

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 ~~patent policy~~. 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 ~~policy~~ 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 ~~create a compliant implementation of implement~~ either a mandatory or optional portions of ~~thea~~ normative clauses of the ~~{Proposed}~~ IEEE Standard when, at the time of the ~~{Proposed}~~ 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 ~~s~~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.

Call for Essential Patents Claims at IEEE Standards Developing Meetings

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 develop~~iment~~ 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 ~~C~~chair issue a call for potential Essential Patent Claims?*

A Working Group ~~C~~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 ~~be issued~~issue a call to the Working Group via ~~e-mail~~written communications (electronic or ~~letter~~otherwise) on a regular basis. It is strongly recommended that the IEEE-SA Standards Board Patent Committee-developed ~~slide sets~~slide set be used. Note that a call for patents shall be made at every standards develop~~iment~~ 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. ~~4a.~~ *Should a Call for Patents be issued at a Study Group or other ~~pre-PAR~~ meeting? ~~meetings that occur before approval of a Project Authorization Request (PAR)?~~*

No. However, it is recommended that the ~~'Patent Slides for pre-PAR Meetings'~~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 ~~policy~~IEEE-SA Patent Policy every day?*

The Working Group ~~C~~chair or his or her designee shall issue the call at every ~~Working Group~~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 ~~must~~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 ~~patent policy~~IEEE-SA Patent Policy as read or displayed on the first day. Note, though, that this rule applies

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84 separately to each “group” that is “meeting” during the week. For example, if a
85 working group holds a meeting during the same week as its task group and/or task
86 force, the chair of each of those groups ~~must~~shall read or display the policy at ~~the~~
87 ~~beginning of~~ that group’s ~~first day of~~ “meeting.”
88

- 89 7. ~~5a.~~ How does the chair determine that the participation in a group that is “meeting” for
90 consecutive days is substantially the same?
91

92 The chair has to use his/her judgment to determine this. It could, for example, be
93 done based on the attendance numbers each day. The default action is to read the
94 ~~patent policy~~IEEE-SA Patent Policy slides.
95

- 96 8. What if a group meets telephonically?

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

- 104 9. What if the group does not meet either in person or by telephone – for example, the
105 group “meets” only through email or ~~chat rooms~~other interactive electronic means?
106

107 If the group does not meet face-to-face or telephonically, the chair of the group should
108 issue the ~~call for patents via e-mail or letter~~call for patents via written communications
109 ~~(electronic or otherwise)~~ on a regular basis.
110

Letter of Assurance

- 112
113 10. What is a Letter of Assurance?
114

115 ~~In general, a letter~~Letter of ~~a~~Assurance is the term that IEEE-SA uses to describe a
116 document stating a Submitter’s position with respect to ownership, enforcement, or
117 licensing of an Essential Patent Claim that may be incorporated into a specifically
118 referenced IEEE Standard. The specific requirements for ~~an IEEE Letter of Assurance~~a
119 Letter of Assurance are defined in clause 6.1 of the *IEEE-SA Standards Board Bylaws*
120 at <http://standards.ieee.org/develop/policies/bylaws/sect6-7.html#6.1>.
121

- 122 11. When does the IEEE send out a request for a Letter of Assurance?
123

124 The Working Group ~~C~~hair or, where appropriate, the Sponsor ~~C~~hair will send out a
125 request for a Letter of Assurance whenever the ~~C~~hair is notified, at any time and by
126 any means, that the [Proposed] IEEE Standard may require the use of a potential

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Essential Patent Claim.

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

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

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

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

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

~~An Accepted Letter of Assurance~~As stated in clause 6.3.5 of the IEEE-SA Standards Board Operations Manual:

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

The Working Group ~~Chair~~ shall initiate a request for a new Letter of Assurance from a known Submitter when re-using portions of an or technologies specified in an existing ~~[Proposed]~~ IEEE Standard, amendment, corrigendum, edition, or revision referenced in an Accepted Letter of Assurance in a different ~~[Proposed]~~ IEEE Standard.

15. ~~12a.~~ *How should Working Groups handle Letters of Assurance when re-using portions of a non-IEEE standard in ~~a [Proposed]~~an IEEE Standard?*

The Working Group ~~Chair~~ shall initiate a request for a Letter of Assurance from holders of potential Essential Patent Claims when re-using portions of ~~an existing~~a

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171 non-IEEE standard in ~~a~~an IEEE Standard. ~~Any~~The Working Group chair
172 should not assume that any patent letters of assurance (or patent declarations) given
173 to the developer of the non-IEEE standard ~~cannot be stated to will~~ also apply to the
174 ~~Proposed~~ IEEE Standard. In addition, there are specific requirements that must be
175 incorporated into an IEEE Letter of Assurance in order for it to have the possibility of
176 becoming an Accepted Letter of Assurance.

Participants and Notification to IEEE of Essential Patent Claims

- 178
179
180 16. ~~What obligation do~~Do individual participants have to notify the IEEE if they own, or
181 their employer owns, potential Essential Patent Claims incorporated in ~~a~~an
182 IEEE Standard? What if they are uncertain whether a Patent Claim they own, or their
183 employer owns, is essential?

