

## **Intellectual Property Rights in ICT Standardization: – Trade-Related Issues**

Presentation at

### **Standards and Innovation Policy in the Global Knowledge Economy – Core Issues for China and the US**

Beijing, China

Oct. 14, 2009

ICT standards are trade related in various respects. First of all, the TBT Agreement provides that Members shall take international standards as basis for their technical regulations. This is important in the global economy where competing standards coexist and may cause great trade problems, as the 2005 WTO report indicated. Secondly, ICT standards are complicated with patent and other forms of IPRs, which are protected by Member government in line with requirements in TRIPS. Problematic issues may arise with regard to IPR enforcement in the context of standards development and implementation. Thirdly, various market opening policies may also be affected by ICT standards. For example, when market for trade in services are de jure open, it may be closed de facto.

In order to address concerns in IPR in standards, China raised this issues in the WTO in 2005, requesting the WTO to explore solutions in order to maintain the integrity of standardization and trade. China has not been able to provide detailed solutions, as normally Members would do when they propose something new in the WTO. The reason is that China would like to seek solutions together with all other stakeholders in coping with this hard issue with great technical perplexities.

Chinese submission had been gaining world wide attention after its submission. At the same time, some doubt over the real intention of raising this issue arose. A journal paper had asked if China want to to revise the TBT Agreement. Some others may think if China raised this issue to balance the pressure it had been facing on IPR protection. Again, for good faith communications, the real purpose of this submission is integrated ICT standards and trade systems. Chinese IPR profile is getting bigger. It would not be beneficial for China to simply drive for low royalty for IPRs. If China is going to do so, the first opposing force would come from its own domestic industrial groups. At the same time, China has been paying due attention to the problem of IPR misuses in ICT standards. With that, I sincerely hope that we could sit down for in-depth technical discussion on the issue of IPR in standards, such as public policy and public interests implications of standardization, the application of antitrust on related issues and cooperations at policy and firm levels, taking advantage of Chinese open up policy. This is not a political statement. This is substantial. However, sometimes, open up policy may not have been fully comprehended by either China or foreign stakeholders.

In this regard, I personally may find it hard to trust a technical nationalism as a valid and lasting argument. To the very most, it is part of normal competition among nations and firms. Nor do I believe it is the right direction to make ICT standards related disputes highly profiled. The core

issue is, as Prof. Ernst put it explicitly, to "search for new ways of sharing the benefits of the emerging global knowledge economy by adjusting both national and international standards."

The whole world is doing this job with great endeavour. A good example is what EC has been doing in recent years, especially the Workshop on IPR in standardization. Stakeholders in the US are also making great efforts in this regard, see, especially those taken by the US competition authorities, businesses such as SUN, IBM, various academic and civil society communities. The WIPO and international organizations for standardizations such as the ITU are also trying their best to carry this issue forward. At the same time, it should also be noted that IPRs in standards incur great commercial interests and other concerns and it is not surprising that great controversies will continue.

IPR in ICT standards has been heated issue which even sometimes takes on "a quasi-religious dimension". It is important to make relevant discussions rational ones and to focus on the business and trade implications of this issue. Following this direction and relying on business cooperation among at firm level, we could then develop and maintain a healthy, open and competitive environment for ICT standards.