

# Understanding Patent Issues During IEEE Standards Development

## Patented Technology in IEEE standards

This guide offers information concerning the IEEE Standards Association and its patent policies but does not state the IEEE-SA Patent Policy. The word “shall” is used in these FAQs when it refers to corresponding language in the *IEEE-SA Standards Board Bylaws*, the *IEEE-SA Standards Board Operations Manual*, or the *Letter of Assurance* form. Definitive statements of the IEEE Standard Association's policies and procedures concerning patents can be found in the *IEEE-SA Standards Board Bylaws* and the *IEEE-SA Standards Board Operations Manual*, which control in the event of a conflict between them and this guide.

A complete package of patent-related materials is available at <http://standards.ieee.org/about/sasb/patcom/materials.html>. This package includes all the documentation you need to comply with the IEEE Standards Association Patent Policy concerning essential patents. A flowchart with additional guidance on the methodologies used by the [IEEE-SA Standards Board Patent Committee](#) is part of this package. If you include patented technology in your standard, then you may have incorporated an essential patent.

## Essential Patent Claims

### 1. *What is an Essential Patent Claim?*

An Essential Patent Claim means any Patent Claim [including claims in issued patent(s) or pending patent application(s)] the use of which was necessary to implement either a mandatory or optional portion of a normative clause of the IEEE Standard when, at the time of the IEEE Standard's approval, there was no commercially and technically feasible non-infringing alternative implementation method for such mandatory or optional portion of the normative clause. An Essential Patent Claim does not include any Patent Claim that was essential only for Enabling Technology or any claim other than that set forth above even if contained in the same patent as the Essential Patent Claim. See clause 6.1 of the IEEE-SA Standards Board Bylaws at <http://standards.ieee.org/develop/policies/bylaws/sect6-7.html#6.1>.

### 2. *Does the IEEE determine whether a patent is essential when requesting a Letter of Assurance?*

No. When it requests a Letter of Assurance, the IEEE has made no determination of any Patent Claim's essentiality.

40 **Call for Essential Patents Claims at IEEE Standards Developing Meetings**

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3. *What is a call for patents?*

A call for patents is a reminder made by the chair, or the chair’s designee, at an IEEE standards development meeting. The chair or the chair’s designee informs the participants that if any individual believes that Patent Claims might be Essential Patent Claims, that fact should be made known to the entire working group and duly recorded in the minutes of the working group meeting.

4. *How often should a Working Group chair issue a call for potential Essential Patent Claims?*

A Working Group chair or his or her designee shall issue the call at every Working Group meeting. If the Working Group does not meet face-to-face or telephonically, the Working Group chair should issue a call to the Working Group via written communications (electronic or otherwise) on a regular basis. It is strongly recommended that the IEEE-SA Standards Board Patent Committee-developed slide set be used. Note that a call for patents shall be made at every standards development meeting. This includes, but is not limited to, working group and task force meetings. For information about groups that meet for several days during a single week, see also question 6.

5. *Should a Call for Patents be issued at a Study Group or other meetings that occur before approval of a Project Authorization Request (PAR)?*

No. However, it is recommended that the *Patent Slides for pre-PAR Meetings* be used in these meetings.

6. *Our group gathers for several days during a single week. Does the chair have to announce the IEEE-SA Patent Policy every day?*

The Working Group chair or his or her designee shall issue the call at every standards-developing meeting. If a group is meeting for consecutive days and the attendance is substantially the same for each day of the gathering, the policy only needs to be read once. If the chair plans not to read or display the policy each day, then in order to satisfy the requirement to issue a patent call, the chair may either (a) ensure that the policy or a URL for it has been sent out to all attendees prior to the meeting (and is available in the registration packet for any on-site registrants), or (b) announce each day that the meeting is subject to the IEEE-SA Patent Policy as read or displayed on the first day. Note, though, that this rule applies separately to each group that is meeting during the week. For example, if a working group holds a meeting during the

82 same week as its task group and/or task force, the chair of each of those groups shall  
83 read or display the policy at that group's meeting.

- 84  
85 7. *How does the chair determine that the participation in a group that is meeting for*  
86 *consecutive days is substantially the same?*

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88 The chair has to use his/her judgment to determine this. It could, for example, be  
89 done based on the attendance numbers each day. The default action is to read the  
90 IEEE-SA Patent Policy slides.

- 91  
92 8. *What if a group meets telephonically?*

93 If the Working Group meets telephonically, you can send the slides in an email to the  
94 participants in advance of the call, or include a link in the meeting announcement. In  
95 order to satisfy the requirement to issue a patent call, the chair may then ask at the  
96 start of the call whether there is anybody participating that has not read the policy. If  
97 someone says they have not, then the chair needs to either (a) read the IEEE-SA  
98 Patent Policy slides aloud, or (b) send the policy or URL electronically and pause the  
99 call until all participants have read the policy.

- 100 9. *What if the group does not meet either in person or by telephone – for example, the*  
101 *group meets only through email or other interactive electronic means?*

102  
103 If the group does not meet face-to-face or telephonically, the chair of the group should  
104 issue the call for patents via written communications (electronic or otherwise) on a  
105 regular basis.

106  
107 **Letter of Assurance**

- 108  
109 10. *What is a Letter of Assurance?*

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111 *Letter of Assurance* is the term that IEEE-SA uses to describe a document stating a  
112 Submitter's position with respect to ownership, enforcement, or licensing of an  
113 Essential Patent Claim that may be incorporated into a specifically referenced IEEE  
114 Standard. The specific requirements for a Letter of Assurance are defined in clause 6.1  
115 of the *IEEE-SA Standards Board Bylaws* at  
116 <http://standards.ieee.org/develop/policies/bylaws/sect6-7.html#6.1>.

- 117  
118 11. *When does the IEEE send out a request for a Letter of Assurance?*

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120 The Working Group chair or, where appropriate, the Sponsor chair will send out a  
121 request for a Letter of Assurance whenever the chair is notified, at any time and by  
122 any means, that the [Proposed] IEEE Standard may require the use of a potential  
123 Essential Patent Claim.