184
185 ~~Individual participants of a call for patents~~Individuals participating in the IEEE
186 standards development process are required to notify the IEEE of the identity of a
187 holder of any potential Essential Patent Claims (but not the identity of the Essential
188 Patent Claim) where (1) the individual participant is personally aware that the holder
189 may have a potential Essential Patent Claim; (2) the holder is the participant or an
190 entity the participant is from, employed by, or otherwise represents; and (3) the
191 potential Essential Patent Claim is not already the subject of ~~any existing Letter of~~
192 ~~Assurance~~an Accepted Letter of Assurance. If such a participant is uncertain whether
193 the patent is essential, the participant still shall notify the IEEE (or cause the IEEE to
194 be notified) of the possibility because ~~they are~~the participant is personally aware of a
195 claim that is a *potential* Essential Patent Claim.

- 196
197 17. ~~13a.~~When is a potential Essential Patent Claim considered to be the subject of an
198 ~~existing~~Accepted Letter of Assurance?

199
200 A potential Essential Patent Claim is the subject of an ~~existing Letter of~~
201 ~~Assurance~~Accepted Letter of Assurance for a particular standard (a) if there is an
202 Accepted Letter of Assurance for the potential Essential Patent Claim or related
203 potential Essential Patent, (b) if there is an Accepted Blanket Letter of Assurance from
204 the holder of the potential Essential Patent Claim, or (c) an Accepted Letter of
205 Assurance for the potential Essential Patent Claim exists under the conditions defined
206 in IEEE-SA Standards Board Operations Manual ~~subclause 6.3.5 'Applicability~~subclause
207 6.3.5 Applicability of Letters of Assurance to Amendments, Corrigenda, Editions, or
208 Revisions¹ (see ~~FAQ12~~question 14).

- 209
210 18. How do I find out if a particular company has submitted ~~a~~an Accepted Letter of
211 Assurance?

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213 Accepted Letters of Assurance are listed on the IEEE-SA's web site at
214 <http://standards.ieee.org/about/sasb/patcom/patents.html>. Letters of Assurance
215 accepted after 31 December 2006 will be posted on the web site as they are
216 ~~received~~accepted and Letters of Assurance ~~received~~accepted prior to that date will be
217 posted over time.

218 | 19. ~~15.~~ *What are ~~example~~examples of the means by which an individual participant can*
219 *notify the IEEE (or cause the IEEE to be notified) that his or her employer is the holder*
220 *of a potential Essential Patent Claim incorporated in a [Proposed] IEEE Standard? Does*
221 *the individual participant need to identify the Essential Patent Claim specifically?*

222
223 An individual participant could fulfill his or her duty to the IEEE by telling the Working
224 | Group ~~Chair~~ that his or her employer is the holder of a potential Essential Patent
225 Claim. Alternatively, the participant could request that his or her employer submit a
226 Letter of Assurance or otherwise notify the IEEE that it is the holder of a potential
227 Essential Patent Claim. In the latter case, the participant fulfills his or her duty to the
228 IEEE only if his or her employer submits a Letter of Assurance or otherwise notifies the
229 IEEE that it is the holder of a potential Essential Patent Claim. If the employer declines
230 | to submit a Letter of Assurance or otherwise notify the IEEE, and if the participant ~~will~~
231 ~~have~~continues to ~~tell~~believe the ~~Working Group Chair that his or her~~ employer may ~~be~~
232 ~~the holder of~~hold a potential Essential Patent Claim, then the participant has not
233 fulfilled his or her duty. The participant, therefore, shall inform the IEEE of the holder
234 of that potential Essential Patent Claim. In all cases, the duty on the participant is only
235 to inform the IEEE of the identity of the holder of a potential Essential Patent Claim
236 | and not the patent, application, or particular claim itself. ~~The response~~A participant
237 does not need to ~~respond to a~~ call for patents ~~only needs to be made~~ if the
238 ~~response relates to a~~relevant potential Essential Patent Claim ~~that is not~~ already ~~the~~
239 ~~subject of any existing~~covered by an Accepted Letter of Assurance or request for a
240 Letter of Assurance.

241
242 | 20. ~~15a.~~ *Can a response to the call for patents be made via email in advance or*
243 *subsequent to a meeting?*

244
245 The duty on the participant is to inform the IEEE of the identity of the holder of a
246 | potential ~~Essential Patent Claim.~~Essential Patent Claim. ~~The chair~~ can be
247 notified at any time (in advance or subsequent to a meeting is acceptable). The
248 | declaration must be made in a recordable manner such as email.

249
250 | 21. *Do participants have to notify IEEE of third party patent holders? For these purposes,*
251 *“third party” means a person other than the participant or an entity the participant is*
252 *from, employed by, or otherwise represents.*

253 Participants are not required to notify the IEEE that they are aware of any potential
254 Essential Patent Claims held by a third party. Participants may make such disclosure at

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255 their own discretion. Although there is no obligation to notify the IEEE of third party
256 patent holders, the IEEE encourages participants to do so. This encouragement is
257 particularly strong asbecause the third party may not be a participant in the standards
258 development process.

