Foreword

Patent law is subject to a lot of scrutiny, but most of it concentrates on its internal workings and thresholds. Questions focus on the level of inventive step and the scope of patentable subject matter, to name just these. From an external point of view there is the issue of competition law and of course there is the development agenda. But that is often where matters stop.

The issue of standardisation and the international system of industry standards is left completely out of the equation. Standards are often simply considered to be a technical issue for standardisation bodies as part of the administrative regime that is not considered to be part of intellectual property law. In fact there is very little proper legal analysis of the whole system of standardisation.

But one should not forget that the newest and most valuable standards and the items that are taken into account as candidates for standardisation are often protected by one or more patents. Whether one likes it or not, the two areas do touch each other. For the purposes of standardisation a standard pre-supposes access to technology for all the actors of a certain industry. As an exclusive right a patent makes that access conditional on the consent of the right holder, who has the right to refuse certain licences for certain potential licensees and who can set the terms of the licence. Exclusivity and standards simply do not go together very well.

A decision by a standardisation body cannot invalidate or overrule the patent though. There is no mechanism in patent law to require the right holder to renounce the patent and the exclusive right that goes with it. Somehow a *modus vivendi* will have to be worked out.

Very real issues arise therefore and very little attention has been paid to them in terms of legal scholarship and analysis. Dr Jae Park is to be congratulated for turning our attention to this difficult and underexplored area. His work focuses on standards and patents but goes well beyond an initial analysis. He examines the finer points of both sets of rules in order to find out exactly where the problem lies and he then looks at the existing mechanisms that could provide a solution. Many of these have their roots in the area of competition law, but his thorough analysis shows that competition law in its current form and with its current limitations is not the perfect tool to address the problems that arise when patented technology becomes the object of standardisation. This leads Dr Park to develop his own

solution for the problem at hand: a solution which he finds in the dynamic liability rules regime.

This book really breaks new ground and provides a first and thorough analysis of this rarely addressed but increasingly important area.

Prof. Dr Paul L.C. Torremans
Professor of Intellectual Property Law
School of Law, University of Nottingham