124

125 12. *How will a participant know if the IEEE has accepted a Letter of Assurance?*  
126

127 Accepted Letters of Assurance can be found on the IEEE-SA's web site at  
128 <http://standards.ieee.org/about/sasb/patcom/patents.html>.  
129

130 13. *What happens if the IEEE has not received assurances regarding all potential Essential  
131 Patent Claims incorporated in a [Proposed] IEEE Standard?*  
132

133 If the IEEE is aware of an asserted potential Essential Patent Claim and no  
134 corresponding Letter of Assurance has been received, the matter will be referred to the  
135 IEEE-SA Standards Board Patent Committee through the PatCom Administrator. The  
136 IEEE-SA Standards Board Patent Committee will review the circumstances and make a  
137 recommendation to the IEEE-SA Standards Board.  
138

139 14. *How should Working Groups handle existing Letters of Assurance provided to IEEE  
140 when developing an amendment, corrigendum, edition, or revision of the particular  
141 standard referenced in the Letter of Assurance?*  
142

143 As stated in clause 6.3.5 of the IEEE-SA Standards Board Operations Manual:  
144

145 An Accepted Letter of Assurance referencing an existing standard, amendment,  
146 corrigendum, edition, or revision will remain in force for the application of the  
147 Essential Patent Claim(s) to the technology specified in another amendment,  
148 corrigendum, edition, or revision of the same IEEE Standard but only if (a) the  
149 application of the technology required by the amendment, corrigendum, edition,  
150 or revision of the same IEEE Standard has not changed from its previous usage  
151 and (b) the same Essential Patent Claims covered by the prior Accepted Letter of  
152 Assurance remain Essential Patent Claims in the same IEEE Standard or revision  
153 thereof.  
154

155 The Working Group chair shall initiate a request for a new Letter of Assurance  
156 from a known Submitter when re-using portions of, or technologies specified in,  
157 an existing IEEE Standard, amendment, corrigendum, edition, or revision  
158 referenced in an Accepted Letter of Assurance in a different IEEE Standard.  
159

160 15. *How should Working Groups handle Letters of Assurance when re-using portions of a  
161 non-IEEE standard in an IEEE Standard?*  
162

163 The Working Group chair shall initiate a request for a Letter of Assurance from holders  
164 of potential Essential Patent Claims when re-using portions of a non-IEEE standard in  
165 an IEEE Standard. The Working Group chair should not assume that any patent letters  
166 of assurance (or patent declarations) given to the developer of the non-IEEE standard  
167 will also apply to the IEEE Standard. In addition, there are specific requirements that

168 must be incorporated into an IEEE Letter of Assurance in order for it to have the  
169 possibility of becoming an Accepted Letter of Assurance.

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171 **Participants and Notification to IEEE of Essential Patent Claims**

- 172  
173 16. *Do individual participants have to notify the IEEE if they own, or their employer owns,*  
174 *potential Essential Patent Claims incorporated in an IEEE Standard? What if they are*  
175 *uncertain whether a Patent Claim they own, or their employer owns, is essential?*

176  
177 Individuals participating in the IEEE standards development process are required to  
178 notify the IEEE of the identity of a holder of any potential Essential Patent Claims (but  
179 not the identity of the Essential Patent Claim) where (1) the individual participant is  
180 personally aware that the holder may have a potential Essential Patent Claim; (2) the  
181 holder is the participant or an entity the participant is from, employed by, or otherwise  
182 represents; and (3) the potential Essential Patent Claim is not already the subject of  
183 an Accepted Letter of Assurance. If such a participant is uncertain whether the patent  
184 is essential, the participant still shall notify the IEEE (or cause the IEEE to be notified)  
185 of the possibility because the participant is personally aware of a claim that is a  
186 *potential* Essential Patent Claim.

- 187  
188 17. *When is a potential Essential Patent Claim considered to be the subject of an Accepted*  
189 *Letter of Assurance?*

190  
191 A potential Essential Patent Claim is the subject of an Accepted Letter of Assurance for  
192 a particular standard (a) if there is an Accepted Letter of Assurance for the potential  
193 Essential Patent Claim or related potential Essential Patent, (b) if there is an Accepted  
194 Blanket Letter of Assurance from the holder of the potential Essential Patent Claim, or  
195 (c) an Accepted Letter of Assurance for the potential Essential Patent Claim exists  
196 under the conditions defined in IEEE-SA Standards Board Operations Manual subclause  
197 6.3.5 *Applicability of Letters of Assurance to Amendments, Corrigenda, Editions, or*  
198 *Revisions* (see question 14).

- 199  
200 18. *How do I find out if a particular company has submitted an Accepted Letter of*  
201 *Assurance?*

202  
203 Accepted Letters of Assurance are listed on the IEEE-SA's web site at  
204 <http://standards.ieee.org/about/sasb/patcom/patents.html>. Letters of Assurance  
205 accepted after 31 December 2006 will be posted on the web site as they are accepted  
206 and Letters of Assurance accepted prior to that date will be posted over time.

- 207 19. *What are examples of the means by which an individual participant can notify the IEEE*  
208 *(or cause the IEEE to be notified) that his or her employer is the holder of a potential*  
209 *Essential Patent Claim incorporated in a [Proposed] IEEE Standard? Does the individual*  
210 *participant need to identify the Essential Patent Claim specifically?*

211  
212 An individual participant could fulfill his or her duty to the IEEE by telling the Working  
213 Group chair that his or her employer is the holder of a potential Essential Patent Claim.  
214 Alternatively, the participant could request that his or her employer submit a Letter of  
215 Assurance or otherwise notify the IEEE that it is the holder of a potential Essential  
216 Patent Claim. In the latter case, the participant fulfills his or her duty to the IEEE only  
217 if his or her employer submits a Letter of Assurance or otherwise notifies the IEEE that  
218 it is the holder of a potential Essential Patent Claim. If the employer declines to submit  
219 a Letter of Assurance or otherwise notify the IEEE, and if the participant continues to  
220 believe the employer may hold a potential Essential Patent Claim, then the participant  
221 has not fulfilled his or her duty. The participant, therefore, shall inform the IEEE of the  
222 holder of that potential Essential Patent Claim. In all cases, the duty on the participant  
223 is only to inform the IEEE of the identity of the holder of a potential Essential Patent  
224 Claim and not the patent, application, or particular claim itself. A participant does not  
225 need to respond to a call for patents if the relevant potential Essential Patent Claim is  
226 already covered by an Accepted Letter of Assurance or request for a Letter of  
227 Assurance.

