## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Wintrust Financial Corporation,* Lake Forest, Illinois; to acquire 100 percent of the voting shares of Great Lakes Advisors, Inc., Chicago, Illinois, and thereby engage in financial and investment advisory activities, pursuant to section 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, May 10, 2011.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2011–11777 Filed 5–12–11; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

### Request for Comments and Announcement of Workshop on Standard-Setting Issues

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of workshop and request for comments.

**SUMMARY:** The Federal Trade Commission seeks public comments in connection with a project to examine the practical and legal issues arising from the incorporation of patented technologies in collaborative standards, including the risk of patent "hold-up" and its effect on competition and consumers. Among the topics to be considered are the disclosure of patent rights during the standard-setting process, the implications of a patent holder's commitment to license users of the standard on reasonable and non-discriminatory ("RAND") terms, and the possibility of negotiating license terms prior to choosing the standard. The Commission seeks the views of consumers and the legal, academic, and business communities on the issues to be explored in this project. As part of the project, the Commission will conduct a workshop and may prepare a report discussing these issues. This notice poses a series of questions relevant to those issues for which the Commission seeks comment.

**DATES:** The workshop will be held June 21, 2011, in the Conference Center of the FTC office building at 601 New Jersey Avenue, NW., Washington, DC. Prior to the workshop, the Commission will publish an agenda and further information on its Web site. Comments in response to this notice must be received on or before July 8, 2011.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: *https://ftcpublic.commentworks.com/ftc/standardsproject* (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex X), 600 Pennsylvania Avenue, NW., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Roach, *standardsproject@ftc.gov,* FTC, 600 Pennsylvania Avenue, NW., Rm. NJ–6264, Washington, DC 20580, 202–326–2793.

**SUPPLEMENTARY INFORMATION:** This project focuses on practical and legal issues that arise from collaborative standard setting when standards incorporate technologies that are protected by intellectual property rights. Such a situation raises the potential for "hold-up" by a patent owner—a demand for higher royalties or other more costly licensing terms after the standard is implemented than could have been obtained before the standard was chosen. Hold-up can subvert the competitive process of choosing among technologies and undermine the integrity of standard-setting activities. Consumers can be harmed if manufacturers are able to pass on higher costs resulting from hold-up.

Collaborative standard setting plays an important role in the modern economy. In areas such as information and communications technology, for example, the usefulness of complex products and services often depends on the interoperability of components and products of different firms. To enhance the value of these complex products, private firms—including competing manufacturers, their customers and suppliers—frequently participate in standard-setting organizations (SSOs) to set technological standards for use in designing products or services. While such collaborations are not without antitrust risks, antitrust enforcers in the United States and Europe have recognized the valuable and pro-competitive character of this kind of legitimate standard-setting process.[1] It can lead to innovation, better products and more competition.

Various technological alternatives may compete to be selected for the standard. But once a technology is incorporated into a standard, and the standard becomes widely used, a manufacturer may find it difficult, or indeed impossible, to switch to what were once alternative technologies. A firm with a patent reading on the standard often can demand a royalty that reflects not only the ex ante market value of the patented invention, but also added value associated with changes in the marketplace and investments made to implement the standard. This has been called patent "hold-up."

SSOs have sought to prevent hold-up in several ways. First, many SSOs have patent disclosure rules that try to ensure that SSO members are aware of relevant patents when adopting a standard. Second, they commonly require a patent holder to commit that after the standard-setting process is completed, it will license the patent on terms that are

[1] U.S. Dept of Justice & Fed. Trade Comm'n, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition, at 33–56 (2007); Guidelines on the applicability of Article 101 of the Treaty on the functioning of the European Union to horizontal co-operation agreements, 2011 OJ C 11/1, Chapter 7 (2010), available at *http://ec.europa.eu/competition/antitrust/legislation/horizontal.html.*

reasonable and non-discriminatory ("RAND"). Third, they may require or allow ex ante disclosure of specific licensing terms as part of the standard-setting process, before users of the standard are locked in to using the patented technology.