- 259 22. ~~17.~~ *What duty does an individual participant have to the IEEE if a participant's*
260 *employer owns a potential Essential Patent Claim but the individual participant doesn't*
261 *have personal knowledge of such claim?*

262
263 As noted in the answer to question ~~13,16.~~, a participant only needs to notify the IEEE of
264 the holder of a potential Essential Patent Claim if such participant is "personally aware"
265 that his or her employer has a potential Essential Patent Claim. There is no duty for
266 that employee (or anyone else in his or her organization) to conduct a patent search,
267 but the IEEE-SA does expect that participants will conduct themselves in good faith.
268 This expectation arises both from the IEEE Code of Ethics and from the background
269 legal rules. The IEEE Code of Ethics makes clear, for example, that participants "accept
270 responsibility in making decisions consistent with the safety, health and welfare of the
271 public." Similarly, the U.S. Supreme Court stated in the Allied Tube case that SDOs
272 operate based on "the merits of objective expert judgments" using "procedures that
273 prevent the standard-setting process from being biased by members with economic
274 interests in stifling product competition." Consequently, while ~~(again)~~ the policy does
275 not require a patent search, the IEEE does encourage each participant to make
276 sufficient inquiry to satisfy him or herself that s/he is not being deliberately shielded
277 from relevant knowledge and that the employer does not have any potential Essential
278 Patent Claims.

- 279
280 23. ~~18.~~ *Can an individual participate in standards development activities if his or her*
281 *employer is unwilling to submit a Letter of Assurance once requested or to provide the*
282 *assurance indicated in the ~~patent policy~~IEEE-SA Patent Policy in a Letter of Assurance?*
283

284 Yes. As long as the participant complies with the requirement that he or she notify the
285 IEEE that his or her employer is the holder of a potential Essential Patent Claim if the
286 participant is personally aware that his or her employer is such a holder, the individual
287 can continue to participate in standards development activities. See also question
288 ~~15-19.~~

- 289
290 24. ~~19.~~ *Does the IEEE ~~patent policy~~-SA Patent Policy require participants or their*
291 *employers to make an assurance or submit a Letter of Assurance?*

292 No. Submission of a Letter of Assurance is not a precondition to participation.
293 Participants do have a duty to inform the IEEE if they or an entity they are from,
294 employed by, or otherwise represents holds potential Essential Patent Claims. See
295 ~~questions 13, 16, and 18~~Essential Patent Claims. See questions 16, 21, and 23 for
296 more information.

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297 ~~25-20. Is the IEEE's patent policy a "disclosure" policy?~~

298
299 ~~No. The IEEE's patent policy is a policy of assurance as further described in these~~
300 ~~frequently asked questions, not a policy of disclosure.~~

301
302 ~~26-25. 21. What does a participant's employer need to do to determine whether it has any~~
303 ~~potential Essential Patent Claims when it receives a request from the IEEE for a Letter~~
304 ~~of Assurance? Specifically,~~

305
306 (a) *Does the employer need to do a patent search?*

307
308 No. The policy expressly states that there is no duty to conduct a patent search; but
309 the employer may do so if it wishes.

310
311 (b) *Does the employer need to talk to every person they have sent to the Working*
312 *Group?*

313
314 When the employer receives the request for a Letter of Assurance, the employer can
315 state its licensing position with respect to any Patent Claims that might be or become
316 Essential Patent Claims relating to the particular standard referenced in the Letter of
317 Assurance. In the alternative, the employer can indicate that it is not aware of any
318 Patent Claims that the employer may own, control, or have the ability to license that
319 might be or become Essential Patent Claims, but **only if** the employer does a
320 Reasonable and Good Faith Inquiry to determine the existence of any such Patent
321 Claims. As described in clause 6.1 of the IEEE-SA Standards Board Bylaws, a
322 "Reasonable and Good Faith Inquiry" includes, but is not limited to, the employer using
323 reasonable efforts to identify and contact those individuals who are from, employed by,
324 or otherwise represent the employer and who are known to the employer to be current
325 or past participants in the development process of the [Proposed] IEEE Standard
326 identified in the Letter of Assurance, including, but not limited to, participation in a
327 Sponsor Ballot or Working Group. If the Submitter did not or does not have any
328 participants, then a "Reasonable and Good Faith Inquiry" may include, but is not
329 limited to, the Submitter using reasonable efforts to contact individuals who are from,
330 employed by, or represent the Submitter **and** who the Submitter believes are most
331 likely to have knowledge about the technology covered by the [Proposed] IEEE
332 Standard. As described above, the employer only needs to engage in a Reasonable and
333 Good Faith Inquiry if it wants to avoid providing an assurance based on its assertion
334 that it is not aware of any Patent Claims that the employer may own, control, or have
335 the ability to license that might be or become Essential Patent Claims.

336
337 Submitting a Letter of Assurance

338

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339 ~~27.26. 22.~~ Do the terms "potential Essential Patent Claims" and "Patent Claims that the
340 Submitter may own, control, or have the ability to license . . ." include claims
341 described in patent applications?
342

343 Yes. The definition of Patent Claims includes pending patent applications.
344

345 ~~28.27. 23.~~ At what point should ~~the~~ Letter of Assurance be submitted?

