



Novel Approaches to IP Management: One-Stop Technology Platform Licenses

OECD Workshop:

Genetic Conventions, Intellectual Property
Rights and Licensing Practices

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1



MPEG LA: Background

- Born out of the core international digital video compression standard known as MPEG-2
- Single biggest challenge to MPEG-2's adoption was dealing with the essential intellectual property rights (IPRs)
- Many patents owned by many patent holders created potential for confusion, conflict and cost
- MPEG LA provided the solution

2



MPEG LA: Background

- MPEG-2 Standard developed 1992-95
- MPEG LA, LLC organized as a licensing administrator company in 1996
- US Dept of Justice review concluded June 97 (EC Comfort Letter issued December 98)
- MPEG LA began licensing MPEG-2 in July 97
 - Started with 8 Licensors, now 20
 - 97 Patent families (over 400 patents worldwide)
 - Over 360 Licensees
- 1394 LASM licensing program organized Nov 99 (IEEE 1394)
 - 9 Licensors, representative of broad industry spectrum
 - 100+ Licensees
- MPEG LA opens London office
- DVB LASM licensing program organized July 01 (DVB-T)
- MPEG LA continues to work on other IPR issues

3



MPEG LA: What Problem Does It Solve?

- Expansion of broad technologies
 - Growing interdependence among patents
 - Growing number of patents, narrower claims
 - Multiple patent holders
- Licensing transaction costs are burdensome
- Technological advance, adoption and use are impeded
- Freedom of movement is restricted
- Potential for conflict is increased
- Traditional one-on-one licensing arrangements fall short

4

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MPEG LA: How Does It Solve the Problem?

- Fair, reasonable, nondiscriminatory access to fundamental technologies
- One-stop licenses consisting of essential patents owned by multiple patent owners
- Objective: to include as much IP as possible
- Works with any technology
- Enables worldwide technological implementation, interoperability and use
- Autonomy maintained, competition promoted

5

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What Works and Why: Principles

- Fair, reasonable, nondiscriminatory access
- Mutual respect for IP promotes innovation, creativity, new products, competition
 - Shared objectives, worldwide inclusion
 - Sample contractual safeguards
 - Include one, include all
 - Most Favorable Royalty Rates
 - Grant back
 - Yanking
 - Licensee data protected as confidential

6

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What Works and Why: Requirements

- Professional Management
 - Organization and product development
 - Legal (including patent, anti-trust, contractual, tax)
 - Licensing/Marketing
 - Transaction fulfillment, finance, int'l tax reconciliation
- Legal Tenability
 - Anti-trust/competitive review and compliance
 - US (DOJ), EC, Japan
- Value given for value received

7

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What Works and Why: In Practice

- Not captive to one particular interest
 - MPEG LA is neither Licensor nor Licensee
 - Diverse Licensors
 - Licensors are Licensees
 - Shared Objective - provide access and value
 - All Licensors/Licensees treated the same
 - e.g., Most Favorable Royalty Rates

8

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What Works and Why: In Practice

- Business model can be adjusted to fit
 - Motivated by desire to create positive economic opportunity
 - It's all about the value proposition
 - Viability = value given for value received
 - There must be buyers as well as sellers
 - Balance interest in reasonable return (however defined) with interest in reasonable access (however defined)
 - Opportunity comes in different forms

9

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What Works and Why: In Practice

- Nonexclusive: Other licensing options not foreclosed

10

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What Works and Why: In Practice

- Defined product: "Essentiality"

11

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What Works and Why: In Practice

- Responsive to marketplace
 - Examples
 - Include as much IP as possible: new Licensors, more patents
 - Adjusting royalty rates
 - Most Favorable Royalty Rates
 - Include prospective users

12

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Biotech/Pharma: Problems in Common

- Expansion of broad technologies
 - Growing interdependence among patents
 - Many patents, narrower claims
 - Multiple patent holders
- Licensing transaction costs are burdensome
- Technological advancement, implementation and use are impeded
- Freedom of movement is restricted
- Potential for conflict is increased
- But, the industry may not view these as problems

13

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Biotech/Pharma: What Is Different?

- Not standards-driven
- Interoperability may be useful in research, discovery and diagnostic phases but not at outer edges of therapeutic product development chain
- Companies are founded on the basis of proprietary technologies
- “Bunker mentality”
- Disagreement over patent values
- Platform technologies (i.e., quasi-standards) may not be easy to define

14

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Biotech/Pharma: Barriers to Adoption

- Find the incentive
- Define “essentiality”/set boundaries
 - Satisfy competition laws
 - Communicate/market what’s in and what’s out
 - Determine patents that are in and out
- Determine what the market needs

15

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Biotech/Pharma: Overcoming Barrier #1

- Find the incentive
 - Benefits to the public interest
 - Addressing need for interoperability/access
 - Avoiding conflict and related costs
 - Reducing costs of negotiating licenses with many parties for many patents
 - New revenue streams (whole is greater than the sum of its parts)
 - Compulsory license?

16

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Biotech/Pharma: Overcoming Barrier #2

- Define “essentiality”/set boundaries
 - Find areas where interdependent patents are necessary, e.g., platform technology in lieu of a standard
 - Find lowest common denominator

17

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Biotech/Pharma: Overcoming Barrier #3

- Determine what the market needs
 - Where freedom of movement is desirable
 - Where avoiding conflict is desirable
 - Provide lowest common denominator

18

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