

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Implementation of Section 304 of the Telecommunications Act of 1996)	CS Docket No. 97-80
)	
Commercial Availability of Navigation Devices)	
)	
Compatibility Between Cable Systems and Consumer Electronics Equipment)	PP Docket No. 00-67

REPLY COMMENTS OF GENESIS MICROCHIP INC.

Genesis Microchip (“Genesis”), by its counsel, hereby submits these Reply Comments in the above-captioned proceeding. Genesis is a leading supplier of display image processors. Its customers include brand name manufacturers of LCD Monitor Displays, Flat Panel Digital TV Displays, CRT Digital TV Displays, DVD players and set-top boxes. Genesis will be directly affected by the outcome of the proposed actions in this proceeding.

Genesis applauds the cable and consumer electronics industries for their work in developing the “Plug & Play” “Memorandum of Understanding Among Cable MSOs and Consumer Electronics Manufacturers (the “MOU”),” as well as the Commission’s effort to bring this agreement quickly to the public for comment. In these Reply Comments, Genesis is addressing the narrow, yet vitally important, issue of patent availability implicated by the MOU and the consequent Commission proposals, which has not been addressed in comments thus far. Therefore, Genesis believes it is appropriate to take this opportunity to direct attention to this important area of the standard setting process. It should be emphasized that these comments are not intended to discuss the virtues of any particular standard the Commission has been requested to adopt, but merely the scope of Commission in the adoption of any standard requiring the availability of patented technology.

The Commission's Current Patent Policy and Its Application to Digital Television. The only statement of the policy toward patents implicated by the the Commission's standards setting process was published in the 1961 public notice, "Revised Patent Procedures of the Federal Communications Commission" which states simply, "Whenever it appears that the patent structure is or may be such as to indicate obstruction of the service to be provided under the technical standards promulgated by the Commission, this fact will be brought to the Commission's attention for early consideration and appropriate action."¹ Over the intervening 42 years, the Commission has had little occasion to amplify or explain this policy in specific detail. Significantly, the Commission gave its fullest explanation of the Patent Policy in 1996 in the very proceeding that adopted the advanced television standards.² There the Commission explained:

In earlier phases of this proceeding we indicated that, in order for DTV to be successfully implemented, the patents on the technology would have to be licensed to other manufacturing companies on reasonable and nondiscriminatory terms. We noted that the system proponents that participated in the Advisory Committee's competitive testing process were required to submit a statement that they would comply with the ANSI patent policies. The proponents agreed to make any relevant patents that they owned available either free of charge or on a reasonable, nondiscriminatory basis and we stated that we intended to condition selection of a DTV system on such commitments. In the Fifth Further Notice, we sought additional comment on whether more detailed information on the specific terms of such patent licensing, how pending patents will be licensed, or any other intellectual property issues should be considered.

¹ 3 FCC 2d 26 (1961)

² See Fourth Report and Order in Docket 87-268, *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, 11 FCC Rcd 17771 (1996)

It appears that licensing of the patents for DTV technology will not be an impediment to the development and deployment of DTV products for broadcasters and consumers. We reiterate that adoption of this standard is premised on reasonable and nondiscriminatory licensing of relevant patents, but believe that greater regulatory involvement is not necessary at this time. We remain committed to this principle and if a future problem is brought to our attention, we will consider it and take appropriate action.³

It would appear then, that the Commission's Patent Policy, requires as a fundamental tenet that patents implicated by a standard must be licensed reasonably, and that the Commission will conduct the necessary investigation to assure itself that this will be the case, and thereafter take whatever action is necessary should its policy be violated. Genesis requests express confirmation in this docket that this remains the Commission's patent policy for technical standards adopted into law.

Application of the Patent Policy to the MOU. Industry proponents of the MOU would have the Commission require, and in its Notice the Commission has indeed proposed to require, *inter alia*, that in order for DTV products to be labeled or marketed as able to connect directly to digital cable systems, they must include DVI/HDCP or HDMI/HDCP secure digital connectors and specifications on a phased-in basis. Since DTV receivers will be marketed as such, this means that the Commission is proposing to adopt certain standard interface connections that DTV receivers must employ. These interface connections are all supported by patents.