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

349 ~~29.28. 24.~~ Who should submit a Letter of Assurance?

350
351 Any person or entity that believes that it holds a potential Essential Patent Claim may
352 submit a Letter of Assurance.
353

354 The IEEE will request licensing assurance on the IEEE-SA Standards Board approved
355 Letter of Assurance form from any person upon being notified that ~~a~~ Proposed ~~an~~
356 IEEE Standard may require the use of a potential Essential Patent Claim. Although the
357 IEEE encourages any person receiving a request for assurance to submit the Letter of
358 Assurance, the IEEE may not use any coercion in requesting the assurance. This
359 means the IEEE cannot require that a person submit a Letter of Assurance or provide a
360 particular assurance with respect to ownership, enforcement, or licensing of an
361 Essential Patent Claim in order to participate in an IEEE standards development
362 activity.
363

364 ~~Additionally, a Submitter~~ A Submitter of a Letter of Assurance is required to submit a
365 Letter of Assurance if, after providing a Letter of Assurance to the IEEE, the Submitter
366 ~~of the Letter of Assurance~~ becomes aware of additional Patent Claim(s) not already
367 covered by an ~~existing~~ Accepted Letter of Assurance as further described in the answer
368 to question ~~26. Any person or entity that believes that it holds a potential Essential~~
369 ~~Patent Claim is encouraged to submit a Letter of Assurance, even if not specifically~~
370 ~~requested to do so.~~ 30.
371

372 ~~30.29. 25.~~ Who should sign a Letter of Assurance?

373
374 Only a person who is authorized to sign and bind the Submitter Submitter (including its
375 Affiliates unless specifically and its covered Affiliates permissibly excluded) to the
376 assurance shall sign the Letter of Assurance. Unless the Letter of Assurance is
377 received from an individual ~~who has clear~~ whose title suggests authority for intellectual
378 property and legal matters, the IEEE-SA Standards Board Patent Committee
379 Administrator will take follow-up action.
380

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381 ~~31.30. 26. What duty does~~*Does* a Submitter have to provide an additional assurance if it
382 becomes aware of ~~additional~~ Essential Patent Claims not already covered by an
383 ~~existing~~Accepted Letter of Assurance?
384

385 ~~As further described in Section 6.2 of the Bylaws, the Submitter of~~ If a Letter of
386 Assurance is required to submit a Letter of Assurance if, after providing a Letter of
387 Assurance to the IEEE, the Submitter of the Letter of AssuranceSubmitter becomes
388 aware of additional Patent Claim(s)Patent Claim(s) that are not already covered by an
389 ~~existing~~Accepted Letter of Assurance ~~and,~~ that are owned, controlled, or licensable by
390 the Submitter, and that may be or ~~may~~ become Essential Patent Claim(s) for the same
391 IEEE Standard. ~~The Submitter is deemed to be "aware" of, then~~ such additional
392 potential EssentialSubmitter shall submit a Letter of Assurance stating its position
393 regarding enforcement or licensing of such Patent Claims. For the purposes of this
394 commitment, the Submitter is deemed to be aware if any of the following individuals
395 who are from, employed by, or otherwise represent the Submitter have personal
396 knowledge of ~~such claims~~additional potential Essential Patent Claims, owned or
397 controlled by the Submitter, related to a [Proposed] IEEE Standard and not already the
398 subject of a previously Accepted Letter of Assurance: (a) past or present participants
399 in the development of the [Proposed] IEEE Standard; or (b) the individual executing
400 the previously ~~submitted~~Accepted Letter of Assurance. See also question 28.
401

402 ~~32.31. 27. Can the Letter of Assurance form be modified?~~

403 No. ~~Use of the~~In submitting a Letter of Assurance ~~form, use of the LOA form is ~~now~~
404 mandatory. (Completing the form is not considered a modification.)~~

405 ~~33.32. 28. What happens when a Letter of Assurance is not accepted?~~

406
407 The Submitter will be informed by the PatCom Administrator that the Letter of
408 Assurance was not accepted and why it was not accepted.
409

410 ~~34.33. 29. Are~~Do attachments submitted with a Letter of Assurance become a part of the
411 Accepted Letter of Assurance?
412

413 Yes. See also ~~question 38~~questions 50 and ~~39~~51.
414

415 ~~35.34. 30. Who can enforce~~ thean Accepted Letter of Assurance?
416

417 Users and implementers may seek to enforce the terms of any Accepted Letter of
418 Assurance. In certain circumstances and at its sole discretion, the IEEE may also seek
419 to enforce the terms of an Accepted Letter of Assurance.
420

Affiliates

421
422

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423 ~~36.35. 31.~~ *Who is an Affiliate?*

424
425 An Affiliate is an entity that directly or indirectly, through one or more intermediaries,
426 controls the Submitter or Applicant, is controlled by the Submitter or Applicant, or is
427 under common control with the Submitter or Applicant. For the purposes of this
428 definition, the term "control" and its derivatives, with respect to for-profit entities,
429 means the legal, beneficial, or equitable ownership, directly or indirectly, or more than
430 fifty percent (50%) of the capital stock (or other ownership interest, if not a
431 corporation) of an entity ordinarily having voting rights. "Control" and its derivatives,
432 with respect to nonprofit entities, means the power to elect or appoint more than fifty
433 percent (50%) of the Board of Directors of an entity. See clause 6.1 of the *IEEE-SA*
434 *Standards Board Bylaws* available at
435 <http://standards.ieee.org/develop/policies/bylaws/sect6-7.html#6.1>. For example, the
436 parent corporation of a Submitter, any brother or sister corporation of the Submitter,
437 and any Submitter subsidiary in which the Submitter owns more than 50% are
438 considered Affiliates.

