STANDARDIZATION UNDER EU COMPETITION RULES and US ANTITRUST LAWS

The Rise and Limits of Self-Regulation

BJÖRN LUNDQVIST

NEW HORIZONS IN COMPETITION LAW AND ECONOMICS

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Standardization under EU Competition Rules and US Antitrust Laws

NEW HORIZONS IN COMPETITION LAW AND ECONOMICS

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Case 155/4 SELEX v. Commission [2006] ECR II-4797. Appeal rejected *see* case C-113/07 SELEX v. Commission [2009] ECR 000.....185, 186, 187, 188, 191, 197, 380
Case C 415/93 Union royal belge des societes de football association ASBL et al v. Jean-Marc Bosman [1995] ECR I-4921 .....213, 377, 378
Case 36/74 Walrave v. Koch [1974] ECR 1415.....377
Case C-309/99 Wouters [2002] ECR I-1577.....377, 378

(ii) Cases from the Member States

Germany

Federal Supreme Court (Bundesgerichtshof) July 13, 2004 – Case No. KZR 40/02 *('Tight-Head Drum') (Standard-Spundfass)*.....319, 320, 324, 325, 378
LG Dusseldorf, WuW 13.12.2007, heft 12, Seite 1278-1288, DE-R 2120-2130 ...29, 164, 309, 382
Federal Supreme Court (Bundesgerichtshof) May 6, 2009 – Case No. KZR 39/06 *('Orange-Book-Standard')* 319, 320, 325
Philips v. SonyEricsson (District Court of Mannheim, May 27, 2011, doc no. 7 O65/10).....321
Motorola v Apple (Court of Appeal in Karlsruhe, February 27, 2012, doc. No. 6 U 136/11) 321

The Netherlands

LG Electronics v. Koninklijke Philips Electronics N.V., The District Court of the The Hague, rolnummer 287026 / KG ZA 07-528, 11 June 2007 ....29, 164, 309, 331, 382

UK

Royal Court of Justice, 27 February 2007, Sandisk Corp. v. Sisvel et al .2007 EWHC 448 309
Nokia v. InterDigital, English and Wales High Court 802 (Pat), Pumfreu J., 12 April 2006, BL C746 345
Court of Appeal from the High Court of Justice Chancery Division (Patents Court) case no: A3/2011/2018 & 2018(y), Nokia Corporation v. IPCom Gmbh & Co KG.....311
Nokia Corporation v. IPCom Gmbh & Co KG, High Court, 20 February 2012, Case No. HC09C04868 .....303, 311, 312, 315, 323

(iii) Decisions by the EU Commission

Commission decision Asahi/Saint-Gobain, OJ 1994 L 354/87 .....221, 223
Commission decision AstraZeneca, 15 June 2005 [2006] 5 CMLR 287 ..71, 72, 317, 318, 345, 418, 423,
Commission decision Bayer/Gist-Brocades, OJ 1976 L 30/13.....222
Commission decision BdKEP 20 October 2004 [2006] 4 C.M.L.R. 981 295
Commission decision Belasco OJ 1986 L 232/15.....204
Commission decision Continental/Michelin, OJ 1988 L 305/33 220

Commission decision 197-1 Standard- EMC/European Cement, COMP/F-2/38.401 ..... 193, 370, 372, 410
Commission decision ETSI IPR Policy OJ 1995 C 76/5 ..... 57, 61, 208, 392
Commission decision Exxon/Shell, OJ 1994 L 144/20 223
Commission decision Fujitsu AMD Semiconductors, OJ 1994 L 341/66 223
Commission decision Case No COMP/M.6381 Google/Motorola Mobility 303, 313
Commission decision Konsortium ECR 900, OJ 1990 L 228/31 267
Commission decision Open Group, OJ 1987 L 35/36 ..... 197, 200, 223
Commission decision Optical Fibres, OJ 1986 L 236/30 ..... 195, 214, 215,216, 217, 219, 268
Commission decision Pasteur Mérieux-Merck, OJ 1994 L 309/1 222
Commission decision PVC I, OJ 1989 L 74/1 ..... 316, 410
Commission Decision Pre-insulated Pipes, OJ 1999 L 24/1 ..... 114, 207, 212
Commission decision SCK and FNK OJ 1995 L 312/79 392
Commission decision Videocassette recorders, OJ 1977 L 47/42 ..... 69, 207, 279

