

Agenda item 10
Author(s) / Submitter(s) Secretariat

Unofficial Translation of Legal Advice on Patent Policy

1 SUMMARY

This paper is an unofficial translation of an advice received by the Secretary-General from a Danish lawyer on the draft Guideline on Patent Policy developed at the request of the IALA ENAV Committee.

1.1 Related documents

Input papers to LAP17:

- LAP17-10.2 Draft IALA Patent Policy Guideline

2 UNOFFICIAL TRANSLATION

Dear Francis

I refer to our earlier correspondence and discussions through telephone regarding IALA Patent Policy.

I have now amended the "IALA Patent Policy Notes" and "IALA Patent Policy and associated Procedures" as shown in the attached documents with tracked changes.

As you will see, new "subjects" have been introduced, and I have made provision for the guidelines to deal with the three potential conflict situations, that in my opinion can arise, when dealing with patents.

I have read the ITU Common Patent Policy for ITU-T/ITU-R/ISO/IEC, and I can see that IALA has incorporated wording (phrases) taken directly from the ITU policy, into the documents that I have received and now amended. I have nevertheless allowed myself to make changes also to such wording (phrases) in the attached documents, if I do not understand the rationale for the wording (phrases), and/or if I find, based on my knowledge of patent law, that another wording (phrase) will better address the solutions to the situations that I foresee can arise in practise.

Regarding "Standard Essential Patents":

I have allowed myself to delete the references to Essential Patents and Standard Essential Patents. Both are established concepts with a known meaning and refer to the larger group (complex) of cross license agreements on the FRAND (Fair, Reasonable and Non-Discriminatory) licensing conditions that a number for commercial establishments, i.e. in the area of cellularphones, have entered into with each other, as this is necessary in order to enable these establishments to produce, market and sell their own products without infringing the patents of other commercial establishments.

I am not aware that the Standard Essential Patents group (complex) of agreements is the norm within the IALA area of activity of navigational- and marine equipment technologies, and I cannot find, from reading the documents that I have received from IALA, that this should be the case. The reference to Standard Essential Patents will thus, in my view, appear in the documents as disconnected from the context and do not, based on my current knowledge, belong in the patent policy.

With the changes I have suggested in the attached documents, I have, based on patent legislation, tried to describe the specific situations where challenges may arise due to patent or patent applications, and I have thereafter described the solutions that could, in my view, be applied to the situations.

Even though the problems and solutions look simple, questions regarding patents and inventions are particularly complex, regarding both legislation and practical application.

For example, as regards publishing own patentable subject matter in order to disclose the novelty and create what we call patent prophylaxis, this may also result in the disclosure of the novelty of the inventions of others, and such publishing by IALA could then be the subject of conflict with other companies.

Furthermore, it will be necessary to carry out searches to identify patents and published patents pending, and IALA thus can not only rely on the information contributed by the committee members.

The practical challenges should not, however, hinder the development of a patent policy and some practicable guidelines. I just want to point out that neither policy nor guidelines can stand alone.

When you have had the time to go through the attached documents I suggest we discuss the matter.

Best regards

Signed: Annemette Ellermann Holmbom

3 ACTION REQUESTED OF THE LEGAL ADVISORY PANEL

The LAP is requested to take this advice into account when considering input paper LAP17-10.2.