439
440 ~~37.36. 32.~~ *Does the Letter of Assurance bind the Submitter's Affiliates?*

441
442 ~~Yes, other than those Affiliates explicitly excluded in a Letter of Assurance.~~
443 ~~Yes, other than those Affiliates specifically and permissibly excluded in a Letter of~~
444 ~~Assurance. Note that a Submitter cannot exclude Affiliates if the Submitter has~~
445 ~~indicated Reciprocal Licensing on an Accepted Letter of Assurance.~~

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

446
447
448
449 ~~38.37. 33.~~ *What does the Submitter of an Accepted Letter of Assurance have to do if the*
450 *Submitter transfers one or more Essential Patent Claims covered by the Letter of*
451 *Assurance to a third party?*

452
453 The ~~Submitter of a Letter of Assurance~~ Submitter is required to provide notice of ~~the~~ an
454 Accepted Letter of Assurance to any assignee or transferee of any Essential Patent
455 Claims covered by the Letter of Assurance. That notice can be provided by notifying
456 the assignee or transferee that the Essential Patent Claims are subject to an Accepted
457 Letter of Assurance or by a general statement in the transfer or assignment agreement
458 that the Essential Patent Claims being transferred or assigned are subject to any
459 encumbrances that may exist as of the effective date ~~or such agreement. For example,~~
460 ~~a Submitter could include a provision like the following in its purchase agreement:~~

461
462 ~~"One or more of the assets being transferred are subject to encumbrances that may~~
463 ~~exist as of the Effective Date of the Purchase Agreement."~~ of such agreement.

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465 In addition, the Submitter shall require that the assignee or transferee agree to
466 provide the same notice to any subsequent assignees or transferees and require its
467 subsequent assignees or transferees to do the same.
468

469 ~~*Hypothetical.* Company A submits a Letter of Assurance for an Essential Patent Claim
470 for IEEE Standard X which is accepted by the IEEE-SA. Two years after submitting the
471 Letter of Assurance, Company A sells all of its assets to Company B, including the
472 Essential Patent Claim. Three years later, Company B sells the Essential Patent Claim
473 to Company C. Subsequently, Company C sells the Essential Patent Claim to Company
474 D but does not provide the required notice to Company D.~~

~~(a) Company A's Obligations~~

475
476
477
478 Company A can fulfill its obligations to the IEEE-SA in one of two ways:

- 479
480 ✓ ~~Company A can notify Company B that the Essential Patent Claim is subject to an
481 Accepted Letter of Assurance; or~~
- 482 ✓ ~~Company A can provide a statement in its purchase agreement with Company B that
483 one or more of the assets being transferred may be subject to any encumbrances
484 that may exist as of the effective date of such agreement.~~

485
486 Regardless of which path it takes, Company A also must require that Company B agree
487 to provide the same notice to its assignees or transferees and to bind those assignees
488 or transferees to provide the same notice.

~~(b) Company B's Obligations~~

489
490
491 Company B can fulfill its obligations to the IEEE-SA one of two ways:

- 492 ✓ ~~Company B can notify Company C that the Essential Patent Claim is subject to an
493 Accepted Letter of Assurance; or~~
- 494 ✓ ~~Company B can provide a statement in its purchase agreement with Company C that
495 one or more of the assets being transferred may be subject to any encumbrances
496 that may exist as of the effective date of such agreement.~~

497
498 Regardless of which path it takes, Company B also must require that Company C agree
499 to provide the same notice to its assignees or transferees and to bind those assignees
500 or transferees to provide the same notice.

~~(c) Company C's Obligations~~

501
502
503 Company C must agree to provide the same notice to its assignees or transferees and
504 to bind those assignees or transferees to provide the same notice as described in (a)
505 and (b) above. In this case, Company C did not provide the required notice to
506 Company D in breach of its agreement with Company B. However, as long as Company

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507 ~~B required that Company C provide the required notice to Company D, Company B has~~
508 ~~fulfilled its commitment under the Letter of Assurance. Although Company B may~~
509 ~~decide not seek to enforce its agreement with Company C, users and implementers~~
510 ~~could themselves seek to enforce Company C's agreement to provide required notice~~
511 ~~to Company D.~~

512
513 ~~34. If a Submitter transfers one or more Essential Patent Claims that may be covered by a~~
514 ~~Letter of Assurance, what commitment does it need to get from the transferee~~
515 ~~regarding the Letter of Assurance?~~

516
517 ~~See answer to question 33.~~

518
519 ~~39-38. 35. Does the Submitter have any responsibility to ensure that its assignees and~~
520 ~~transferees provide notice of thean Accepted Letter of Assurance to subsequent~~
521 ~~transferees?~~

522
523 No. As long as the Submitter provides the required notice to its assignees and
524 transferees and requires that its assignees and transferees agree to provide the
525 required notice and bind its assignees and transferees to the same, the Submitter is
526 not responsible for the actions of any downstream assignees and transferees.