B. US CASES

(i) US court cases

Addamaxx Corp. v. Open Software Foundation Inc. et al., 888 F. Supp. 274 (D.Mass. 1995) 163, 164
Addamaxx Corp. v. Open Software Foundation Inc 152 F.3d 48 (1st Cir 1998) 163, 164
Allied Tube and Conduit Corp. v. Indian Head, Inc. 486 U.S. 492 (1988) 152, 158, 162, 164, 167, 170, 173, 174, 175, 176, 225, 308, 316, 317, 380, 390, 400, 407, 410, 418, 423
American Security Co. v. Shatterproof Glass Corp., 268 F.2d 769 (3rd Cir. 1959) 259
Apple, Inc v. Motorola, Inc. No. 1:11-cv-08540 2012 BL 157789 (N.D. III June 22, 2012) 330, 334, 335, 337, 343, 346, 348, 350, 351
Apple, Inc. v. Motorola Mobility, Inc., No. 11-cv-178bbc, 2011 WL 7324582 (W.D. Wis. June 10, 2011) 354
Apple, Inc. v. Motorola Mobility, Inc., – F. Supp. 2d –, No. 11-cv-178bbc, 2012 WL 3289835, (W.D. Wis. Aug. 10, 2012) 354
Apple, Inc. v. Samsung Electronic. Ltd et al, C-11-1846 & C 12-0630 .341, 352, 363
Baker-Cammack Hosiery Mills, Inc. v. Davis Co., 181 F.2d 550 (4th Cir. 1950) 172
Bibb v. Navajo Freight Lines, 359 U.S. 520 (1959) 117, 185, 380
Broadcom v. Qualcomm Inc., 501 F.3d. 297 (3rd Cir. 2007) 7, 12, 33, 64, 66, 70, 276, 232, 305, 306, 309, 310, 326, 341, 355
Carpet Seaming Tape Licensing Corp. v. Best Seam Inc., 616 F.2d 1133 (9th Cir. 1980) 171
Chicago Board of Trade v. United States, 246 U.S. 231 (1918) 154
C-O-Two Fire Equip. Co. v. United States 197 F2d 489 (9th Circ), cert. denied, 344 U.S. 892 (1952) 172, 174, 285

