



HP Policy Position

Intellectual Property

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Intellectual property protection is essential to innovation. Each year, HP invests significant resources to develop cutting-edge technology products and drive the next waves of innovation. We support strong protection of intellectual property rights in every market, putting this into action with our leading anti-counterfeiting program. We promote reform and phasing out of copyright levies systems and replacement by alternative means of compensation. We also encourage patent reform measures to protect against frivolous litigation, unwarranted product exclusion, and excessive licensing fees unrelated to patent value. Finally, HP encourages online marketplaces to strengthen their policies to prevent marketing, promotion and distribution of counterfeit and infringing products, and regulators to enforce existing regulations to ensure that online marketplaces do not become unpoliceable venues for the sale of counterfeits and infringing products.

HP's Policy Recommendations

Anti-Counterfeiting

- HP seeks to curtail counterfeit products by strengthening IP laws in priority countries/regions through direct engagement with governments, collaboration with regional and international organizations, training for customs officials, public awareness campaigns and strong IP language in trade agreements.
- We encourage stronger enforcement and increased government resources allocated to combat counterfeiting in priority countries/regions. We also urge adoption of best practices to eliminate counterfeit supplies in government procurement.

Clones

- Clone cartridges are introduced with increasing frequency in the market. These are new-built compatible cartridges manufactured by third parties, imitating an HP cartridge with a shell, internal components and ink or toner not manufactured by HP. They often use a clone security chip not manufactured by HP, designed to emulate the original HP security chip and fool HP secure communication protocol between the cartridge and the printer.
- HP notes with concern that these clones, mostly originating in China but also Europe and other parts of Asia, produce negative consequences to customers, the environment and the printing market. The complex nature of printing systems design and R&D makes it highly likely that these clone cartridges infringe existing HP patents. HP does not endorse these products, and strongly recommends use of genuine HP cartridges, ink and toner for optimal performance.

Copyright Levies

- HP encourages the European Commission to reform copyright levies by establishing alternative methods suitable for the Digital Single Market with a closer link between compensation and actual harm caused to right-holders.
- Copyright levies are an inefficient and obsolete compensation system for private copying. Levies should not be expanded to new products, such as 3D printers, as increased costs will hamper these innovative technologies. Governments should explore new, effective ways of compensating right-holders suitable for the digital age, such as direct licensing systems or public budget funding.

Patent Reform

- We support reforms to strengthen the U.S. patent system, improve patent quality and curb abusive patent litigation in U.S. federal courts. Legislative changes, however, must preserve the integrity of the post-grant review procedures enacted in the America Invents Act in 2012.
- HP supports legislative reform of the U.S. International Trade Commission, which is needed to curtail abusive litigation by Patent Assertion Entities (PAEs) increasingly seeking exclusionary orders through the agency. HP supports reforms that would refocus the ITC on its core mission of protecting U.S. domestic industries and moderate PAE's use of the ITC forum.

Standard Essential Patents

- We are seeking additional definition and codification of Fair, Reasonable, and Non-Discriminatory (FRAND/RAND) licensing terms to ensure that firms holding standard essential patents are not using their advantaged position to charge excessive fees.

Issue Background

Anti-Counterfeiting

Counterfeiting has increasingly become a more organized, trans-border, and sophisticated criminal activity on a global scale. Counterfeit operations in virtually every region and economy take advantage of HP's highly visible and regarded brand and target HP products – primarily ink and toner print cartridges – to deceive millions of customers. Counterfeiters also target HP-branded power adapters, laptop batteries and HP accessories such as USB drives. The counterfeit products cheat the consumers who unknowingly purchase the product, believing it to be genuine, impacting consumer confidence and damaging the HP brand, and in some cases posing health and safety risks.

To counteract this threat, HP has developed an industry-leading anti-counterfeiting (ACF) program to deter counterfeit products from entering the market by improving IPR laws and enforcement in priority countries and regions. HP continues to lobby governments throughout the world to enact and strengthen anti-counterfeit laws, increase enforcement, issue deterrent sentencing, improve speed of case resolution, address counterfeit activities in free trade zones, and eliminate counterfeits entering public procurement.