Compliant Implementation

527
528
529
530 ~~39. Why does the definition of Compliant Implementation include the phrase “component,~~
531 ~~sub-assembly, or end-product”?~~

532
533 ~~Compliant Implementation is defined as “...any product (e.g., component, sub-~~
534 ~~assembly, or end-product) or service that conforms to any mandatory or optional~~
535 ~~portion of a normative clause of an IEEE Standard” to reflect how IEEE standards are~~
536 ~~written and how they are implemented in the marketplace. The examples of any~~
537 ~~product (“component, sub-assembly, or end-product”) are included for clarity.~~

538
539 ~~40. Can a Submitter offer a license to an Essential Patent Claim for use only to conform to~~
540 ~~the IEEE Standard?~~

541
542 ~~Yes. A Submitter’s commitment is to make available licenses “to make, have made,~~
543 ~~use, sell, offer to sell, or import any Compliant Implementation that implements the~~
544 ~~Essential Patent Claims for use in conforming with the IEEE Standard.” Therefore, a~~
545 ~~Submitter may limit its license to cover only implementations that are created for use~~
546 ~~in conforming with the IEEE Standard. The Submitter is free to offer a license that is~~
547 ~~broader than what the policy requires but must make available at least the license~~
548 ~~required under the policy.~~

549
550 ~~41. Who determines whether a product is a Compliant Implementation?~~
551

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

Reasonable Rates

554
555
556
557 42. In discussing Reasonable Rates, what is an example of the value that is excluded in
558 the statement: "...excluding the value, if any, resulting from the inclusion of that
559 Essential Patent Claim's technology in the IEEE Standard"?

560
561 The IEEE-SA Patent Policy states that a "Reasonable Rate shall mean appropriate
562 compensation to the patent holder for the practice of an Essential Patent Claim
563 excluding the value, if any, resulting from the inclusion of that Essential Patent Claim's
564 technology in the IEEE Standard." A Reasonable Rate does not include value arising
565 from the cost or inability of implementers to switch from the Essential Patent Claim's
566 technology included in the standard.

567
568 As a hypothetical example, during the development of a standard, a working group
569 considers alternatives and makes a decision based on many factors. Suppose two and
570 only two alternative technologies are available, both patented and both offering the
571 same performance, implementation cost, and all other qualities. Therefore, the value
572 of the two options is exactly the same, although only one will be selected. Any
573 additional value imputed to the selected option because of its inclusion in the standard
574 is excluded.

575
576 The policy does not mean that an Essential Patent Claim covering an invention created
577 solely to enhance an IEEE standard can never have value.

578
579 43. In discussing Reasonable Rates, what is an example of the "value of the relevant
580 functionality of the smallest saleable Compliant Implementation"?

581
582 The smallest saleable Compliant Implementation (e.g., a component, sub-assembly or
583 end-product) that practices an Essential Patent Claim may have multiple functions.
584 For example, if a smallest saleable Compliant Implementation implements IEEE
585 Standard 1284™, RS-232 and USB but the Essential Patent Claim relates only to the
586 circuit's IEEE 1284 parallel port function, then the "relevant functionality" is only that
587 IEEE 1284 functionality. The parties should consider the value contributed by the
588 Essential Patent Claim's claimed invention to that relevant functionality.

589
590 44. In discussing Reasonable Rates, what is an example of a "smallest saleable Compliant
591 Implementation that practices the Essential Patent Claim"?

592
593 Determining the smallest saleable Compliant Implementation that practices the
594 Essential Patent Claim is a function both of the claims in the patent and of the product
595 or products that implement a standard. For example, assume a component is a
596 Compliant Implementation of IEEE 802.11™ and practices the Essential Patent Claim.

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597 That component is then used in an entertainment system that is then installed into an
598 airplane. In this example, the component is the smallest saleable Compliant
599 Implementation of IEEE 802.11.

601 45. In discussing Reasonable Rates, what is an example of considering "...in light of the
602 value contributed by all Essential Patent Claims for the same IEEE Standard practiced
603 in that Compliant Implementation"?