228  
229 20. *Can a response to the call for patents be made via email in advance or subsequent to a*  
230 *meeting?*

231  
232 The duty on the participant is to inform the IEEE of the identity of the holder of a  
233 potential Essential Patent Claim. The chair can be notified at any time (in advance or  
234 subsequent to a meeting is acceptable). The declaration must be made in a recordable  
235 manner such as email.

236  
237 21. *Do participants have to notify IEEE of third party patent holders? For these purposes,*  
238 *third party means a person other than the participant or an entity the participant is*  
239 *from, employed by, or otherwise represents.*

240 Participants are not required to notify the IEEE that they are aware of any potential  
241 Essential Patent Claims held by a third party. Participants may make such disclosure at  
242 their own discretion. Although there is no obligation to notify the IEEE of third party  
243 patent holders, the IEEE encourages participants to do so. This encouragement is  
244 particularly strong because the third party may not be a participant in the standards  
245 development process.

246 22. *What duty does an individual participant have to the IEEE if a participant's employer*  
247 *owns a potential Essential Patent Claim but the individual participant doesn't have*  
248 *personal knowledge of such claim?*

249  
250 As noted in the answer to question 16, a participant only needs to notify the IEEE of  
251 the holder of a potential Essential Patent Claim if such participant is personally aware  
252 that his or her employer has a potential Essential Patent Claim. There is no duty for



253 that employee (or anyone else in his or her organization) to conduct a patent search,  
254 but the IEEE does expect that participants will conduct themselves in good faith. This  
255 expectation arises both from the IEEE Code of Ethics and from the background legal  
256 rules. The IEEE Code of Ethics makes clear, for example, that participants “accept  
257 responsibility in making decisions consistent with the safety, health and welfare of the  
258 public.” Similarly, the U.S. Supreme Court stated in the Allied Tube case that SDOs  
259 operate based on “the merits of objective expert judgments” using “procedures that  
260 prevent the standard-setting process from being biased by members with economic  
261 interests in stifling product competition.” Consequently, while the policy does not  
262 require a patent search, the IEEE does encourage each participant to make sufficient  
263 inquiry to satisfy him or herself that s/he is not being deliberately shielded from  
264 relevant knowledge and that the employer does not have any potential Essential Patent  
265 Claims.

- 266  
267 23. *Can an individual participate in standards development activities if his or her employer*  
268 *is unwilling to submit a Letter of Assurance once requested or to provide the assurance*  
269 *indicated in the IEEE-SA Patent Policy in a Letter of Assurance?*  
270

271 Yes. As long as the participant complies with the requirement that he or she notify the  
272 IEEE that his or her employer is the holder of a potential Essential Patent Claim if the  
273 participant is personally aware that his or her employer is such a holder, the individual  
274 can continue to participate in standards development activities. See also question 19.  
275

- 276 24. *Does the IEEE-SA Patent Policy require participants or their employers to make an*  
277 *assurance or submit a Letter of Assurance?*

278 No. Submission of a Letter of Assurance is not a precondition to participation.  
279 Participants do have a duty to inform the IEEE if they or an entity they are from,  
280 employed by, or otherwise represents holds potential Essential Patent Claims. See  
281 questions 16, 21, and 23 for more information.

- 282 25. *What does a participant’s employer need to do to determine whether it has any*  
283 *potential Essential Patent Claims when it receives a request from the IEEE for a Letter*  
284 *of Assurance? Specifically,*

285  
286 (a) *Does the employer need to do a patent search?*  
287

288 No. The policy expressly states that there is no duty to conduct a patent search; but  
289 the employer may do so if it wishes.

290  
291 (b) *Does the employer need to talk to every person they have sent to the Working*  
292 *Group?*  
293

294 When the employer receives the request for a Letter of Assurance, the employer can  
295 state its licensing position with respect to any Patent Claims that might be or become  
296 Essential Patent Claims relating to the particular standard referenced in the Letter of  
297 Assurance. In the alternative, the employer can indicate that it is not aware of any  
298 Patent Claims that the employer may own, control, or have the ability to license that  
299 might be or become Essential Patent Claims, but **only if** the employer does a  
300 Reasonable and Good Faith Inquiry to determine the existence of any such Patent  
301 Claims. As described in clause 6.1 of the IEEE-SA Standards Board Bylaws, a  
302 "Reasonable and Good Faith Inquiry" includes, but is not limited to, the employer using  
303 reasonable efforts to identify and contact those individuals who are from, employed by,  
304 or otherwise represent the employer and who are known to the employer to be current  
305 or past participants in the development process of the [Proposed] IEEE Standard  
306 identified in the Letter of Assurance, including, but not limited to, participation in a  
307 Sponsor Ballot or Working Group. If the Submitter did not or does not have any  
308 participants, then a "Reasonable and Good Faith Inquiry" may include, but is not  
309 limited to, the Submitter using reasonable efforts to contact individuals who are from,  
310 employed by, or represent the Submitter **and** who the Submitter believes are most  
311 likely to have knowledge about the technology covered by the [Proposed] IEEE  
312 Standard. As described above, the employer only needs to engage in a Reasonable and  
313 Good Faith Inquiry if it wants to avoid providing an assurance based on its assertion  
314 that it is not aware of any Patent Claims that the employer may own, control, or have  
315 the ability to license that might be or become Essential Patent Claims.

316

317 **Submitting a Letter of Assurance**

318

319 26. *Do the terms "potential Essential Patent Claims" and "Patent Claims that the Submitter*  
320 *may own, control, or have the ability to license . . ." include claims described in patent*  
321 *applications?*

322

323 Yes. The definition of Patent Claims includes pending patent applications.

324

325 27. *At what point should a Letter of Assurance be submitted?*

326 The IEEE encourages the submission of a Letter of Assurance as soon as reasonably  
327 feasible in the standards development process once the PAR has been approved by the  
328 IEEE-SA Standards Board.

329 28. *Who should submit a Letter of Assurance?*

330

331 Any person or entity that believes that it holds a potential Essential Patent Claim may  
332 submit a Letter of Assurance.

333

334 The IEEE will request licensing assurance on the IEEE-SA Standards Board approved  
335 Letter of Assurance form from any person upon being notified that an IEEE Standard



336 may require the use of a potential Essential Patent Claim. Although the IEEE  
337 encourages any person receiving a request for assurance to submit the Letter of  
338 Assurance, the IEEE may not use any coercion in requesting the assurance. This  
339 means the IEEE cannot require that a person submit a Letter of Assurance or provide a  
340 particular assurance with respect to ownership, enforcement, or licensing of an  
341 Essential Patent Claim in order to participate in an IEEE standards development  
342 activity.