However, the ability of disclosure rules to protect consumers from patent hold-up is unclear. Such rules cannot bind patent holders that are not members of the SSO. Moreover, not all SSOs have disclosure rules. Even when SSOs do have disclosure rules, the terms will not necessarily lead to disclosure of all relevant patents. For instance, disclosure is sometimes required only of issued patents, and not pending applications that later may ripen into patents reading on a standard. Further, to alleviate the burden on SSO members, disclosure usually is required only of patents known to a firm's representatives in the standards process, and does not require a full search of the firm's patent portfolio.

Many rules encourage disclosure of the existence of relevant patents, but are vague as to what should be disclosed and when. This lack of clarity may undermine the ability of standards users to enforce the rules through allegations based on fraud, patent law estoppel or antitrust. In some situations, it may be possible for a patent holder to deceive SSO members concerning its patent rights—subverting the competitive process of choosing among technologies—without violating the particular disclosure rules. For these and other reasons, disclosure rules often may not provide full transparency about possible patent interests implicated by a standard, or effective relief of the problem of potential patent hold-up.

The most common mechanism used by SSOs to attempt to prevent patent hold-up is the RAND commitment. Many SSOs seek RAND commitments only on disclosed patents. Some SSOs require a RAND commitment for all patents owned by firms participating in the standard-setting process, and dispense with a patent disclosure requirement. Setting specific terms of the patent license generally occurs in bilateral negotiations between the patent holder and individual standards users after the standard-setting process is completed, sometimes long after the standard has been implemented.

Proponents of this practice argue that the use of RAND commitments often simplifies the standard-setting process by allowing participants to focus on technical issues. Others criticize the RAND commitment as vague. They worry that leaving the negotiation of licensing terms until after the standard has been implemented gives the patent holder excessive leverage that can lead to patent hold-up. Whether a RAND commitment is sufficient protection against hold-up depends on numerous questions concerning its enforcement B whether it can be enforced under contract law, patent law, or antitrust law, and what principles the courts should look to in deciding disputes over RAND licensing terms.

To limit the patent holder's leverage after the standard is implemented, some SSOs allow or require disclosure of specific royalty and licensing terms ex ante B during the standard setting process. The Department of Justice and the Commission have stated that unilateral announcements of price or licensing terms by patent holders as part of the standards process present little anticompetitive risk. The agencies also have stated that they will apply the rule of reason when evaluating joint activities that allow potential licensees, before the standard is adopted, to negotiate licensing terms with patent holders.[2] Despite this assurance by the enforcement agencies, however, it does not appear that there has been wide use of ex ante licensing.

In this project, the Commission seeks to examine these and other issues pertaining to potential patent hold-up of collaborative standards. It intends to consider antitrust issues, as well as examine how other legal doctrines (such as contract, patent, and consumer protection law), and economic and practical considerations affect the analysis of the issues. The Commission invites public comment on questions relevant to these topics, including:

**Disclosure of Patent Rights in an SSO**

- How do patent disclosure policies vary among SSOs? How do disclosure policies vary in their effectiveness of making SSO members aware of relevant patent rights?
- What considerations drive variation in disclosure policies? Why do SSOs adopt policies that may lead to incomplete disclosure of relevant patents, for instance by excluding patent applications from disclosure or by not requiring members to search their patent portfolios?
- When SSO policies create a potential for incomplete disclosure of members' patent rights, how else can members protect themselves against hold-up?
- When have SSO patent disclosure policies been reviewed or amended? What prompted those reviews? What were the results of the reviews?
- Are there mechanisms for an SSO to encourage disclosure of relevant patents or patent applications held by nonmembers?
- What ambiguities concerning the scope of a disclosure requirement exist in SSO disclosure policies? Why do they persist? Would more clarity be beneficial in preventing patent hold-up?
- What principles apply in judging whether a patent holder's conduct before an SSO is deceptive? What is the role of the SSO's patent disclosure policy in judging whether conduct is deceptive or unfair?
- Does non-disclosure or lack of information about relevant patent rights subvert the competitive process of selecting technologies for standards or undermine the integrity of standard-setting activities? How?