Consolidated Metal Prod. v. American Petroleum Inst. 846 F.2d 284, 293 et seq, (5th Circ 1988).....176
Cutter Labs., Inc. v. Lyophile-Cryochem Corp., 179 F.2d 80 (9th Cir. 1949).....172
Diamond v. Chakrabarty 447 U.S. 303 (1980).....89
E. Bement & Sons v. National Harrow, 186 U.S. 70 (1902) 171, 249
Eastern Railroad presidents Conference v. Noerr Motor Freights 365 US 127 (1961).....166
eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388 (2006).....12, 328, 329, 350
FTC v. Actavis, Inc. 570 U.S. June 17, 2013.....90
FTC v. Ind. Fed'n of Dentists 476 U.S. 477 (1986).....313
Golden Bridge Tech. v. Nokia Inc., 416 F. Supp. 2d 525 (E.D. Tex 2006) 174
Golden Bridge Technology Inc. v Nokia, Inc. 527 F.3d 1318, 87 U.S.PQ.2d 1049 (Fed. Cir 2008) 174
Golden Bridge Technology Inc. v Motorola, Inc. 547 F.3d 266 (Fed. Cir 2008) ...174
Goldfarb v. Virginia State Bar 421 US 773, 791,789 (1975) 167
Georgia-Pacific v. United States Plywood Corp. 318 F. Supp. 1116, 1120 (S.D.N.Y 1970) 350
Handgards, Inc. v. Ethicon, Inc. 743 F.2d 1282, 1288 et seq. (1984).....318
Hartford-Emprise et al v. United States, 46 F. Supp. 541 (1942), modified 323 U.S. 386 (1945) 282
Intel Corp. v. Intergraph Corp., 195 F.3d 1346 (Fed. Cir. 1999).....240
International Manufacturing Co. v. Landon, 336 F.2d 723 (9th Cir. 1964).....259
International Norcent Technology v. Koninklijke Philips Electronics N.V., not reported in F.Supp.2d, 2007 WL 4976364, C.D.Cal. 2007 Oct 29, 2007 245
Illinois Tool Works, Inc. v. Independent Ink, Inc., 547 U.S. 28 (2006) 295, 302
Jefferson Parish Hospital Dist. No. 2 v. Hyde, 466 U.S. 2, 104 S. Ct. 1551, 80 L.Ed.2d 2 (1984) 258, 259
King v. Anthony Pools, Inc., 202 F. Supp. 426 (S.D. Cal. 1962) 172
Kobe, Inc. v. Dempsey Pump Co., 198 F.2d 416 (10th Cir. 1952) 171
KSR International Co. v. Teleflex Inc., 550 U.S. 398 (2007) 423
Madey v. Duke University, 307 F.3d 1351 (Fed. Cir. 2002).....97, 241
Matsushita Elec. Indus. Co. v Cinram Int'l, Inc., 299 F. Supp. 2d 370 (Del. 2004) 256
Microsoft Corp. v. Motorola, Inc., 696 F.3d 872 (9th Cir. 2012) 335, 354
Micosoft v. Motorola, Case no. C10-1823 JLR, Findings of Fact and Conclusion in Law, (W.D. Wash. 25 April 2013).....41, 142, 353, 354, 355, 358, 359, 391
Microsoft Corp. v. Motorola, Inc., 864 F. Supp. 2d 1023 (W.D. Wash. 2012) 354
Microsoft Corp. v. Motorola, Inc., 854 F. Supp. 2d 993 (W.D. Wash. 2012) 354
Minnesota v. Clover Leaf Creamary Co, 449 U.S. 456 (1981) 117, 185, 380
Northern Pacific R. Co. v. United States, 356 U.S. 1 (1958) 256
Nat. Macaroni Mfrs. Ass'n., 65 FTC 583 (1964), enforced, 345 F.2d 421 (7th Cir. 1965) 172
NYNEX Corp. v. Discon, Inc. 525 U.S. 128 (1998).....307
Open Software Foundation Inc et al. v. United States Fidelity and Guaranty, 307 F.3d 11 (1st Cir. 2002).....157, 163
Parker v. Brown 317 US 341 (1943).....166, 380

Professional Real Estate Investors, Inc. v. Columbia Pictures Industry 508 U.S. 47,113 S.Ct. 1920 (1993) 318
Qualcomm Inc. v. Nokia Corp. 466 F.3d 1366 (Fed. Cir. 2006) 7, 70, 276, 310
Radiant Burners, Inc. v. Peoples gas Light & Coke Co., 364 U.S. 656 ..... 163, 170, 174, 175, 192, 312, 225
Rambus Inc. v FTC, 522 F.3d 456 (D.C. Cir 2007), cert. denied 123 S Ct 1318 (2009) 23, 29, 143
Rambus inc. v. Infineon Technologies AG, 318 F.3d 1081 (Fed. Cir. 2003) 29, 164
Schering-Plough Corp. v. Federal Trade Commission, 402 F.3d 1056 (11th Cir. 2005) 90
Senza-Gel v. Seiffhart, 803 F.2d 661 (Fed. Cir. 1986) 256
Southern Motor Carriers Rate conference v. US 471 US 48, 57 (1985) 167
Spectrum Sports v. McQuillan, 506 U.S. 447 (1993) 302
Standard Oil Co. v. United States, 283 U.S. 163 (1931) 169, 171
Standard Sanitary Mfg. Co. v. United States, 226 U.S. 20 (1912) 171
Trueposition, Inc. v. LM Ericsson Telephone Company 2012 WL 33075(N.D. Cal. May 14, 2012) 174
Uniloc U.S.A v. Microsoft Corp. 632 F 3.d 1292 (Fed. Cir. 2011) 349
United States v. Am Radiator and Standard Sanitary Corp. 433 F2d 174, 185 (3rd Cir 1970), cert denied, 401 U..S. 948 (1971) 172, 285
United States v. AMR Corp., 335 F.3d 1109 (10th Cir 2003) 261
United States v. Automobile Mfrs. Ass'n, 307 F. Supp. 617 (C.D. Cal. 1969) appeal dismissed *sub nom*. City of New York v. United States, 397 U.S. 248 (1970), modified *sub nom* 157
United States v. Mfrs. Aircraft Ass'n, Inc., 1976-1 Trade Cas. (CCH) 60,810 (S.D.N.Y. 1975) 157
United States v. General Electric Company et al., 272 U.S. 476 (1926) 183
United States v. General Electric Company et al., 82 F.Supp. 753 (D.N.J 1949) 97, 241
United States v. Krasnov, 143 F. Supp 184 (E.D. Pa. 1956), aff'd. 355 U.S. 5 (1957) 244, 249, 250, 382, 413
United States v. Line Material Co., 333 U.S. 287 (1948) 172
United States v. Microsoft Corp., 253 F.3d 34 (D.C. Cir. 2001) (*en banc*) 227, 258
United States v. Motor Vehicle Mfrs. Ass'n, 182-82 Trade Cas. (CCH) 65,088 (C.D. Cal. 1982) 157
United States v. New Wrinkle, Inc., 342 U.S. 371 (1952) 172
US Philips Corp. v. International Trade Commission, 424 F3d 1179 (Fed. Cir. 2005) cert. denied 126 S. Ct 2899 (2006) 251, 258
United States v. Singer Mfg. Co., 374 U.S. 174 (1963) 172
United States v. U.S. Gypsum Co., 333 U.S. 364 (1948) 172
Verizon Communication Inc. v. The Law Offices of Curtis v. Trinko LLP, 124 S. Ct. 872 (2004) 90
Qualcomm Inc. v. Broadcom Corp. 548 F.3d 1004, 1009-10 (Fed. Cir. 2008) 305
Qualcomm Inc. v. Nokia Corp.466 F.3d 1366 (Fed. Cir. 2006) 7, 70, 276, 310
Wang Labs, Inc. v. Mitsubishi Elecs. America, Inc. 103 F3d 1571 (Fed. Cir.), cert denied, 522 U.S. 818 (1997) 299
White v. Samsung Electronics America Inc., 989 F.2d 1512, 1513 (9th Cir.1993) 95