In addition to country-specific initiatives and partnerships, HP is engaged to ensure that strong IP protection is prioritized through the Anti-Counterfeiting Trade Agreement, APEC, the EU Commission, World Trade Organization and World Customs Organization, the U.S. IPR Center and the European Observatory on Counterfeiting and Piracy. HP is also an active member of associations such Business Action to Stop Counterfeiting and Piracy, International Anti-Counterfeiting Coalition, and many other national and regional organizations.

Clones

Clone cartridges are introduced with increasing frequency in the market. They are new-built cartridges manufactured by third parties imitating an HP cartridge with a shell, internal components and ink or toner not manufactured by HP. When equipped with a chip, they also use a clone chip not manufactured by HP but designed to emulate the original HP security chip. Given the highly complex nature of printing systems design and extensive investments in R&D, clone products are likely to infringe existing patents.

Studies have shown that these clones have high rates of “dead on arrival”, early failure and poor quality¹ and can cause damage that void warranties. In addition to the intellectual property infringement and quality problems, clones do not have environmentally sound end-of-life practices. For example, no scheme exists for collection, remanufacturing or reprocessing of clone cartridges. Procurements that select clones based solely on price do not take into account quality, total value, and overall life cycle sustainability that a genuine HP product provides. HP does not endorse clone supplies and recommends that only genuine HP printing supplies be used in our products

Copyright Levies

Current copyright levy regimes are a mix of tariffs randomly applied to different goods (e.g., PCs, scanners, single-function and multifunctional printers), at different levels, in different ways, in countries around the world. Levies are particularly prevalent in the EU, where the system was originally implemented in Germany in 1965 and then spread across Europe in the 1980s. Collecting societies, intermediaries that act on behalf of right-holders, collect the levies from manufacturers and importers. The stated purpose is to compensate right-holders for reproduction of their work for private purposes or by reprographic means. National collecting societies tend to copy levy tariffs and products subject to levies from one another. Consumers are often unaware they are paying these levies, often multiple times in the case of online content (once as part of the license and additionally as part of the levy), causing an economic waste of at least 51.2 cents for each Euro collected.² Business customers that should be in theory exempted from payment of compensation for private copying bear in practice the burden of payment because of the complexities of the levy exception and reimbursement processes.

New technologies, such as 3D printers, should not be subject to levies, as it drives up the cost of and access to innovative products. HP 3D printers are largely for commercial/industrial use, and as such, should be considered levy-exempt on the grounds of business use. Further, levies-style schemes do not offer an effective solution to combat possible infringements of industrial designs.

Reform of the levies regime would be consistent with a Digital Single Market, especially given the high variability of levies applications across different countries. HP encourages the Commission to promote alternative models of compensation that are not based on hardware levies, such as those implemented in Finland, Norway and Estonia, where compensation is funded through state public budgets. Technological development allows today for new management possibilities for right holders and content consumption for users. Hence, at a minimum, copyright levies schemes should be reformed to implement the recommendations of the January 2013 report from Mediator on Copyright Levies Antonio Vitorino,³ finding that levies are incompatible with the internal market, consumer expectations, and new business models. Thus, HP recommends that the EU should at least solve the internal market issues that levies are causing.

Patent Reform

In the United States, HP has supported legislative efforts and court-led reforms to curb abusive patent litigation while preserving incentives to innovate. In 2015, abusive patent litigation returned to all-time highs. Much of this litigation is filed by patent assertion entities (“PAEs”), who neither design nor sell products, but use the cost of litigation and threat of outsized damages awards to drive settlements unrelated to patent value. Further reform is warranted, but such measures must preserve the integrity of the post-grant review procedures that Congress enacted in the America Invents Act in 2012.

