

Patents & Standards WIPO Seminar

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Paul Davey

Director of Intellectual Property

Vodafone Group



Contents

- The context
- The issue
- The remedies



INTRO - PROBLEM STATEMENT

- The growth and innovation which have characterised the mobile telecommunications industry rely heavily on patented technology and industry standards.
- As complex multi-party technology has evolved, the competitive market for patented technology has not and does not function properly. The end-user is paying for this malfunctioning.
- For the mobile telecommunications industry to remain competitive, the fundamental benefits of a competitive market must be restored, both by market parties and public decision makers.



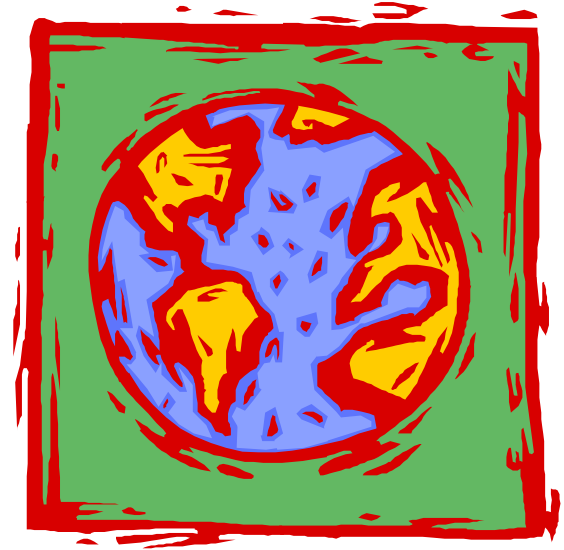
THE CONTEXT



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Basic Mobile Industry market mechanics

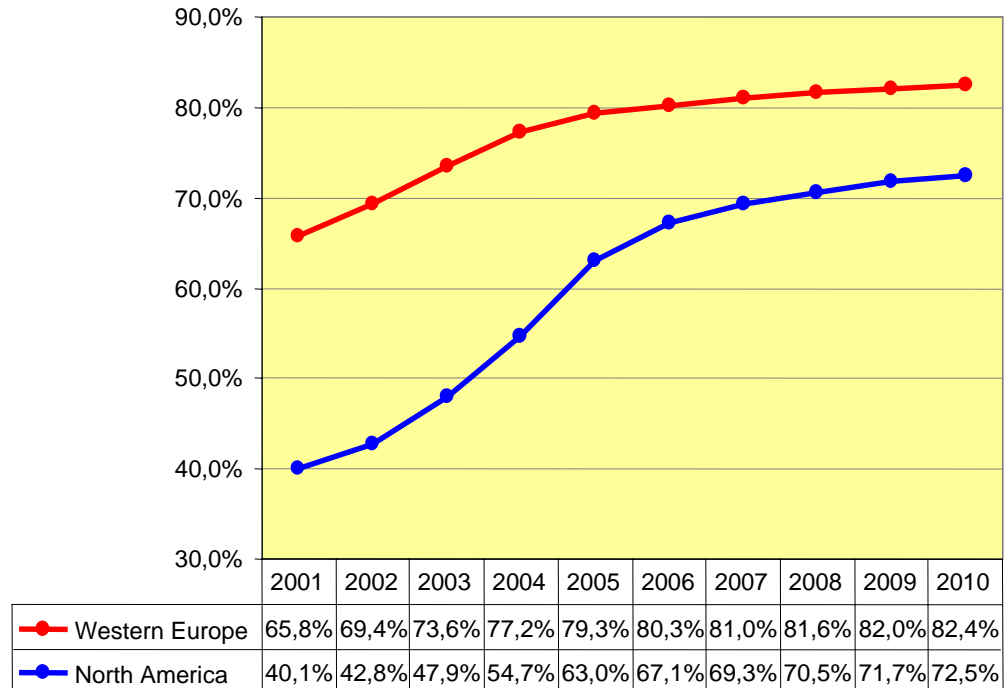
- **Ubiquitous global mobile telecommunications** depends on standardised technology
 - European regulatory drivers.
 - Spectrum licences linked to technology.
 - Pressures to adopt the same technology in other markets.
 - To enable global roaming.
- **Global market scale** drives demand for multi-vendor involvement
 - Circa 2.5Billion subscribers.
 - Terminal and Infrastructure manufacture at market scale requires multi-vendor engagement
- **The consumer offering is;**
 - **Global access to personal voice and data services through a “fashion accessory”.**
 - **Complex technology delivering easy access to substantially consistent services.**



Every one has a mobile, many supplied by Vodafone

- **Ubiquity/accessibility** (Global standards)
- **Globalisation** (roaming, availability in developing markets helping to boost economic development)
- **Innovation** (technology, services, applications, tariffs (prepaid))
- We sell the mobile **services** as well as mobile **handsets** to customers, for which we deploy **networks**.
- We speak as a **holder** of patents and as a **user** of patents.