343

344 A Submitter of a Letter of Assurance is required to submit a Letter of Assurance if,  
345 after providing a Letter of Assurance to the IEEE, the Submitter becomes aware of  
346 additional Patent Claim(s) not already covered by an Accepted Letter of Assurance as  
347 further described in the answer to question 30.

348

349 29. *Who should sign a Letter of Assurance?*

350

351 Only a person who is authorized to sign and bind the Submitter (including its Affiliates  
352 unless specifically and permissibly excluded) to the assurance shall sign the Letter of  
353 Assurance. Unless the Letter of Assurance is received from an individual whose title  
354 suggests authority for intellectual property and legal matters, the IEEE-SA Standards  
355 Board Patent Committee Administrator will take follow-up action.

356

357 30. *Does a Submitter have to provide an additional assurance if it becomes aware of*  
358 *Essential Patent Claims not already covered by an Accepted Letter of Assurance?*

359

360 If a Submitter becomes aware of additional Patent Claim(s) that are not already  
361 covered by an Accepted Letter of Assurance, that are owned, controlled, or licensable  
362 by the Submitter, and that may be or become Essential Patent Claim(s) for the same  
363 IEEE Standard, then such Submitter shall submit a Letter of Assurance stating its  
364 position regarding enforcement or licensing of such Patent Claims. For the purposes of  
365 this commitment, the Submitter is deemed to be aware if any of the following  
366 individuals who are from, employed by, or otherwise represent the Submitter have  
367 personal knowledge of additional potential Essential Patent Claims, owned or controlled  
368 by the Submitter, related to a [Proposed] IEEE Standard and not already the subject of  
369 a previously Accepted Letter of Assurance: (a) past or present participants in the  
370 development of the [Proposed] IEEE Standard; or (b) the individual executing the  
371 previously Accepted Letter of Assurance. See also question 28.

372

373 31. *Can the Letter of Assurance form be modified?*

374 No. In submitting a Letter of Assurance, use of the *LOA* form is mandatory.  
375 (Completing the form is not considered a modification.)

376 32. *What happens when a Letter of Assurance is not accepted?*

377

378 The Submitter will be informed by the PatCom Administrator that the Letter of  
379 Assurance was not accepted and why it was not accepted.

380

381 33. *Do attachments submitted with a Letter of Assurance become a part of the Accepted*  
382 *Letter of Assurance?*

383

384 Yes. See also questions 50 and 51.

385

386 34. *Who can enforce an Accepted Letter of Assurance?*

387

388 Users and implementers may seek to enforce the terms of any Accepted Letter of  
389 Assurance. In certain circumstances and at its sole discretion, the IEEE may also seek  
390 to enforce the terms of an Accepted Letter of Assurance.

391

### 392 **Affiliates**

393

394 35. *Who is an Affiliate?*

395

396 An Affiliate is an entity that directly or indirectly, through one or more intermediaries,  
397 controls the Submitter or Applicant, is controlled by the Submitter or Applicant, or is  
398 under common control with the Submitter or Applicant. For the purposes of this  
399 definition, the term “control” and its derivatives, with respect to for-profit entities,  
400 means the legal, beneficial, or equitable ownership, directly or indirectly, or more than  
401 fifty percent (50%) of the capital stock (or other ownership interest, if not a  
402 corporation) of an entity ordinarily having voting rights. “Control” and its derivatives,  
403 with respect to nonprofit entities, means the power to elect or appoint more than fifty  
404 percent (50%) of the Board of Directors of an entity. See clause 6.1 of the *IEEE-SA*  
405 *Standards Board Bylaws* available at  
406 <http://standards.ieee.org/develop/policies/bylaws/sect6-7.html#6.1>. For example, the  
407 parent corporation of a Submitter, any brother or sister corporation of the Submitter,  
408 and any Submitter subsidiary in which the Submitter owns more than 50% are  
409 considered Affiliates.

410

411 36. *Does the Letter of Assurance bind the Submitter's Affiliates?*

412

413 Yes, other than those Affiliates specifically and permissibly excluded in a Letter of  
414 Assurance. Note that a Submitter cannot exclude Affiliates if the Submitter has  
415 indicated Reciprocal Licensing on an Accepted Letter of Assurance.

416

**Application of LOA to Successors of Essential Patent Claims Covered by LOA**

- 417  
418  
419 37. *What does the Submitter of an Accepted Letter of Assurance have to do if the*  
420 *Submitter transfers one or more Essential Patent Claims covered by the Letter of*  
421 *Assurance to a third party?*

422  
423 The Submitter is required to provide notice of an Accepted Letter of Assurance to any  
424 assignee or transferee of any Essential Patent Claims covered by the Letter of  
425 Assurance. That notice can be provided by notifying the assignee or transferee that the  
426 Essential Patent Claims are subject to an Accepted Letter of Assurance or by a general  
427 statement in the transfer or assignment agreement that the Essential Patent Claims  
428 being transferred or assigned are subject to any encumbrances that may exist as of  
429 the effective date of such agreement.

430  
431 In addition, the Submitter shall require that the assignee or transferee agree to  
432 provide the same notice to any subsequent assignees or transferees and require its  
433 subsequent assignees or transferees to do the same.

- 434  
435 38. *Does the Submitter have any responsibility to ensure that its assignees and*  
436 *transferees provide notice of an Accepted Letter of Assurance to subsequent*  
437 *transferees?*

438  
439 No. As long as the Submitter provides the required notice to its assignees and  
440 transferees and requires that its assignees and transferees agree to provide the  
441 required notice and bind its assignees and transferees to the same, the Submitter is  
442 not responsible for the actions of any downstream assignees and transferees.

443  
444 **Compliant Implementation**

- 445  
446 39. *Why does the definition of Compliant Implementation include the phrase “component,*  
447 *sub-assembly, or end-product”?*

448  
449 Compliant Implementation is defined as “...any product (e.g., component, sub-  
450 assembly, or end-product) or service that conforms to any mandatory or optional  
451 portion of a normative clause of an IEEE Standard” to reflect how IEEE standards are  
452 written and how they are implemented in the marketplace. The examples of any  
453 product (“component, sub-assembly, or end-product”) are included for clarity.

