OP Approved Meeting Report – September 30, 2004 – Teleconference

1. Opening

The meeting was opened at 5:30pm EDT by Ms. Cheryl Blum, TIA Head of Delegation.

2. Attendance

The Secretary introduced contribution OP-20040930-005 containing the list of delegates for the meeting, and asked those listed to confirm their attendance. The revised list of those in attendance is presented in contribution OP-20040930-005r1. It was noted that representatives from ARIB, TIA, TTA and TTC were on the call.

3. Approval of the Agenda

The agenda was approved as presented in contribution OP-20040930-001r1.

4. Contribution Assignments and Status

The Secretary presented contribution OP-20040930-000r1 providing the list of contributions for the meeting. No further contributions were presented.

5. Old Business

5.1 Open Mobile Alliance

The following contributions were presented:

OP-20040616-010r2 – Correspondence from SC Chair to OMA outlining concerns with OMA IPR policy.

OP-20040930-002 – OMA response to OP-20040616-010r2

OP-20040930-003 – OMA Revised IPR Policy

OP-20040930-004 – TIA proposal to OPs regarding revised OMA IPR policy

The Chair presented contributions OP-20040930-002 and OP-20040930-003 for information, noting that the contents had previously been distributed to the OPs via e-mail.
The Chair then turned to Dan Bart of TIA who presented contribution OP-20040930-004. The contribution addresses the current status of IPR-related discussions between 3GPP2 and the OMA, acknowledging that in response to 3GPP’s June 2004 correspondence, the OMA has revised its policy to license intellectual property on reasonable and non-discriminatory terms (RAND) to all users in connection with all documents published January 1, 2005 or later. He further noted that documents published prior to January 1, 2005 would conform to the current OMA IPR policy, which only requires reasonable and non-discriminatory licensing to OMA members.

The TIA contribution noted that this policy change by the OMA continues to present problems to 3GPP2 and to its Organizational Partners since it introduces the administrative burden of ensuring not only that 3GPP2 documents only reference post-January-2005 OMA documents, but also that those OMA documents do not themselves reference older OMA documents not covered by the revised IPR policy.

Finally, as a preferred course of action, the TIA contribution proposes that the SC Chair send a follow-up correspondence to the OMA acknowledging the action the OMA has taken thus far to address 3GPP2’s concerns, but noting the additional concerns the OMA’s change in IPR policy presents, and urging the OMA to reconsider by applying its revised IPR policy to its entire library. As a fallback measure, TIA’s contribution recommends that 3GPP2 and its Organizational Partners correspond with the known 16 OMA intellectual property holders, seeking their willingness to license their intellectual property to all users of (i) 3GPP2 specifications or (ii) the transposed standards of 3GPP2 Organizational Partners which reference or relate to any OMA documents on terms that are reasonable and non-discriminatory.

In the ensuing discussion, the following points were made:

- Assuming 3GPP2 and its Organizational Partners do correspond to the OMA’s intellectual property holders seeking their willingness to license their intellectual property to all users on terms that are reasonable and non-discriminatory, if any intellectual property holders choose not to do so, then this means that neither 3GPP2 nor its Organizational Partners can reference the OMA document or documents that contain the essential intellectual property in question, thus necessitating a technological solution that does not require the use of the essential patent or intellectual property.

- It was stressed that even if 3GPP2 aims to ensure that it only references post-January-2005 OMA documents, without considerable burden there is no assurance that these OMA documents, themselves, do not reference older OMA documents that may contain essential intellectual property not covered by the revised OMA IPR policy.

- Although the OMA web site currently shows 16 essential intellectual property holders, the added administrative burden noted above will also include monitoring this list. Additional intellectual property holders – e.g., those with patents that may currently be pending - may become known, and it will then be necessary to correspond with these additional
intellectual property holders also.

- TTA confirmed that the post-January-2005 provision in the revised OMA IPR policy is a cause for concern, and suggested that the two recommendations in the TIA policy occur in parallel, namely sending follow-up correspondence to the OMA urging that it reconsider applying its revised IPR policy to its entire library, while at the same time corresponding with the sixteen IP holders seeking their willingness to license to all users on reasonable and non-discriminatory terms.

TTA noted that its proposal called for these two actions to be conducted in series but acknowledged the benefits of carrying them out in parallel given the length of time it has taken to address the issues thus far, noting that in the event the IP holders all agree to the request, 3GPP2 and its Organizational Partners can proceed while continuing to secure a favorable policy change from the OMA.

- ARIB questioned whether TIA’s proposal to solicit the willingness of the IP holders to license their intellectual property to all users on reasonable and non-discriminatory terms could jeopardize the IPR Holders’ standing as OMA members.

It was stressed that the OMA IPR policy does not oblige OMA members to ONLY license exclusively to other OMA members, but does oblige the intellectual property holder to license on terms that are reasonable and non-discriminatory to all OMA members. Absent some other undisclosed restrictions the IPR Holders would be free to license or not license others. 3GPP2 and its Organizational Partners would simply be seeking assurances that the intellectual property holders would be willing to expand this list by consenting to license on reasonable and non-discriminatory terms to all users of 3GPP2 specifications or OP standards, regardless of their OMA affiliation.