Again, Genesis is at pains to emphasize that it is offering no judgment on whether these standards should be adopted. Rather, the concern is only that the Commission recognize its obligations to manufacturers and others who may be forced to implement such standards under the Patent Policy. Unlike the DTV proceeding noted above, there is no record evidence of what steps, if any, the Commission has taken to assure itself that the DVI, HDMI and HDCP patents will be licensed reasonably and in a nondiscriminatory fashion. The record does not reflect whether members of the cable operator-CEM coalition investigated the patent implications of their proposals or whether they required patent holders to affirm their willingness to license fairly. Organizations such as ANSI, in

³ Id at Paras. 54 and 55.

the business of standard-setting, have long established published policies detailing rules for patent disclosure and subsequent patent licensing. But the cable operators and consumer electronics manufacturers, by circumstance a temporary coalition, had no safeguards or patent policies in place, or, if they did, these policies have not been fully disclosed. Whereas, in the DTV proceeding the Commission conducted the necessary investigation to assure itself that its Patent Policy would be adhered to, here the Commission has not even laid the framework for such an investigation. In its original DTV rulemaking proposal, the Commission explained its Patent Policy.⁴ Genesis is concerned that in the instant Notice it is not even mentioned and requests Commission clarification on these matters.

Obligations Under the Patent Policy.

Because the cable operator-equipment manufacturer coalition did not employ the usual institutional patent safeguards common to standards-setting organizations such as ANSI, it is particularly incumbent on the Commission, if it is to adhere to its Patent Policy, to analyze any patent or groups of patents that may be the subject of any standards adopted in this proceeding. Under these circumstances, Genesis believes that in order to assure that any patent is licensed reasonably the Commission should require disclosure of 1) the existence of any patent or pending patents which read on the proposed standard; 2) the list of all patent claims that would have to be licensed to implement the standard; 3) copies of all adopter agreements for licensing the patents; and 4) what designs may be practiced without fear of infringement litigation. Moreover, the Commission should make clear its intention to exercise oversight of licensing requirements in order to facilitate the continued implementation of its DTV policies and to resolve disputes that may arise in the course of the licensing process.⁵

⁴ "In light of the significance we ascribe to consumer acceptance of ATV technology, we believe it appropriate at this juncture to address the issue of patent licensing, a question we believe is important to achieving high levels of receiver penetration. We expect that any proponent of an ATV transmission system selected as the nationwide standard will adopt a reasonable patent structure and royalty charging policy so that sufficient numbers of manufacturers will be able to produce ATV receivers and meet consumer demand. " See Para 46, Notice of Proposed Rulemaking in MM Docket No. 87-268, *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, 6 FCC Rcd 7204 (1991)

⁵ Standards setting organizations routinely engage in settling disputes arising from the licensing of patents bearing on adopted standards. Those wishing to acquire the imprimatur of a standards organization such as

Requiring disclosure of adopter agreements containing the terms and conditions pursuant to which patents are licensed would provide the Commission with the most useful indication that the patents bearing on any standard it adopts will be licensed reasonably. The Commission and the public should be able to analyze, for instance, whether an agreement calls for stable and certain license fees; whether an agreement is anticompetitive or discriminatory; or whether the patent license is so restrictive or unclear as to render it unlikely to result in widespread and competitive dissemination of equipment.

Any proponent of a standard must be prepared to tell the Commission what patent or patents are implicated, and who owns the patents. Similarly disclosure of relevant pending patents is necessary in order to assure the Commission that by adopting a standard it does not unjustly enrich a patent holder or create virtual monopolies in the equipment supply market. All standards-setting organizations require the disclosure of pending patents and Genesis urges the Commission to require the same.

Conclusion. Although engaging in a patent review process may seem foreign to an agency which has tried to eliminate unnecessary regulations and permit marketplace forces to operate whenever possible, if the Commission returns to the business of standard-setting, it must apply its Patent Policy and assume the burden of assuring itself and the public that patents bearing on the standards will be licensed reasonably and on a

ANSI, agree to this system if they wish their standards adopted. Any entity wishing the FCC to adopt a standard should expect similar oversight.

nondiscriminatory basis. This does not mean that the Commission must conduct exhaustive studies of competing patents.⁶ It does mean that the Commission cannot ignore the patent implications of the standard-setting process or the Patent Policy that has served it well for the last four decades.

Respectfully submitted,



Terry G. Mahn
Robert J. Ungar

Fish & Richardson
1425 K Street, N.W.
Washington, D.C. 20005
(202) 781-5070

Counsel for Genesis Microchip, Inc.

April 28, 2003

⁶ Even this level of involvement is a far cry from what the Commission contemplated in 1961 when it revised its Patent Policy. At that time it had the ambitious goal of enlarging its staff in order to keep abreast of "all patents issued and technical developments in the communications field which may have an impact on technical standards approved by the Commission in the various services."