(ii) FTC cases and briefs

In re Robert Bosch GmbH No. 121 0081 (F.T.C. April 24, 2013).....338
In re Dell, 121 F.T.C. 616 (1996) (Resolved by consent order) 28, 164, 299, 307
In re Google Inc., No. 121-0120 (F.T.C., January 3, 2013).....334, 335, 337, 389, 416
In re Negotiated Data Solution No 051 0094 (F.T.C., January 23, 2008) 312, 313
In re Intel Corp., No. 9288 (F.T.C., June 8., 1999) 240
In re Rambus, Inc., No. 9302 (F.T.C., June 18, 2002).....164, 307
In re Rambus, Inc., No. 9302 (F.T.C., July 31, 2006).....23, 28, 143
In re Rambus, Inc., No. 9302 (F.T.C., Feb. 2, 2007) 29
In re Summit Tech. Inc., 127 F.T.C. 208 (1998) 282, 291, 390, 400
In re Union Oil Co. of Cal., No. 9305 (F.T.C., Nov 25, 2003)..... 164
In re Union Oil Co., 138 *F.T.C.* 1 (2004) (Resolved by consent order).....29, 299, 300
In re VIXS Inc., 127 F.T.C. 136 (1999) 282, 291, 390, 400
In re Certain Wireless Communication Devices Portable Music & Data Processing Devices, Computers & Components thereof, Inv. No 337-TA-745, brief ITC (F.T.C., June 6 2012) 338

(iii) U.S. International Trade Commission (ITC) Decisions

The Administrative Law Judge final initial determination (ID) of Oct. 24, 2003. In the matter of Certain Recordable Compact Discs and Rewritable Compact Discs, Investigation No. 337-TA-474.....252
Certain Mobile Devices, Associated Software, and Components Thereof, Inv. No. 337-TA-744 (May 15, 2012) (Final) (Notice of a Commission Final Determination of Violation of Section 337; Issuance of a Limited Exclusion Order; Termination of Investigation; Respondent Motorola Mobility, Inc.) 330
Certain Electronic Devices with Communication Capabilities, Components Thereof, and Related Software, Inv. No. 337-TA-808, 76 Fed. Reg. 60,870 (Sept. 30, 2011) (Preliminary) (Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337; Complainant HTC Corp. and Respondent Apple Inc.) 330
Certain Wireless Devices with 3G Capabilities and Components Thereof, Inv. No. 337-TA-800, 76 Fed. Reg. 54,252, 54253 (Aug. 31, 2011) (Preliminary) (Notice of Institution of Investigation; Respondent Nokia Corp.).....330
Certain Mobile Telephones and Modems, Inv. No. 337-TA-758, 2011 ITC LEXIS 1557 (Aug. 11, 2011) (Preliminary) (Order 17; Complainant Sony Corp. and Respondent LG Electronics, Inc.).....330
Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices, and Tablet Computers, Inv. No. 337-TA-794, 76 Fed. Reg. 45,860 (Aug. 1, 2011) (Preliminary) (Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337; Complainant Samsung Electronics Co. and Respondent Apple Inc.) 331

