

## **European Electrical & Electronic Industry's Positions and Proposals on "Regulations of National Standards Relating to Patents (Provisional) (exposure draft)"**

### **EuropElectro<sup>1</sup> Industry Position Paper**

**November, 2009**

China Standardization Administration of the People's Republic of China (hereafter referred to as the '**SAC**') called for public comments on <Regulations of National Standards Relating to Patents (Provisional) (exposure draft)> (hereafter referred to as the '**The Exposure Draft**') on November 9, 2009. In order to manage patent-related matters in national standard development, protect the interests of the public, patent holders, and related parties, and to facilitate the implementation of national standard, SAC drafted '**The Exposure Draft**'.

EuropElectro represents the European electrical & electronics manufacturers who are both users of standards, and also willing to be active in some standards development. Our common position on 'patent inclusion in public standards' is

- China regulations on patent inclusion in China public standards shall follow the published <COMMON PATENT POLICY FOR ITU-T/ITU-R/ISO/IEC >. The RAND principle shall be adopted.
- The implementation of the Regulations shall be transparent.

From standards development view point, we summarized the European electrical & electronics manufacturers' comments and proposals on patent inclusion of national standards development in the position paper on '**The Exposure Draft**'.

### **I. General opinion**

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<sup>1</sup> Through the cooperation with ORGALIME\*, **EuropElectro** is the voice of our Electrical and Electronics member companies from all over Europe in China.

EuropElectro creates and drives a network of communicating in the field of technical legislation, standardization and certification. In these fields we build up an exchange of experiences between European electrical and electronics manufactures and Chinese authorities, administration and organizations. We aim for supporting China authorities to use of international ISO and IEC standards in the Chinese standardization system. Our goal is to facilitate the trade of electro technical and electronic products in regard to technical requirements.

\*ORGALIME -European Engineering Industry Association speaks for 35trade federations representing some 130,000 companies in the mechanical, electrical, electronics and metalworking industries of 24 European countries. These industries employ some 7 million people and account for 1175 billion Euros of annual output, which is a quarter of the EU's output of manufactured products and a third of the manufactured exports of the European Union.

EuropElectro welcomes the **SAC** drafting '**The Exposure Draft**' that makes transparency in the process of patent inclusion in standard development and welcome comments from public. We expect the follow-up work for implementation of the regulations can be carried out both transparently and openly. EuropElectro would like contribute to facilitate implementation of the international policy in China.

In general, we find out that '**The Exposure Draft**' complies with <COMMON PATENT POLICY FOR ITU-T/ITU-R/ISO/IEC >.

Meanwhile, we note that, in some articles of '**The Exposure Draft**', there are some additional requirements to those of <COMMON PATENT POLICY FOR ITU-T/ITU-R/ISO/IEC >.

We suggest the following,

## II. Opinions and proposals

**Article 7 as for approval of national standard involving patent, standard technical committee and the responsible standard authority shall verify the authenticity of relevant patent information table and attestation materials, and submit written proof and patent description to state standardization superior administrative authority.**

We consider that verification of patent information table and relevant attestation materials are of legal in nature. The standard technical committee and responsible standard authority is not capable to and not necessary to take this duty.

International Organization ISO/IEC/ITU is not responsible for the authenticity and appraisal of declared patents. It states that '*... a patent embodied fully or partly in a Recommendation / Deliverable must be accessible to everybody without undue constraints. To meet this requirement in general is the sole objective of the code of practice. The detailed arrangements arising from patents (licensing, royalties, etc.) are left to the parties concerned, as these arrangements might differ from case to case.*'<sup>2</sup>. However, they already provide relevant information to all interested parties, e.g. the 'essential patent pool'.

In addition, according to relevant China laws and regulations, patent holders are responsible for the authenticity of patents. Therefore, It is impractical to require relevant standard technical committees to be responsible for verification of authenticity of patent as required by the '**The Exposure Draft**'.

We suggest the **deletion of 'standard technical committee and the responsible standard authority shall verify the authenticity of relevant patent information table and attestation materials**, **but it is desirable that the fullest available information should be disclosed**<sup>3</sup>.

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<sup>2</sup> ITU-T/ITU-R/ISO/IEC : <COMMON PATENT POLICY FOR ITU-T/ITU-R/ISO/IEC> 2007, page 1, paragraph 3

<sup>3</sup> ITU-T/ITU-R/ISO/IEC : <COMMON PATENT POLICY FOR ITU-T/ITU-R/ISO/IEC> 2007, page 1, paragraph5, clause 1

Otherwise, it will be very difficult to finish the standard development process because of this requirement.

Most of works on standard development has been done by technical experts, and they have no expertise in complex patent and legal affairs. We suggest that **SAC** offer support of professional legal advisors to standard technical committees. This action will clarify and facilitate of the implementation of '**The Exposure Draft**'.

**Article 9 in the case where a patent is involved in national standard development, The standard technical committee and responsible standard authority shall in a timely manner cause an irrevocable written patent right license notice to be issued by the patent holder.**

**Such patent right license notice shall include the following contents. Patent holder shall choose any one of the following items:**

**(1) Patent holder hereby on a reasonable basis and without discrimination gives consent to any organization or individual to use free of charge the patent during executing the national standard;**

**(2) Patent holder hereby on a reasonable basis and without discrimination gives consent to any organization or individual to use the patent during executing the national standard, and agree however that patent fee to be paid in such situation shall be much lower than that normally paid otherwise.**

**(3) Patent holder doesn't agree to license the patent as specified above.**

**If a patent holder chooses the (3), relevant national standard shall not include terms in connection with the patent.**

'Patent fee to be paid in such situation shall be much lower than that normally paid otherwise' mentioned in this article (2) should be a ruling from "Letter on whether the use of Patents Involved in Standards Constitutes infringement of patent right" issued by **the Supreme Court** on July 8, 2008. However, patent appraisal and patent pricing should be in conformity with existing laws and regulations. *The detailed arrangements arising from patents (licensing, royalties, etc.) are left to the parties concerned, as these arrangements might differ from case to case<sup>4</sup>*, Therefore, the above clause is not necessary to be repeated in '**The Exposure Draft**'.

We suggest the **deletion** of 'Patent fee to be paid in such situation shall be much lower than that normally paid otherwise' in this article.

**-The end-**

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<sup>4</sup> ITU-T/ITU-R/ISO/IEC : <COMMON PATENT POLICY FOR ITU-T/ITU-R/ISO/IEC> 2007, page 1, paragraph 3