604
605 Many IEEE Standards require the use of multiple Essential Patent Claims to create a
606 Compliant Implementation. If the value of any given Essential Patent Claim is viewed
607 in isolation from other Essential Patent Claims, then the resulting determination of
608 value for that single patent may be inappropriate. For example, suppose a standard
609 requires implementation of 100 Essential Patent Claims of equal value held by 100
610 Submitters. If each Submitter were to be entitled to a royalty of 2% of the
611 implementation's selling price, then the implementation would never be produced
612 because the total royalties (200% of the implementation's selling price) would exceed
613 any possible selling price. Therefore, when a Submitter and an implementer are
614 considering whether a rate would be a Reasonable Rate, the value of all the Essential
615 Patent Claims should be considered. In practice, the number and value of the
616 Essential Patent Claims and the structure of requested royalties won't be as simple as
617 in the example. The values of the various Essential Patent Claims may vary; some, for
618 example, may have higher value because they cover important functionality, while
619 others may have a lower value because they address less important functionality.
620 Moreover, it may not be feasible for the parties or a court to identify literally "all"
621 Essential Patent Claims. However, at some point, the parties in a negotiation (or a
622 court in a dispute) can decide that they have sufficient information to make a
623 determination.

624
625 46. In discussing Reasonable Rates, what are some examples of an "explicit or implicit
626 threat of a Prohibitive Order?"

627
628 A patent holder's request that a court issue a Prohibitive Order against an
629 implementer, who does not have a license, would be an example of an explicit threat.
630 A patent holder's reminder to an implementer that a Prohibitive Order might be
631 available if the implementer does not agree to the requested rate would be an example
632 of an implicit threat.

633
634 47. In discussing Reasonable Rates, are other considerations allowable in addition to those
635 listed?

636
637 Yes. While the IEEE-SA Patent Policy recommends considerations for use in determining a
638 Reasonable Rate, the policy does not prevent parties, courts, or other adjudicators from
639 using additional considerations. For example, the policy recommends consideration of
640 license agreements obtained without explicit or implicit threat of a Prohibitive Order (and

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641 where the circumstances and resulting license are otherwise sufficiently comparable), but
642 the policy does not prevent consideration of any other licensing agreements.

Licensing Terms Provided with Letters of Assurance

646
647 ~~40.48. 36.~~ *A Submitter of a Letter of Assurance is permitted to provide a not-to-exceed*
648 *license fee or rate commitment. What is the purpose of permitting a Submitter to*
649 *provide a not-to-exceed license fee or rate commitment?*

650
651 The purpose of the policy is to facilitate the development of standards that will serve
652 the interests of industry, government, and the public. Relative costs of implementation
653 for different proposed technical approaches in comparison with the relative technical
654 performance increases or decreases of those proposals is a legitimate topic for
655 discussion and a legitimate basis for decision-making in the standards development
656 process. The ~~new~~ policy attempts to ~~provide~~inform participants ~~with greater of this~~
657 option as a possible way to increase certainty and precision in their understanding of
658 relative costs. See also the answer to question 51 below.

659
660 49. Does the IEEE make a judgment about whether any not-to-exceed rates provided with
661 the Letter of Assurance are reasonable or non-discriminatory?

662
663 No.

664 ~~37.~~ The policy provides a definition of a Reasonable Rate and includes several
665 recommended considerations. However, IEEE takes no position on, and has no
666 responsibility for determining, the reasonableness of disclosed royalty rates.

667
668 ~~41.50.~~ *Is a Submitter of a Letter of Assurance required to provide a not-to-exceed license*
669 *fee or rate commitment?*

670
671 No. The IEEE-~~SA~~ permits, but does not require, the ~~Submitter~~Submitter to provide not-
672 to-exceed royalty rates or other terms.

673
674 ~~42.51. 38.~~ *Does the IEEE make a judgment about whether any terms provided with the*
675 *Letter of Assurance are reasonable or non-discriminatory?*

676
677 No. The IEEE is not responsible for ~~identifying Essential Patent Claims for which a~~
678 ~~license may be required, for conducting inquiries into the legal validity or scope of~~
679 ~~those Essential Patent Claims, or for~~ determining whether any licensing terms or
680 conditions provided in connection with submission of a Letter of Assurance, if any, or in
681 any licensing agreements are reasonable or non-discriminatory. Acceptance of a Letter
682 of Assurance does not imply that the IEEE has made any determination of the
683 ~~reasonableness of the~~ foregoing. As stated on the LOA form, to the extent there are
684 inconsistencies between the Letter of Assurance form and any sample licenses,
685 material licensing terms, or not to exceed rates provided with the LOA form, the terms

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686 of clause 6 of the IEEE-SA Standards Board Bylaws and the Letter of Assurance form
687 shall control.

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

691 No. 39. What is the meaning of "reasonable rates" and "reasonable terms and conditions"?

692 A Submitter cannot, as a condition of granting a license to an Essential Patent Claim,
693 require a prospective licensee to grant licenses to patent claims that are not Essential
694 Patent Claims for the referenced IEEE standard. The IEEE-SA Patent Policy, however,
695 does not prevent parties from mutually and voluntarily agreeing to a cross-license
696 covering any patents (e.g., a portfolio license).

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

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

Prohibitive Orders

707
708
709
710 54. The definition of Prohibitive Order says that it includes an "adjudicative directive that
711 limits..." Would that include an order from a court that determines the amount of a
712 reasonable royalty?

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

715
716
717 55. Does the IEEE-SA Patent Policy give a patent holder a right to seek a Prohibitive
718 Order?

