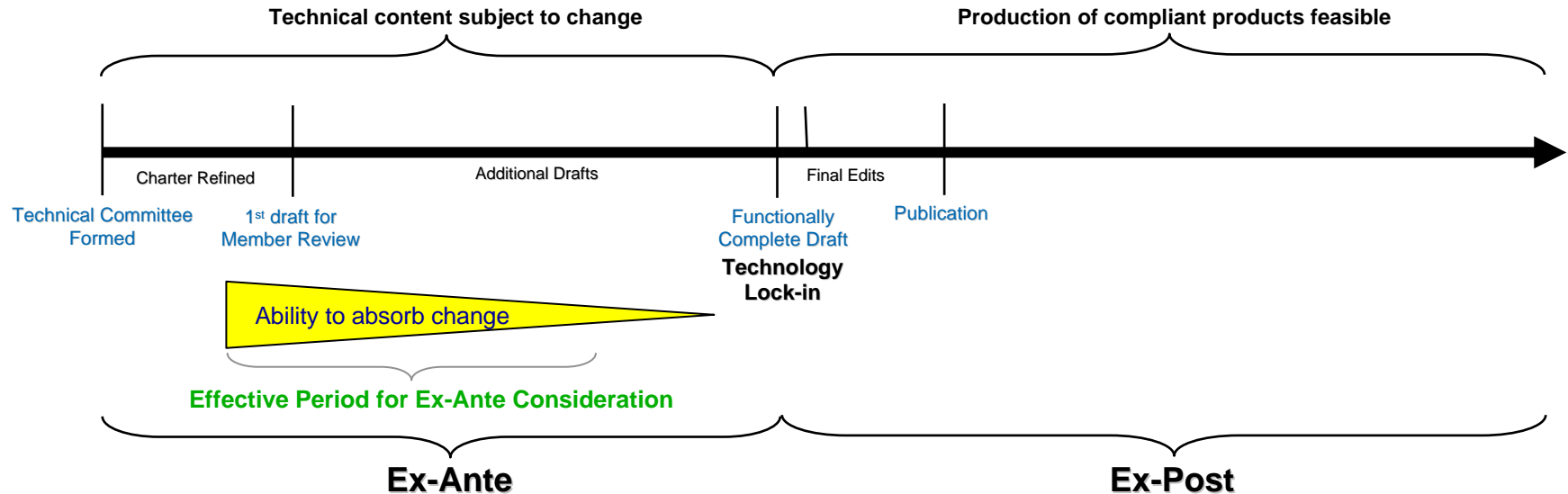
- ❑ **Issues dealing with the identification of potentially encumbered technology**
 - How much detail to reasonably request on potentially essential patents?
 - How to differentiate between essential and non-essential IPR?

- ❑ **Issues dealing with confirming commitments to license**
 - When to reasonably require a commitment to license?
 - How to deal with potentially essential IPR held by non-members?
 - What actions to take if a requested commitment to license is
 - Not forthcoming?
 - Expressly denied?
 - How to deal with the licensing commitments when IPR is transferred?

- ❑ **Issues dealing with the efficient selection of technology for inclusion**
 - How to avoid issues relating to IPR (such as the potential of “hold-up”)?
 - How much and when can information regarding IPR licensing be reasonably requested?
 - What can be reasonably and practically accomplish Ex-Ante and Ex-Post?

* Not an exhaustive list

What is Ex-Ante and Ex-Post?



- ❑ “Ex-Ante” means “before” technology is locked-in to a standard
- ❑ “Ex-Post” means “after” technology is locked-in

US FTC Chairman Majoras' speech

- ❑ Antitrust concerns may have unduly suppressed some pro-competitive benefit of standards development
 - RAND commitment can be vague
 - Transparency in price may increase competition
- ❑ Voluntary unilateral Ex-Ante disclosure is highly unlikely to require antitrust scrutiny
- ❑ Joint Ex-Ante discussions that are reasonably necessary to avoid hold up do not warrant per se condemnation
 - Merit a rule of reason review
- ❑ Cautioned that neither Ex-Ante disclosure or discussion may be appropriate for all persons in all situations

See: "Recognizing the Procompetitive Potential of Royalty Discussions in Standards Setting"
<http://www.ftc.gov/speeches/majoras/050923stanford.pdf>