

USPTO Statement to WIPO

Patents and Standards

- The United States thanks the International Bureau for preparing the background paper on Standards and Patents, and we support the statement made by Germany on behalf of Group B.
- Mr. Chairman, the United States supports and strongly encourages the use of open standards, as traditionally defined, that is, those developed through an open, collaborative process, whether or not intellectual property is involved.
- Open standards can improve interoperability, facilitate interactions ranging from information exchange to international trade, and foster market competition.
- Open standards systems offer a balance of private and public interests that can protect IP with fairness, disclosure policies, and reasonable and non-discriminatory licensing.
- When developed by broadly accepted bodies or organizations, even voluntary standards can become widely adopted. Because of these benefits, use of open standards in the traditional sense is strongly encouraged whenever practical.
- In our view, the standard setting process should be voluntary and market-driven. Unnecessary government intervention can impair innovation, standards development, industry competitiveness, and consumer choice.
- While encouraging innovation, a properly structured public and private partnership can potentially balance the interests of patent holders which endeavor to exploit their patents, with those of producers which want to license and produce the goods covered by the standards at reasonable prices, and of the public which seeks the widest possible choice in the marketplace among interoperable products.
- To effectively respond to the challenges posed by globalization, the emergence of new economic powers, public concerns such as climate change, and the need to remain current with evolving technologies, standards development organizations and the standards development process itself must be flexible as well as capable of adapting the most innovative and best performing technologies available.
- We believe that patent owners should be provided the incentive to have their proprietary technologies included in the standard under fair and reasonable terms.
- Without the commercial return there is no incentive for investors to fund research and development into new technology. Therefore, the incentive to develop and use patented technologies in standards should not be undermined.

- The U.S. is a market – driven, highly diversified society, and its standards system encompasses and reflects this framework.
- Individual standards typically are developed in response to specific concerns and constituent issues expressed by both industry and government.
- The United States is not in favor of a mandatory single set of uniform guidelines which will deprive the U.S., its diverse standard setting community and its innovative industries of its current flexibility in developing standards according to different processes and policies. These are driven by the objective of the particular standards project and the related market factors.
- The U.S. government recognizes its responsibility to the broader public interest by providing financial and legislative support for, and by promoting the principles of, our standards setting system globally. U.S. industry competitiveness depends on standardization, particularly in sectors that are technology driven.
- The United States doesn't encourage government intervention. The issues have long been discussed and are rejected because they hinder innovation, standards development, US industries' competitive advantage and attendant benefits to consumers.
- The United States remains a strong supporter of our policies that allow U.S. standards developers to participate in international standards development activities without jeopardizing their patents, copyrights and trademarks.
- Today, more than 16,455 standards are approved as International Standards (with about 1800 more in the pipeline) and 11,500 of these as American National Standards. Thousands more are adopted by industry associations, consortia, and other Standard Setting Organizations on a global basis.
- Yet the number of disputes that result in litigation per year is typically in single digits, and the vast majority of these cases involve specific fact patterns. In other words, there is NOT a crisis, as claimed by some, in standard setting.
- If I might offer a few words on the "Competition Law Aspects" section of the paper.
- In the United States, antitrust enforcers seek to ensure that our markets are competitive by preventing agreements or mergers that create or increase market power, or unilateral actions that use existing market power to protect or expand a monopoly. Our focus is on preventing harm to the competitive process, not on ensuring competitors treat each other fairly. Therefore, we would strike the use of "fair" wherever it appears before "functioning of the market" and when it modifies "competition" or "market"

- In the United States, we do not to use the term “abuse” in conjunction with IP rights because it often is confused with the concept of patent misuse and because the term is too abstract. We would replace “an abuse” with “illegal collusive or exclusionary conduct” throughout this section.
- Because this section does not cover potentially anticompetitive agreements, such as horizontal practices among members of standard-setting organizations that collude on prices or exclude competitors, we suggest referring generally to “illegal collusive or exclusionary conduct” when discussing competition law aspects.