Certain Mobile Telephones and Wireless Communication Devices Featuring Digital Cameras, and Components Thereof, at 2, Inv. No. 337-TA-703, 2011 ITC LEXIS 1112 (June 30, 2011) (Final) (Notice of Commission Determination to Affirm in Part and Reverse in Part a Determination of No Violation of Section 337; Remand of the Investigation for Further Proceedings; Respondents Apple Inc. and Research in Motion Ltd) 331

Contents

List of figures ix
Table of cases x

1. R&D collaborations, technology standardization agreements and patent pools: antitrust problems or efficient solutions to antitrust problems? 1
2. The proliferation of IPRs and the rise of standards 16
   - 2.1 Network effects and interoperability 16
   - 2.2 Patent management strategies 19
   - 2.3 Patent thickets 29
   - 2.4 The rise of agreements on technology 34
     - 2.4.1 Standards, what are they? 34
     - 2.4.2 What are the sources of standards? 39
     - 2.4.3 Consortia and coopetition 45
   - 2.5 Consumer electronics, telecommunication, information technology and to a lesser extent pharma and biotech 54
     - 2.5.1 The ICT Industry 54
     - 2.5.2 Patent wars 65
     - 2.5.3 Standards and outsourcing 67
   - 2.6 Business patent strategy models 72
   - 2.7 Technology consortium 81
   - 2.8 The functions of patents 87
   - 2.9 Follow-on innovation 95
   - 2.10 Incentive to innovate and the discovery process 98
   - 2.11 Dynamic v. static competition 101
   - 2.12 Monopoly v. competition 103
   - 2.13 Why the theories of dynamic competition cannot be applied to some standard-setting procedures 109
   - 2.14 Conclusion: dynamic competition and the need for a market? 114
3. The governance and institutional structure of SSOs 116
   - 3.1 Introduction 116
   - 3.2 The *de jure* institutional structure of SDOs 118
     - 3.2.1 The guiding principles of WTO 118

3.2.2 The European system 120
3.2.3 The European Member States SDOs 128
3.2.4 The international standard-setting organizations 129
3.2.5 The US standard-setting organizations 132
3.3 IP policies 136
3.4 The *de facto* work in SSOs and SDOs 139
3.5 The patent game in the technical committees 143
3.6 General comments and concluding remarks 145
4. The regulation of standardization agreements and adjoining collaborations 149
4.1 The US antitrust law regarding standard-setting collaborations 149
4.1.1 The NCRPA 149
4.1.2 Background to the Standards Development Organization Advancement Act 158
4.1.3 Members of the SDOs under the NCRPA 166
4.1.4 What is anti-competitive in the standard-setting process under US antitrust laws? 168
4.1.5 The Business Review Letters on SDOs 179
4.1.6 Conclusion 183
4.2 Standardization agreements under EU competition rules 184
4.2.1 Introduction 184
4.2.2 Undertaking and the connection between competition law and the free trade rules 184
4.2.3 Cases concerning assessment under Art. 101 TFEU 191
4.2.4 The application of the R&D block exemption to standard-setting activities 194
4.2.5 The Horizontal Guidelines 197
4.2.6 What is anti-competitive under EU competition law with reference to standard-setting? 205
4.2.7 EU Commission case law on the interface between joint R&D and standard setting 214
4.2.8 Conclusion 223
4.3 Regulation of standards under competition law, *de lege ferende* 224
5. Patent pools 229
5.1 Introduction 229
5.2 The structure of technology pools and some alleged pro- and anti-competitive effects 230
5.2.1 Structure 230

