

CS Docket No. 97-80 Plug & Play

About Genesis Microchip

Genesis Microchip is a leading supplier of display image processors for the computer and consumer electronic industries. To compete in the computer and CE markets, Genesis' products must be compatible with the standards adopted in *Plug and Play* and *Broadcast Flag* proceedings.

Issues of Concern

In PP Docket No. 00-67, the Commission required that by July 2005, digital cable TV devices may not be labeled as *Digital Cable Ready* unless they employ a DVI or HDMI digital display interface. In its Petition for Reconsideration Genesis argued that:

- Because the DVI and HDMI standards were never subjected to the due process scrutiny of an open standards-setting organization, the Commission cannot *mandate* the use of those standards unless it also orders the disclosure of all licensing terms, and all patents, pending patents, and “necessary claims” to implement the standards.
- Alternatively, the Commission can permit the use of any digital display interface standard, provided it is developed pursuant to a standards-making process that is open to the public and includes a patent licensing process comparable to the ANSI patent policy.

Key Points to Consider

1. “When adopting mandatory technical standards, the Commission’s historical focus has been to conduct a sufficient evaluation of the underlying patent rights to prevent any monopoly rights granted under the patent process from being unnecessarily extended through standardization.” (Broadcast Flag Certification Order, released August 12, 2004 at ¶ 89).

2. When adopting a digital display interface standard, the FCC has a *special* obligation under Section 629 of the Act to assure itself that when it mandates a technical standard created by private parties that standard has been subjected to the scrutiny of a private standards setting organization.

- Inclusion of the standards as “normative references” to other standards is not a substitute since this does not mean that scrutiny of patents and patent policies has taken place.
- CEA, as an interested party, cannot qualify as satisfying Section 629 and, by its own admission it did not review the patent policy.

3. When privately developed standards are adopted by the FCC, there is a special obligation to assure that the licensing will not be manipulated for anti-competitive purposes. Simply saying that one can always complain to the FCC is not enough.

4. The DVI adopter agreement does not specify use of the standard for TV, only for computer displays. As a result, any existing agreements for TV have not been put on the record. The Commission has no idea of the patent policies included in those agreements.

5. As for the HDMI standard, the HDMI founders had no formal patent disclosure policy. Indeed, to “the extent any ‘informal policy’ existed, the upshot was that the HDMI founders agreed among themselves at a future time to review which patents are necessarily infringed by complying with the specification, and to license necessary patent claims to any company on reasonable and non-discriminatory terms.” Silicon Image, Inc. Opposition to Genesis Petition for Reconsideration at 6. Any challenge to the validity of a claim automatically results in exclusion from the licensing agreement; the burden of proof as to what constitutes a necessary claim is on the licensee; and a non-assert clause prevents a licensee from asserting its own patent that it believes forms a necessary claim to the HDMI standard.

6. The FCC has no basis for its conclusion that the DVI and HDMI technologies are “freely offered on non-discriminatory terms.”

Relief Sought

1. Revision of the rules to permit use of any digital display interface standard to be labeled and marketed as *digital cable ready*, provided the standard has been developed pursuant to a standards-making process that is open to the public and includes a patent licensing policy comparable to the ANSI patent policy.

2. Remove “DVI or HDMI” as an output requirement or modify the Second R&O in this proceeding to *conditionally* approve DVI and HDMI contingent upon full disclosure and FCC scrutiny of licensing terms and review in consultation with a standard-setting organization pursuant to Section 629 of the Act.