- It was noted that TIA is not seeking a decision on how to proceed at this meeting, but rather wanted to introduce its proposal in contribution OP-20040930-004 for review by the Organizational Partners in preparation for the October OP meeting in Shanghai, China where a decision might possibly be made. The TIA contribution also urged the OPs to take the time to consider internally and socialize with 3GPP and its OPs to see if a harmonized approach could be taken to this mutual problem.

In summarizing, the Chair noted from the discussions that there is general agreement among the Organizational Partners that the concerns raised in TIA’s contribution are valid and worth exploring further, and suggested that the Organizational Partners review TIA’s contribution in detail in preparation for further discussion and decision on how to proceed at the October 2004 OP meeting in Shanghai. There was no objection to the conclusion and proposed course of action.

**DECISION 2004/09-01**

The 3GPP2 OPs present on the September 30 2004 teleconference call agree that the concerns raised by TIA in contribution OP-20040930-004 concerning the revised OMA IPR policy are noteworthy, agree that addressing these concerns
with the OMA is worthwhile, and agree that a parallel strategy of separately seeking the IP holders’ willingness to grant licenses to all users on reasonable and non-discriminatory terms is warranted, but stressed that the preferred solution would be for the OMA to reconsider its decision and apply its revised IPR policy to its entire library.

**ACTION 2004-09/01:**
All Organizational Partners are requested to review the proposal presented by TIA in contribution OP-20040930-004, that addresses how 3GPP2 might proceed in light of the revised OMA IPR policy, in preparation for further discussion and decision at the October 2004 OP meeting in Shanghai, China.

It was suggested that the SC Chair remand to the TSGs the action of reviewing their projects to compile a snapshot list of OMA documents needing to be referenced as a means of gauging the scope of this issue. It was further suggested that, if possible, this review drill at least one level down to list those OMA documents referenced within the OMA documents that are referenced in 3GPP’s projects. If there were some sensitivities to or Non Disclosure Agreement (NDA) reasons why the actual OMA document titles or document numbers could not be disclosed, even a numeric count of the number of OMA documents planned to be directly referenced in 3GPP specifications, and then the number of OMA documents those OMA documents referenced would be more information than the OPs have now. Clif Barber (ARIB) volunteered to draft detailed instructions for the TSGs to use in satisfying this OP request for more information for review by the OPs and the SC Chair.

**ACTION 2004-09/02:**
The SC Chair is asked to remand to the TSGs the action of listing the OMA documents referenced in existing 3GPP2 projects, and the additional OMA documents referenced within these OMA references.

**ACTION 2004-09/03:**
Clif Barber is asked to draft detailed instructions remanding to the TSGs the action of reviewing their projects to compile a list of OMA documents needing to be referenced, and, in turn, those OMA documents referenced within the OMA references. This draft of proposed instructions is to be submitted to the SC Chair for his review, and to the Secretary for review by the Organizational Partners.

TTA indicated that it would be discussing this issue further internally, and at the October 2004 3GPP OP/PCG meeting. TTA volunteered to socialize the concerns raised at this meeting particularly with CCSA, representatives of which were not in attendance at this meeting, and with the 3GPP Organizational Partners, in an effort to align the actions of both Partnership Projects with regard to this issue. There was no objection to TTA’s proposal. TIA encouraged that this issue be shared with ATIS and ETSI who, as non-3GPP2 OPs, will not have benefited from the discussions at this meeting.

**ACTION 2004-09/04:**
TTA is requested to socialize the issues raised at this meeting with CCSA and with 3GPP’s Organizational Partners, particularly ATIS and ETSI, given the occasion of the forthcoming 3GPP OP/PCG meeting. TIA also indicated it would support a joint 3GPP / 3GPP2 OP letter to OMA, if 3GPP requested it, in order to show harmonized concern over the OMA IPR Policy.
6. Any Other Business

Still on the subject of relations with the OMA, it was mentioned that 3GPP2 might wish to invite OMA representatives to attend its next leadership meetings in Shanghai, China in October.

It was noted that the SC Chair’s correspondence to the OMA presented in contribution OP-20040616-010r2 extends this offer of an invitation already and willingness to have an agenda topic on the OMA IPR Policy matter, but that this prior invitation could be stressed again to the Chair of OMA and urge him to accept that offer and notify the SC Chair and 3GPP2 Secretariat of his intentions.

7. Assignments for Next Meeting

The four actions captured at this meeting are as follows:

ACTION 2004-09/01:
All Organizational Partners are requested to review the proposal presented by TIA in contribution OP-20040930-004, that addresses how 3GPP2 might proceed in light of the revised OMA IPR policy, in preparation for further discussion and decision at the October 2004 OP meeting in Shanghai, China.

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8. Date of Next Meeting

The next 3GPP2 meeting is scheduled to take place Tuesday, October 26 2004 in Shanghai, China.

9. Adjournment

There being no further business, the meeting was adjourned at 7:25pm US EDT.