- 454  
455 40. *Can a Submitter offer a license to an Essential Patent Claim for use only to conform to*  
456 *the IEEE Standard?*

457  
458 Yes. A Submitter’s commitment is to make available licenses “to make, have made,  
459 use, sell, offer to sell, or import any Compliant Implementation that implements the  
460 Essential Patent Claims for use in conforming with the IEEE Standard.” Therefore, a  
461 Submitter may limit its license to cover only implementations that are created for use

462 in conforming with the IEEE Standard. The Submitter is free to offer a license that is  
463 broader than what the policy requires but must make available at least the license  
464 required under the policy.  
465

466 41. *Who determines whether a product is a Compliant Implementation?*  
467

468 Determination of whether a product is a Compliant Implementation is left to  
469 implementers, their customers, Submitters, and, if necessary, courts.  
470

471 **Reasonable Rates**  
472

473 42. *In discussing Reasonable Rates, what is an example of the value that is excluded in*  
474 *the statement: "...excluding the value, if any, resulting from the inclusion of that*  
475 *Essential Patent Claim's technology in the IEEE Standard"?*  
476

477 The IEEE-SA Patent Policy states that a "Reasonable Rate shall mean appropriate  
478 compensation to the patent holder for the practice of an Essential Patent Claim  
479 excluding the value, if any, resulting from the inclusion of that Essential Patent Claim's  
480 technology in the IEEE Standard." A Reasonable Rate does not include value arising  
481 from the cost or inability of implementers to switch from the Essential Patent Claim's  
482 technology included in the standard.  
483

484 As a hypothetical example, during the development of a standard, a working group  
485 considers alternatives and makes a decision based on many factors. Suppose two and  
486 only two alternative technologies are available, both patented and both offering the  
487 same performance, implementation cost, and all other qualities. Therefore, the value  
488 of the two options is exactly the same, although only one will be selected. Any  
489 additional value imputed to the selected option because of its inclusion in the standard  
490 is excluded.  
491

492 The policy does not mean that an Essential Patent Claim covering an invention created  
493 solely to enhance an IEEE standard can never have value.  
494

495 43. *In discussing Reasonable Rates, what is an example of the "value of the relevant*  
496 *functionality of the smallest saleable Compliant Implementation"?*  
497

498 The smallest saleable Compliant Implementation (e.g., a component, sub-assembly or  
499 end-product) that practices an Essential Patent Claim may have multiple functions.  
500 For example, if a smallest saleable Compliant Implementation implements IEEE  
501 Standard 1284™, RS-232 and USB but the Essential Patent Claim relates only to the  
502 circuit's IEEE 1284 parallel port function, then the "relevant functionality" is only that  
503 IEEE 1284 functionality. The parties should consider the value contributed by the  
504 Essential Patent Claim's claimed invention to that relevant functionality.  
505

506 44. *In discussing Reasonable Rates, what is an example of a “smallest saleable Compliant*  
507 *Implementation that practices the Essential Patent Claim”?*  
508

509 Determining the smallest saleable Compliant Implementation that practices the  
510 Essential Patent Claim is a function both of the claims in the patent and of the product  
511 or products that implement a standard. For example, assume a component is a  
512 Compliant Implementation of IEEE 802.11™ and practices the Essential Patent Claim.  
513 That component is then used in an entertainment system that is then installed into an  
514 airplane. In this example, the component is the smallest saleable Compliant  
515 Implementation of IEEE 802.11.  
516

517 45. *In discussing Reasonable Rates, what is an example of considering “...in light of the*  
518 *value contributed by all Essential Patent Claims for the same IEEE Standard practiced*  
519 *in that Compliant Implementation”?*  
520

521 Many IEEE Standards require the use of multiple Essential Patent Claims to create a  
522 Compliant Implementation. If the value of any given Essential Patent Claim is viewed  
523 in isolation from other Essential Patent Claims, then the resulting determination of  
524 value for that single patent may be inappropriate. For example, suppose a standard  
525 requires implementation of 100 Essential Patent Claims of equal value held by 100  
526 Submitters. If each Submitter were to be entitled to a royalty of 2% of the  
527 implementation’s selling price, then the implementation would never be produced  
528 because the total royalties (200% of the implementation’s selling price) would exceed  
529 any possible selling price. Therefore, when a Submitter and an implementer are  
530 considering whether a rate would be a Reasonable Rate, the value of all the Essential  
531 Patent Claims should be considered. In practice, the number and value of the  
532 Essential Patent Claims and the structure of requested royalties won’t be as simple as  
533 in the example. The values of the various Essential Patent Claims may vary; some, for  
534 example, may have higher value because they cover important functionality, while  
535 others may have a lower value because they address less important functionality.  
536 Moreover, it may not be feasible for the parties or a court to identify literally “all”  
537 Essential Patent Claims. However, at some point, the parties in a negotiation (or a  
538 court in a dispute) can decide that they have sufficient information to make a  
539 determination.  
540

541 46. *In discussing Reasonable Rates, what are some examples of an “explicit or implicit*  
542 *threat of a Prohibitive Order”?*  
543

544 A patent holder’s request that a court issue a Prohibitive Order against an  
545 implementer, who does not have a license, would be an example of an explicit threat.  
546 A patent holder’s reminder to an implementer that a Prohibitive Order might be  
547 available if the implementer does not agree to the requested rate would be an example  
548 of an implicit threat.  
549

550 47. *In discussing Reasonable Rates, are other considerations allowable in addition to those*  
551 *listed?*

552  
553 Yes. While the IEEE-SA Patent Policy recommends considerations for use in determining a  
554 Reasonable Rate, the policy does not prevent parties, courts, or other adjudicators from  
555 using additional considerations. For example, the policy recommends consideration of  
556 license agreements obtained without explicit or implicit threat of a Prohibitive Order (and  
557 where the circumstances and resulting license are otherwise sufficiently comparable), but  
558 the policy does not prevent consideration of any other licensing agreements.