**The RAND Licensing Commitment**

- Is a RAND commitment part of an enforceable contract between the SSO and the patent holder? Between the SSO members and the patent holder? Should non-members of the SSO who wish to use the standard be able to enforce the commitment?
- Do RAND licensing commitments without accompanying disclosure commitments provide adequate protection against patent hold-up?
- Has any SSO provided guidance on how "reasonable" and "non-discriminatory" licensing terms should be judged for a RAND commitment? What is that guidance? Why do SSOs not provide more definition of RAND?
- Absent an SSO's definition or express limitations given by the patent holder in its commitment, by what standards should "reasonable" and "non-discriminatory" be determined? What principles should a court or tribunal look to in resolving a dispute between a potential licensor and licensee concerning whether proffered terms are RAND?
- What evidence may be relevant in determining whether a proffered license is reasonable and non-discriminatory?
- Should a RAND commitment preclude a patent holder from demanding from users of the standard a cross-license for patents that are essential to practice of the standard? A license of nonessential patents?
- If a patent holder that has given a RAND commitment enters into cross-licenses with some standards users, how should these be evaluated for purposes of determining whether terms it offers others are non-discriminatory?
- Should a RAND commitment preclude a patent owner from seeking in

[2] U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition, at 6–7, 33–56 (2007).

patent litigation a preliminary injunction against practice of the standard? A permanent injunction? An exclusion order in the International Trade Commission? How should courts and the ITC take a RAND commitment into account in these contexts?

• Under what circumstances should a RAND commitment given by a patent holder bind later owners of the patent? What steps can or should SSOs take to ensure that a transferred patent remains subject to a prior RAND commitment?

• Does reneging on a RAND commitment subvert the competitive process of selecting technologies for standards or undermine the integrity of standard-setting activities? How?

**Ex Ante Disclosure and/or Negotiation of Licensing Terms**

• What has been the experience of those SSOs that require or allow ex ante disclosure of licensing terms? How frequently do ex ante disclosures of licensing terms occur? Why are ex ante disclosures of licensing terms not required or made?

• How frequently do ex ante bilateral negotiations of licensing terms occur?

• How frequently do ex ante multilateral negotiations of licensing terms occur? How are such negotiations conducted?

• What factors affect a firm's decision to engage in, or not engage in, ex ante discussions or negotiations?

• How does a patent owner's ex ante disclosure of licensing terms affect the process of choosing technologies for incorporation into the standard?

• How do ex ante discussions or negotiations of licensing terms affect the process of choosing technologies for incorporation into the standard?

• Has experience shown a difference between terms negotiated ex ante and terms negotiated ex post?

• To what extent do concerns about antitrust liability deter ex ante disclosure or negotiation of licensing terms?

• What considerations should shape a rule of reason analysis of joint ex ante license discussions or negotiations?

**Instructions for Filing Public Comments**

Interested parties are invited to submit written comments electronically or in paper form. We must receive your comment by July 8, 2011. Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following Web link: *https://ftcpublic.commentworks.com/ftc/standardsproject* (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the Web link: *https://ftcpublic.commentworks.com/ftc/standardsproject.* If this notice appears at *http://www.regulations.gov/#!home,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov* to read the notice and the news release describing it.

Comments should refer to "Patent Standards Workshop, Project No. P11–1204" to facilitate the organization of comments. Please note that your comment—including your name and your State—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).[3]

A comment filed in paper form should include the "Patent Standards Workshop, Project No. P11 1204" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room HB113 (Annex X), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2011–11704 Filed 5–12–11; 8:45 am]

**BILLING CODE 6750–01–P**

[3] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–00xx; Docket No. 2011–0001; Sequence 2]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; General Services Administration Acquisition Regulation; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (GSA)

**AGENCY:** General Services Administration. (GSA)

**ACTION:** Notice of a request for comments regarding a new information collection.

**SUMMARY:** As part of a Federal Governmentwide effort to streamline the process to seek feedback from the public on service delivery, the General Services Administration (GSA) will be submitting a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA).

**DATES:** Submit comments on or before June 13, 2011.