Reform of the U.S. International Trade Commission: Under Section 337 of the Tariff Act of 1930, the ITC is able to conduct investigations of unfair IP practices, issuing exclusionary orders that block imports of products found to be infringing on U.S. patents where that infringement harms a substantial domestic industry. As PAEs find it more difficult to obtain injunctive in federal court, they are using the ITC as a venue to bring patent cases to leverage settlements that bear no relation to the value of their patent holdings.

The ITC could better enforce the crucial jurisdictional requirement to pursue an exclusion order by clarifying the domestic industry standard. As required in its enabling statute, the ITC should also fully consider the public interest impact of an exclusion order. HP has supported reform bills that would strengthen the consideration of these policy concerns.

We support reforms to eliminate bifurcation of patent infringement and patent validity into separate proceedings in the Unified Patent Court. This type of bifurcation exists in certain jurisdictions within the EU, to the detriment of consumers and innovation. In these bifurcated systems, plaintiffs can quickly obtain an infringement ruling and an

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injunction ruling before there is any determination of whether the asserted patent is actually valid. Unprincipled plaintiffs are thereby able to extract substantial royalties (through settlements or verdicts) from operating companies based on low-quality, and potentially invalid patents. The maintenance of such incentives is exacerbating the rise and concentration of patents disputes in the bifurcated EU jurisdictions. HP is a large patent holder and we assert our patent rights when necessary, including in bifurcated EU jurisdictions. Nevertheless, we prefer and support a more balanced approach which, without the bifurcation of proceedings, still protects patent holders without exposing implementers to groundless injunctions or threat of injunctions.

Standard Essential Patents

Common standards allow technology products to work together effectively, thereby accelerating adoption of new technologies and increasing consumer choice by making functions available through multiple vendors. HP products such as desktops, PCs, tablets, and printers rely on standards for a number of functionalities and compatibility. Standards around emerging technologies such as wearables and Internet of Things will set the direction and scalability of these applications.

A standard essential patent (SEP) is a patent having one or more claims which will be necessarily infringed when implementing a technical standard adopted by a standards-setting organization (SSO). Often as a condition of having its technical contributions included in a standard, a patent owner may agree to make its applicable SEPs available at Fair, Reasonable and Non-Discriminatory (FRAND/RAND) conditions to the adopter of the standard. The FRAND/RAND principle is also core to ensure that SEP holders do not violate anti-trust/competition policies. Total royalties cost for implementing a standard is generally produced by stacking SEP licensing fees as requested by multiple SEP holders, which usually determine their own individual FRAND/RAND royalties independently from royalties requested by each other holder of SEPs in the same standard. HP is a member of the [Fair Standards Alliance](#), a European non-profit which promotes the following key principles:

- 1.) a license for SEPs should be available at any point of the value chain
- 2.) a FRAND royalty should reflect the value of the invention (i.e. based on smallest device implementing the SEPs, and taking into account the overall royalty which can be reasonably charged for licensing all SEPs of the standard)
- 3.) injunctions and similar legal threats should be a last resort
- 4.) a FRAND commitment should follow even when the SEP is sold to another company

In February 2015, the Institute of Electrical and Electronics Engineers (IEEE) established a new patent policy on SEPs that attempt to define what FRAND conditions mean, by limiting availability of injunctive relief for SEP holder and by providing guidance on what are “reasonable rates” for licensing SEPs, which is deemed to be appropriate compensation to the patent holder while excluding the value determined by including the patented technology in the standard. Further, the IEEE has stated that determination of this “reasonable rate” should consider the smallest saleable unit that practices said invention. HP views IEEE’s patent policy as a very positive move, promoting-competition, supporting innovation and preventing companies from seeking excessive royalty payments, and urges other SSOs to adopt similar policies.

¹ <http://www.spencerlab.com/reports/HP-Reliability-WWCL-2013.pdf>

² IE ENTER study, 2011

³ Vitorino report: http://ec.europa.eu/internal_market/copyright/docs/levy_reform/130131_levies-vitorino-recommendations_en.pdf