559  
560  
561 **Licensing Terms Provided with Letters of Assurance**

562  
563 48. *A Submitter of a Letter of Assurance is permitted to provide a not-to-exceed license*  
564 *fee or rate commitment. What is the purpose of permitting a Submitter to provide a*  
565 *not-to-exceed license fee or rate commitment?*

566  
567 The purpose of the policy is to facilitate the development of standards that will serve  
568 the interests of industry, government, and the public. Relative costs of implementation  
569 for different proposed technical approaches in comparison with the relative technical  
570 performance increases or decreases of those proposals is a legitimate topic for  
571 discussion and a legitimate basis for decision-making in the standards development  
572 process. The policy attempts to inform participants of this option as a possible way to  
573 increase certainty and precision in their understanding of relative costs. See also the  
574 answer to question 51 below.

575  
576 49. *Does the IEEE make a judgment about whether any not-to-exceed rates provided with*  
577 *the Letter of Assurance are reasonable or non-discriminatory?*

578  
579 No. The policy provides a definition of a Reasonable Rate and includes several  
580 recommended considerations. However, IEEE takes no position on, and has no  
581 responsibility for determining, the reasonableness of disclosed royalty rates.

582  
583 50. *Is a Submitter of a Letter of Assurance required to provide a not-to-exceed license fee*  
584 *or rate commitment?*

585  
586 No. The IEEE permits, but does not require, the Submitter to provide not-to-exceed  
587 royalty rates or other terms.

588  
589 51. *Does the IEEE make a judgment about whether any terms provided with the Letter of*  
590 *Assurance are reasonable or non-discriminatory?*

591  
592 No. The IEEE is not responsible for determining whether any licensing terms or  
593 conditions provided in connection with submission of a Letter of Assurance, if any, or in  
594 any licensing agreements are reasonable or non-discriminatory. Acceptance of a Letter



of Assurance does not imply that the IEEE has made any determination of the foregoing. As stated on the LOA form, to the extent there are inconsistencies between the Letter of Assurance form and any sample licenses, material licensing terms, or not to exceed rates provided with the LOA form, the terms of clause 6 of the IEEE-SA Standards Board Bylaws and the Letter of Assurance form shall control.

52. *Can a Submitter demand, as a condition of granting a license to an Essential Patent Claim, a license to a prospective licensee's non-essential patent claims?*

No. A Submitter cannot, as a condition of granting a license to an Essential Patent Claim, require a prospective licensee to grant licenses to patent claims that are not Essential Patent Claims for the referenced IEEE standard. The IEEE-SA Patent Policy, however, does not prevent parties from mutually and voluntarily agreeing to a cross-license covering any patents (e.g., a portfolio license).

53. *Can a Submitter demand a prospective licensee take a license for the Submitter's non-essential patent claims?*

No. A Submitter cannot, as a condition to granting a license to an Essential Patent Claim, require a prospective licensee to take licenses to patent claims that are not Essential Patent Claims for the referenced IEEE standard. The IEEE-SA Patent Policy, however, does not prevent parties from mutually and voluntarily agreeing to a cross-license covering any patents (e.g., a portfolio license).

### **Prohibitive Orders**

54. *The definition of Prohibitive Order says that it includes an "adjudicative directive that limits..." Would that include an order from a court that determines the amount of a reasonable royalty?*

No. An order that merely determines a past or future royalty is not a Prohibitive Order.

55. *Does the IEEE-SA Patent Policy give a patent holder a right to seek a Prohibitive Order?*

No. The policy does not create a right that does not already exist in a specific jurisdiction. Whether and to what extent a Submitter would have a right to seek a Prohibitive Order depends on the law of each specific jurisdiction. An Accepted Letter of Assurance defines the circumstances in which the Submitter has voluntarily agreed not to seek or seek to enforce a Prohibitive Order, even if otherwise permitted in a specific jurisdiction.

638 56. *Does the IEEE-SA Patent Policy prevent an implementer from raising issues of patent*  
639 *validity, patent infringement, or any other claims or defenses against the Submitter or*  
640 *change the requirements for that litigation?*

641  
642 No. The policy does not prevent the parties from litigating those issues, and it does  
643 not change any jurisdiction's rules on allocating burdens of proof or production of  
644 evidence.

645  
646 57. *Why does the IEEE-SA Patent Policy text on Prohibitive Orders use the phrase "... by*  
647 *one or more courts..."?*

648  
649 In some jurisdictions, a single court does not have the authority to decide all issues.  
650 For example, a jurisdiction may empower one court to determine patent validity but  
651 another court to determine infringement or compensation. The policy was drafted so  
652 that it could apply in such a jurisdiction.

653  
654 58. *What is a first-level appellate review?*

655  
656 A first-level appellate review is a proceeding conducted by a court at the next-higher  
657 judicial level (e.g., a court of appeals or a court of second instance) to review the  
658 adjudication of the next-lower body (e.g., a trial court or a court of first instance).

659  
660 59. *What are some examples that constitute a failure "to participate in, or to comply with*  
661 *the outcome of, an adjudication"?*

662  
663 A failure to participate in an adjudication occurs, for example, when the prospective  
664 licensee is not subject to the jurisdiction of the court(s) with the power to determine  
665 and award reasonable compensation to the Patent Holder and does not voluntarily  
666 submit to such jurisdiction. Failing to comply occurs, for example, when the  
667 prospective licensee refuses to pay past or future royalties as determined in an  
668 adjudication as described in the policy.

669  
670 60. *What should a Submitter do if it faces an unwilling licensee?*

671  
672 Whether a party is willing or unwilling is a matter of perspective, and the IEEE does  
673 not make any determinations of "willing" or "unwilling". A Submitter who is  
674 dissatisfied with the progress of negotiations is not prevented, by its voluntary  
675 submission of a Letter of Assurance under the IEEE-SA patent policy, from  
676 commencing litigation.

677  
678 **Working Groups and LOAs**

679  
680 61. *Can copies of Accepted Letters of Assurance be handed out at a standards*  
681 *development meeting?*

682

683 Yes. A participant may provide an Accepted Letter of Assurance to other participants  
684 by handing out paper copies of an Accepted Letter of Assurance (including a copy of  
685 the sample license or material licensing terms, if provided as part of the Letter of  
686 Assurance) or a data file with an image of the Accepted Letter of Assurance as it  
687 resides on the IEEE web site.

688  
689 62. *Can the link to the IEEE web site for an Accepted Letter of Assurance be provided?*  
690

691 Providing or displaying the IEEE URL for an Accepted Letter of Assurance is also  
692 acceptable.

693  
694 63. *Can the actual Accepted Letter of Assurance be displayed on a screen?*  
695

696 Yes, but displaying the LOA is not recommended because doing so may lead to  
697 impermissible questions or discussion. Nevertheless, displaying the Accepted Letter of  
698 Assurance as it resides on the IEEE web site is not a violation of the IEEE-SA Patent  
699 Policy provided a participant does not read aloud, present, or answer questions about  
700 the displayed Letter of Assurance. See also question 68.