Penetration rates in two regions



Source: Strategy Analytics (2005)








Patents are key for mobile

- **We support the recognition of innovation;**
 - It must be rewarded to reflect and encourage continuing investment;
 - Innovation must be **genuinely inventive** *and* **compatible** with good functioning of the market.
- For W-CDMA technology (3G) in mobile devices & infrastructures, hardware & software.
 - **2000+ patent** families declared around 3G (W-CDMA) technology;
 - comprising **6000+ individual patents** from some **50 companies** and consortia.
- **With many contributions comes a need for many rewards**



Mobile industry's patent requirements

The Mobile telecommunications industry patent requirements can be different to other industries:

	Mobile	Pharma
• Patents are essential to drive innovation.		
• Patents must support technology vendor collaboration.		
• Complex cross licensing is essential to support market scale.		
• Selection of a common standard encouraged by regulatory initiatives and consumer expectations of interoperability.		

A complex mix of consumer expectations, regulation, market scale and homogenous technology drives particular issues.



THE ISSUE



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The competitive market is not working properly

Consumer price and innovation suffer

- There is no “competitive” market for technology in standards.
 - Vendors and Operators MUST use the standard in Europe .
- Technology is selected before the standard
 - Technology is developed by committee of all parties
 - Parties are Required to indicate when they are contributing patented technology.....BUT
 - There is no sanction for failure to notify
 - There is no obligation to notify new claims not yet granted.
- Patent License fees are set after the standard
 - Technology vendors negotiate bi-lateral deals
 - Total licence costs remain an unknown until some years after the standard is set
 - Within the standard there is no competitive market for patent fee levels
 - In Europe there is no alternative to the standard inside managed spectrum
 - No price competition and no innovation initiative.
- Conflict resolution is in the courts



FRAND does not work without competitive pressures to regulate the term “reasonable”

Specific issues

- Patent speed does not match Market speed
 - 18 months from claim to grant is too slow
 - Technology developers have to work with uncertainty
 - Patent applications not even published, let alone granted, when evaluating adoption of technology.
- No visibility of associated IPR license costs.
- Jurisdictional differences
 - USA - Triple Damages rule for willful infringement
 - Ignorance is the best defence!
 - Creates and sustains “blind spots” for technology licensors
 - Encourage large numbers of lower quality patents.



Multiple Patent jurisdictions always apply

- Roaming affects all operators regardless of where the business is based.
 - All patent jurisdictions apply all of the time.
- IPR regimes' designs differ across regions:
 - e.g. first to invent vs. first to file, grace period for first filing, software and business matters protectable in US, no effective patent challenge procedure in US/JP PTO.
- IPR regimes' implementations also vary across jurisdictions:
 - even in Europe, the same patent will be subject to different interpretation and examination.
 - Many granted US patents are not even filed in Europe as simply unpatentable subject matter.
- As quality of patents granted is variable, we end up in numerous infringement cases. It creates legal uncertainty and delay.



Overall consumers costs from IPR are rising

- Cumulative IPR fees from multiple standards technologies
 - GSM + W-CDMA + ?
 - Competition did not work so no downward price pressure
- Rising functionality is significantly increasing patent volumes
 - Media codecs, MP3, MPEG 4, H264 increase IPR costs
- OMA DRM example
 - A Patent ambush in a standards body resulted in
 - Delay in adoption of the standard
 - Higher terminal costs
 - Greater progress of a higher cost proprietary technology
- Legal uncertainty creates risks to the business.
 - We can manage risks (that is what a business is about) but it ultimately raises costs – which are born by customers.



POSSIBLE REMEDIES

Vodafone suggested outcomes

- Reconcile protection of genuine innovation and proper functioning of competition thanks to:
- **Greater transparency** of licensing terms – to allow the market to work properly
- **Earlier transparency** of relevant patents – to create legal certainty and allow risk assessment and technical/business decisions
- **Greater quality** – to be able to determine what is a relevant or not a relevant patent



What we have done about it?

- **With the industry**

- talk to vendors individually (they are our commercial partners, we are their customers); and
- within the operator led GSM Association and the NGMN initiative (collective + bilateral approach).

- **With SDO**

- in ETSI, reform of IPR engaged a year ago is progressing. Slow (but we expected it), however tangible results support the increase of IPR transparency.

- **With public decision makers**

- EU Commission (input to consultation on patent regime reform);
- WIPO today!



How can policy makers help?

- **Greater transparency**
 - Promote the use of **strong disclosure policies** by SDO
- **Earlier transparency**
 - Support the adoption of **early publication rules** (less than 18 months!) by SDO
 - Foster **faster processes** to produce patents and patent decisions
- **Greater quality**
 - **Harmonise** protection regimes and interpretation practices
 - Grant quality patents, **not numerous patents**, to promote innovation



Thank you!