5.3 The modern approach to patent pools under US antitrust law 234
5.3.1 The early Business Review Letters 234
5.3.2 The *US Philips I* case 251
5.3.3 The latest Business Review Letters 262
5.3.4 Future patent pools or joint defence solutions? 263
5.3.5 Conclusion 264
5.4 The EU antitrust approach to patent pools 265
5.4.1 Structure 265
5.4.2 The famous patent pools 266
5.4.3 The EU pool structure 269
5.5 Comparative analysis of patent pools in the light of standard setting 272
5.5.1 Introduction 272
5.5.2 Telecommunications and the problem of developing patent pools 273
5.5.3 The difference between, on the one hand, the JVC-Betamax, DVD and Blu-Ray standard wars and, on the other hand, the telecommunications industry 277
5.5.4 When is a standard derived patent pool an anti-competitive cartel? 281
5.5.5 Price discrimination and marginal squeeze 294
5.6 Concluding remarks 297
6. Unilateral conduct under standards 299
6.1 The early patent ambush incidents 299
6.2 Dominance under US antitrust law and EU competition rules 302
6.3 Patent ambush 305
6.3.1 The US *Qualcomm* cases 305
6.3.2 The *Rambus* case 307
6.3.3 The EU *Qualcomm* case 309
6.4 *IPCom* and other cases concerning the sale and purchase of SEPs 311
6.4.1 The purchasers/assignees 311
6.4.2 The sellers/assignors 315
6.4.3 Conclusion 319
6.5 Access to patents, i.e. injunctions: A competition law or IP law problem? 319
6.5.1 The *Orange-Book-Standard* and other European cases 319
6.5.2 *eBay* and the ITC cases that followed 328

6.5.3 The *Google/Motorola* cases 334
6.5.4 The US and EU doctrines 341
6.6 Essentiality, overdeclaring essentiality and workarounds 344
6.7 Defining FRAND 349
6.8 Concluding remarks and a discussion regarding outstanding issues 361
7. Comparative analysis and critique 365
7.1 Introduction 365
7.2 Limits to competition policy and law 367
7.2.1 Sometimes no room for 'trial and error' 367
7.2.2 Government and courts should not decide on standards 370
7.2.3 The interface between competition law and trade rules 375
7.3 The interaction and interface between standards, IP arrangements under SSOs/SDOs and patent pools and what should be considered anti-competitive 381
7.3.1 What may be anti-competitive? 381
7.3.2 Application of competition law 384
7.3.3 The application of competition law outside the safe harbour 389
7.3.4 Anti-competitive agreements under infrastructure standards 391
7.3.5 Anti-competitive agreements under interoperability standards 393
7.3.6 Anti-competitive conduct under product design standards 399
7.3.7 Patent thicket and other market failures 401
7.3.8 Conclusion 401
7.4 Pre-standardization agreements and agreement on technology 402
7.5 Unilateral conduct under standards 407
7.5.1 PAEs 411
7.6 More developed and stringent procedural rules when scrutinizing SSOs 413
8. Conclusion 419

Bibliography 425
Index 445

Figures

1.1 Standardization business model 6
2.1 Business patent strategy model 75
7.1 IP banks' business model 386

1. R&D collaborations, technology standardization agreements and patent pools: antitrust problems or efficient solutions to antitrust problems?

When interviewed, a representative for the world's leading equipment supplier and network service operator of mobile and fixed phone and telecommunications stated that the two most important outputs of research are patents and technology standards.[1] The representative for the telecommunications firm went on to say that technology standardization is never an end in itself because consumers' requirements and competitors' positions need to be taken into consideration and balanced against each other.[2] The firms that combine forces in the standardization committees change over time but collaboration remains essential since the processes in the technical committees are usually consensual.[3] In fact, the negotiation of compromises in the technical committees of standard-setting organizations permits a feedback loop into research activities. Technical committees create platforms where competitors can communicate, negotiate and collaborate about the development and the standardization of the technology.[4]

In relation to intellectual property rights, the members of these technical committees are these days conscious of the patent or IP 'ecosystem' that is linked to suggested standards. They often file patent applications before the

[1] Rudi Bekkers et al., 'Case studies on the interface between research and standardisation, and case studies on patent pools as a coordination mechanism' (INTEREST consortium Priority 8 No. Contract 503 594, EU 6th Specific Targeted Research Project, 2006), 53. [The document is on file with the author.]

[2] Ibid. 55.

[3] Ibid.

[4] Ibid.