

EIP

EPO and ITU cooperate to improve transparency in patents and ICT standards

The European Patent Office (EPO) and the International Telecommunications Union (ITU), which creates Information and Communication Technology (ICT) standards, have announced that they have signed an agreement to share information to help improve the quality of patents. This is the first agreement that the ITU has ever concluded with a patent office.

Standards define certain minimum criteria that, if followed, help to improve interoperability amongst products that might otherwise not work together. For example, standards relating to the GSM technology make sure that mobile phones work across different networks in various countries. Thus, standards aim to create a level playing field on which companies can compete by using common platforms that ensure freedom of user choice.

By contrast, a patent provides an exclusive right that allows a patentee to exclude others from practising the patented invention. If the implementation of a particular standard necessitates use of a technology protected by one or more so-called “essential” patents, the patentee could use the essential patent to prevent implementation of the standard, although often a patentee licenses the patented invention to boost their licensing revenue.

During the standard-setting process, members submit a wide range of draft proposals, some of which are adopted in a given standard. Whether or not the submissions are adopted in the standard, they can still count as prior art against patent applications filed after these submissions are made. The agreement between the EPO and the ITU will enable the EPO to gain access to all ITU documentation, and eventually make it available to its examiners in a searchable form. This might seem like a fairly inconsequential

development when the EPO has access to such a large amount of potential prior art already, but it could have a huge impact on patent quality. In the telecommunications field, it has been estimated that 35% of all prior art citations relied upon by the EPO originate from Standard Setting Organisations, such as the ITU.

For the ITU, this agreement will allow them to link their patent database to the EPO's database, which will help them to assess whether a particular technology that may be relevant to a standard is patented. This can improve the legal certainty for the implementers of standards, as is evident from the dispute surrounding the JPEG standard for digital image compression. A patentee asserted that it owned patent rights covering the JPEG technology approximately 10 years after the JPEG standard was issued, as a result catching the implementers of the JPEG standards unaware.

The EPO has previously made similar information-sharing agreements with the Institute of Electrical and Electronics Engineers (IEEE) Standards Association, which creates standards relating to electrical and electronic technologies and the European Telecommunications Standards Institute (ETSI), which produces standards in the field of telecommunications.

It is expected that this agreement will benefit patentees, implementers of standards and consumers, while also improving the quality of patents that relate to technology that may cover, or be covered by, standards.