Let’s Start with a Question:

Question: What is the value of a SEP?
What’s the Answer?

Answer: You asked the wrong question
Which should have been?

What’s the value of a Standard?
But Wait! We all know that:

- The evidence of innovation is to be found in patents, copyrights and trademarks
- Value is measured by tracking these official recognitions of value in commerce
- The ability to gain such recognition drives innovation
That’s because IPRs give you:

• The right to:
  • Be the only one to do, sell or provide something; and
  • Let someone else do, sell or provide something on your terms and price, or not at all
Yes, but what does a Standard do?

- Allows you to do, sell, or provide the same function or service as everyone else
- Usually for free, but if not, then on RAND terms
- Often supported by other services (e.g., testing, branding, etc.)
What do Standards make possible?

• Enormously transformational networks (railways, telecommunications, the Internet and Web)

• New markets for goods (audio and video formats; WiFi) and services (via the Internet)

• Safety, health, transportation, financial markets, much more
ICT Standards are all about...

- Creating Network Effects
- Getting others to do something they don’t have to do
- Convincing them that it’s safe and smart to do so
As a result:

On the other side of the Looking Glass:

- It’s all about giving things away
- Patents cause friction
- Patents slow things down
- Patents can impede uptake

In short, patents can, and often do, stand in the way of creating value, rather than aiding in the creation of value.
But wait, you say...

- Doesn’t the right to charge royalties provide the necessary incentives to develop and contribute technology?

- Yes and no: in consumer electronics and telephony, yes. In most IT, no, and on the Internet and the Web, virtually never

- The value is in the broad rapid uptake, or in other patents, or in displacing an incumbent, or in being able to sell other goods and services
What is the value of a SEP in comparison to that of:

• A standard, such as HTML or HTTP?

• The combined, global services and capabilities that have been made possible by the Internet?

• The trade secrets contributed without charge to the standards underlying the Internet and the Web?

• The collaboration of thousands of competitors developing and implementing these standards?
Values vs. Costs of SEPs

- Is the value of a given royalty-bearing SEP under a standard positive, or negative?

- It depends:
  - Was it the only available technology, or just the one that won?
  - Could an alternative technology have been adopted that would have cost nothing?
  - Did its inclusion slow or cripple the uptake of the standard?
  - Is the validity or essentiality of the SEP questionable, leading to expensive litigation and disruption?
Examples of negative value for consumers:

• Format or other standards introduced primarily to drive end users to buy a new generation of goods

• Standards wars vs. standards competitions

• Standards that include SEPs unnecessarily
In Conclusion:

To be understood at all, standards need to be understood from the other side of the Looking Glass
In Conclusion:

On the other side of the Looking Glass, asserted SEPs are more likely to provide problems than solutions.
In Conclusion:

The owner of a SEP usually decides it can gain far more by making it available for free than by insisting on royalties.
In Conclusion:

The value of a SEP used to gain reciprocity for all implementers can be greatest of all
In Conclusion:

A standard that infringes a SEP is not automatically more valuable than one that does not.
In Conclusion:

Except for trolls, the value of standards (to almost all implementers and users) is far greater than the value of any SEPs they may own.
In Conclusion:

*The greatest contributed value in ICT standards is in the consensus (in development and implementation), not in the IPRs*
In Conclusion:

The value of standards, like laws, is held in common and realized by all - implementers, intermediaries, end-users, and society as a whole.