701  
702 64. *Can a Working Group chair provide participants with a list of requested LOAs?*  
703

704 Yes. The Working Group chair should maintain a list of the requests that the chair (or  
705 his/her designee) has made and the date of each request. The chair may make this  
706 information available to participants in the working group and should make it available  
707 to participants upon request.

708  
709 65. *How does a participant know if a Letter of Assurance has been requested from a  
710 particular company?*  
711

712 A participant may ask the Working Group chair whether he or she has requested an  
713 LOA from that company. Accepted Letters of Assurance are available on the IEEE's  
714 web site.

715  
716 66. *Can a working group discuss the absence of a requested Letter of Assurance?*  
717

718 The working group should not discuss the reasons for the absence of an LOA. The chair  
719 or a working group participant may state whether there is or is not an Accepted Letter  
720 of Assurance in response to the request.

721  
722 67. *Can a participant make a presentation or answer questions about the not-to-exceed  
723 license fee or rate, material licensing terms, or sample license agreement?*  
724

725 No, except that using one or more not-to-exceed rates as components in a  
726 presentation comparing relative costs is acceptable. Further information can be found

727 in [Promoting Competition and Innovation: What You Need to Know about the IEEE](#)  
728 [Standards Association's Antitrust and Competition Policy](#).

729  
730 68. *What can standards development groups discuss about Letters of Assurance or*  
731 *submitted license terms?*

732  
733 Nothing. Note, however, that Accepted Letters of Assurance may be distributed as  
734 described in question 61. In addition, using one or more not-to-exceed rates as  
735 components in a presentation comparing relative costs is acceptable. Further  
736 information can be found in [Promoting Competition and Innovation: What You Need to](#)  
737 [Know about the IEEE Standards Association's Antitrust and Competition Policy](#).

738  
739 69. *Doesn't it make sense to discuss license terms as part of an overall evaluation of a*  
740 *proposed technology?*

741  
742 IEEE-SA standards development meetings consist primarily of engineers who are there  
743 primarily to discuss the technical merits of competing solutions. Some knowledge of  
744 relative cost is entirely appropriate, and the policy provides for exactly that. But  
745 licensing issues can be complex and involve not just technical issues but legal and  
746 business issues as well, and those discussions can require a different set of people  
747 than are present for the technical meetings.

748  
749 70. *What do I do if the standards development group launches into a discussion of patent*  
750 *licensing terms?*

751  
752 A participant should object to, and a Working Group chair shall close down, any  
753 discussion that is not permitted under IEEE-SA policies.

754  
755 71. *What should the chair do if a participant wants to modify the terms of an Accepted*  
756 *Letter of Assurance during the meeting?*

757  
758 An Accepted Letter of Assurance cannot be modified, either in the meeting or  
759 elsewhere. Anyone who wishes to submit an additional Letter of Assurance may do so  
760 (although any previous Accepted Letters of Assurance will continue to be available).  
761 The chair should instruct the individual to submit a new Letter of Assurance as  
762 provided in the [IEEE-SA Standards Board Operations Manual](#). See also response to  
763 question 77.

764  
765 72. *What about conversations in the hallway? Can participants discuss the particulars of*  
766 *license terms there?*

767  
768 The IEEE-SA regulates what goes on in forums that the IEEE-SA provides, such as  
769 meeting rooms and email reflectors. The IEEE-SA has no ability to regulate purely  
770 private conduct of its participants. There are some topics that participants should not

771 discuss regardless of where they are (such as prices that each of them as competitors  
772 will charge for compliant products). There are other topics that participants shall not  
773 discuss in IEEE-SA forums and shall not discuss in immediately adjacent spaces that  
774 might reasonably lead outside observers to believe it is just a continuation of the  
775 formal meeting. Further information can be found in [Promoting Competition and](#)  
776 [Innovation: What You Need to Know about the IEEE Standards Association's Antitrust](#)  
777 [and Competition Policy](#). Please also see IEEE-SA Standards Board Operations Manual  
778 5.3.10.

779  
780 *73. If a Letter of Assurance is submitted without the Submitter having exercised the option*  
781 *of providing a not-to-exceed license fee or rate commitment or other license terms, is*  
782 *it okay for a Working Group participant to request or encourage the Submitter to file*  
783 *an additional Letter of Assurance to provide that information?*  
784

785 No. Although relative cost comparisons can certainly note the absence of cost  
786 information, participants shall not request license fees, terms, or conditions during  
787 technical standards-development meetings or in other IEEE-SA forums for technical  
788 discussions (such as email reflectors).

789  
790 *74. What can be discussed about patents in a standards development group meeting or in*  
791 *an IEEE-SA email reflector?*  
792

793 You can discuss the technical merits of using the technology included even if it is  
794 included within a potential Essential Patent Claim. You can discuss and compare the  
795 relative costs of technology claimed in potential Essential Patent Claims. You must not  
796 discuss subjects such as how a patent should be licensed, or essentiality, validity, or  
797 interpretation of a patent claim. These are not appropriate topics for discussion in a  
798 standards development committee. Further information can be found in [What You](#)  
799 [Need to Know About IEEE Standards and the Law](#). Please also see IEEE-SA Standards  
800 Board Operations Manual 5.3.10.

801  
802 *75. Can someone submit a different Letter of Assurance for different Essential Patent*  
803 *Claims within the same standard?*  
804

805 Yes. A Submitter may submit separate Letters of Assurance providing its licensing  
806 positions for different potential Essential Patent Claims.

807  
808 *76. If a person submits a Letter of Assurance but doesn't identify a specific Essential*  
809 *Patent Claim covered by the Letter of Assurance, are the assurances binding on all of*  
810 *the Essential Patent Claims on the same IEEE Standard owned by the Submitter?*  
811

812 Yes, except for any Essential Patent Claims identified in a previously or simultaneously  
813 submitted Accepted Letter of Assurance for the same IEEE Standard. See also  
814 question 82.

815

816 77. *Can a Submitter change the terms of the assurance it has given after an LOA has been*  
817 *accepted by the IEEE? For example, what if the Submitter decided to lower the not-to-*  
818 *exceed price it would offer to license for an Essential Patent Claim?*

819

820 A Letter of Assurance is irrevocable once submitted and accepted and shall apply, at a  
821 minimum, from the date of the standard's approval to the date of the standard's  
822 transfer to inactive status. Thus, a Submitter cannot change the terms of an Accepted  
823 Letter of Assurance for a particular Essential Patent Claim once it is accepted.

824 However, over time, a Submitter may provide multiple assurances for a given Essential  
825 Patent Claim by submitting multiple Letters of Assurance for such claim, each of which  
826 shall be binding on the Submitter. Each potential licensee may choose to invoke the  
827 terms of any applicable Letter of Assurance accepted by the IEEE. Thus, the Submitter  
828 desiring to lower the not-to-exceed price that it would offer for licensing its Essential  
829 Patent Claim can submit an additional Letter of Assurance with the revised not-to-  
830 exceed price and each potential licensee may choose to invoke the terms of either  
831 Letter of Assurance.

832

### 833 **Reciprocal Licensing**

834

835 78. *Many IEEE Standards have amendments and corrigenda and are revised every ten*  
836 *years. How does the selection of Reciprocal Licensing work in these situations?*

837

838 Reciprocity is based on licensing Essential Patent Claims "for the referenced IEEE  
839 Standard, including any amendments, corrigenda, editions, and revisions." If a  
840 Submitter checks the box selecting Reciprocal Licensing, the scope of that Reciprocal  
841 Licensing for both the Submitter and the Applicant is the entire IEEE Standard. Please  
842 also note section 6.3.5 of the IEEE-SA Standards Board Operations Manual,  
843 *Applicability of Letters of Assurance to Amendments, Corrigenda, Editions, or*  
844 *Revisions*. See also questions 14 and 15.

845

846 79. *Can a Submitter select Reciprocal Licensing while excluding specific Essential Patent*  
847 *Claims from its licensing commitment?*

848

849 No. When a Submitter checks the Reciprocal Licensing box, neither the Submitter nor  
850 the Applicant can exclude from its licensing commitment to the other party any  
851 Essential Patent Claims for the referenced IEEE standard.

852

853 80. *Why can't a Submitter exclude its Affiliates when demanding Reciprocal Licensing?*

854

855 In situations similar to those described in question 79 above, Essential Patent Claims  
856 might not be available for licensing if they are owned by an excluded Affiliate. Since  
857 the Applicant has no ability to exclude any Affiliate or any Essential Patent Claims held  
858 by such Affiliate, the same limitation must be applied to the Submitter.



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## Blanket Letter of Assurance

81. *What is a “Blanket Letter of Assurance”?*

A Blanket Letter of Assurance is a Letter of Assurance referencing a standard or project that applies to all Essential Patent Claims for which a Submitter may currently or in the future (except as otherwise provided for in the [IEEE-SA Standards Board Bylaws](#) and in the [IEEE-SA Standards Board Operations Manual](#)) have the ability to license. This is defined in clause 6.1 of the IEEE-SA Standards Board Bylaws available at <http://standards.ieee.org/develop/policies/bylaws/sect6-7.html#6.1>.

82. *What happens if the Submitter submits a Blanket Letter of Assurance after previously offering a specific Letter of Assurance?*

If a Submitter has signed and submitted a Letter of Assurance specifically identifying an Essential Patent Claim before or concurrently with signing and submitting a Blanket Letter of Assurance, the Blanket Letter of Assurance cannot be invoked as to the specified Patent Claim.

83. *Does a Blanket Letter of Assurance apply to Essential Patent Claims that my company acquires after submitting the Letter of Assurance?*

Yes, unless the acquired entity or the prior holder of the acquired Essential Patent Claim has submitted a Letter of Assurance before the acquisition. Any Blanket Letter of Assurance submitted by the acquired entity or the prior holder of the acquired Essential Patent Claim before the acquisition, shall continue to apply to acquired Essential Patent Claims covered by such assurance (but not to the acquirer’s Essential Patent Claims). An acquiring party can ask a seller of an acquired Essential Patent Claim or an acquired entity to submit additional Letters of Assurance before closing of the acquisition. See IEEE-SA Standards Board Operations Manual clause 6.3.4.

## Implementation of updated IEEE-SA Patent Policy

84. *What is the effective date of the updated IEEE-SA Patent Policy?*

The effective date of the updated IEEE-SA Patent Policy set forth in the [IEEE-SA Standards Board Bylaws](#) and [IEEE-SA Standards Board Operations Manual](#) is 1 January 2015.

85. *Will the updated IEEE-SA Patent Policy apply to existing standards development projects currently underway as well as new standards development projects?*

902 The updated policy will apply to any LOAs (for any project or standard) submitted on  
903 or after the effective date. See also question 84.

904  
905 **Essential Patent Claims during Ballot Resolution**

906  
907 86. *During ballot resolution, what should be the response to a comment regarding the lack*  
908 *of an LOA?*

909  
910 If an LOA has not been requested from the indicated holder of a potential Essential  
911 Patent Claim, the process for requesting an LOA should be followed (See [6.3.2 Call for](#)  
912 *patents* in the [IEEE-SA Standards Board Operations Manual](#)).

913  
914 Furthermore, the IEEE is not responsible for the following, and the comment response  
915 should so state:

- 916 – Identifying Essential Patent Claims for which a license may be required
- 917 – Determining the validity, essentiality, or interpretation of Patent Claims;
- 918 – Determining whether any licensing terms or conditions provided in connection  
919 with submission of a Letter of Assurance, if any, or in any licensing agreements  
920 are reasonable or non-discriminatory;
- 921 – Determining whether an implementation is a Compliant Implementation.

922  
923 (Taken from the subclause 6.2 *Policy* of the IEEE-SA Standards Board Bylaws)

924 and that no discussions or other communications regarding the

- 925
- 926
- 927 – Essentiality of patent claims
- 928 – Interpretation of patent claims
- 929 – Validity of patent claims

930  
931 shall occur during IEEE-SA working group standards-development meetings or other  
932 duly authorized IEEE-SA standards-development technical activities.

933  
934 (Note: This is not a complete list of the items for non-discussion. Adapted from  
935 [5.3.10.2 Discussion of litigation, patents, and licensing](#) of the IEEE-SA Standards Board  
936 Operations Manual).