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

725
726
727 56. Does the IEEE-SA Patent Policy prevent an implementer from raising issues of patent
728 validity, patent infringement, or any other claims or defenses against the Submitter or
729 change the requirements for that litigation?

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

734
735 57. Why does the IEEE-SA Patent Policy text on Prohibitive Orders use the phrase "... by
736 one or more courts..."?

737
738 In some jurisdictions, a single court does not have the authority to decide all issues.
739 For example, a jurisdiction may empower one court to determine patent validity but
740 another court to determine infringement or compensation. The policy was drafted so
741 that it could apply in such a jurisdiction.

742
743 58. What is a first-level appellate review?

744
745 A first-level appellate review is a proceeding conducted by a court at the next-higher
746 judicial level (e.g., a court of appeals or a court of second instance) to review the
747 adjudication of the next-lower body (e.g., a trial court or a court of first instance).

748
749 59. What are some examples that constitute a failure "to participate in, or to comply with
750 the outcome of, an adjudication"?

751
752 A failure to participate in an adjudication occurs, for example, when the prospective
753 licensee is not subject to the jurisdiction of the court(s) with the power to determine
754 and award reasonable compensation to the Patent Holder and does not voluntarily
755 submit to such jurisdiction. Failing to comply occurs, for example, when the
756 prospective licensee refuses to pay past or future royalties as determined in an
757 adjudication as described in the policy.

758
759 60. What should a Submitter do if it faces an unwilling licensee?

760
761 Whether a party is willing or unwilling is a matter of perspective, and the IEEE does
762 not make any determinations of "willing" or "unwilling". A Submitter who is
763 dissatisfied with the progress of negotiations is not prevented, by its voluntary
764 submission of a Letter of Assurance under the IEEE-SA patent policy, from
765 commencing litigation.

Working Groups and LOAs

766
767
768
769 As noted in the answer to question 38, the IEEE-SA takes no position on, and has no
770 responsibility for determining, the reasonableness of disclosed royalty rates or other
771 licensing terms and conditions. The IEEE-SA's acceptance of a Letter of Assurance does
772 not imply any finding that the disclosed not-to-exceed terms are or are not reasonable.
773 The IEEE-SA's approval of a standard does not imply any finding (in the case of a
774 standard for which not-to-exceed terms have been disclosed) that such terms are or

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~~are not reasonable or any finding (in the case of a standard for which not to exceed terms were not disclosed) that reasonable terms would be greater or less than the disclosed maximum terms (if any) for any other technology.~~

~~40. The policy says that “copies of an Accepted Letter of Assurance may be provided to the Working Group, but shall not be discussed, at any standards Working Group meeting.”~~

~~43.61. Can copies of Accepted Letters of Assurance be handed out at a standards development meeting?~~

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

~~44.62. b) Can the link to the IEEE website/web site for an Accepted Letter of Assurance be provided?~~

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

~~45.63. e) Can the actual Accepted Letter of Assurance be displayed on a screen?~~

Yes, but ~~displaying the LOA~~ is not recommended. ~~The Letter of Assurance consists of three pages of often very small type. Therefore, the display is not going to be legible except in the smallest of rooms. The lack of legibility because doing so~~ may lead to impermissible questions or discussion. Nevertheless, displaying the Accepted Letter of Assurance as it resides on the IEEE website/IEEE web site is not a violation of the IEEE-SA Patent Policy provided a participant does not read aloud, present, or answer questions about the displayed Letter of Assurance. See also question 68.

~~64. d) Can a Working Group chair provide participants with a list of requested LOAs?~~

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

~~65. How does a participant know if a Letter of Assurance has been requested from a particular company?~~

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

821
822 66. Can a working group discuss the absence of a requested Letter of Assurance?

823
824 The working group should not discuss the reasons for the absence of an LOA. The chair
825 or a working group participant may state whether there is or is not an Accepted Letter
826 of Assurance in response to the request.

827
828 46-67. Can a participant make a presentation or answer questions about the not-to-exceed
829 license fee or rate, material licensing terms, *or* sample license agreement?

830
831 No, except that using one or more not-to-exceed rates as components in a
832 presentation comparing relative costs is acceptable. Further information can be found
833 in "What You Need to Know about the IEEE Standards Association's Antitrust and
834 Competition Policy."Promoting Competition and Innovation: What You Need to Know
835 about the IEEE Standards Association's Antitrust and Competition Policy.

836
837 47-68. e) What can standards development groups discuss about Letters of Assurance or
838 submitted license terms?

839
840 Nothing, ~~other than distribution of the Letter~~. Note, however, that Accepted Letters of
841 Assurance may be distributed as described in FAQ 40(a) above question 61. In
842 addition, using one or more not-to-exceed rates as components in a presentation
843 comparing ~~relative costs~~relative costs is acceptable. Further information can be found
844 in "Promoting Competition and Innovation: What You Need to Know about the IEEE
845 Standards Association's Antitrust and Competition Policy".

846
847 48-69. f) Doesn't it make sense to discuss license terms as part of an overall evaluation of
848 a proposed technology?

849
850 IEEE-SA standards development meetings consist primarily of engineers who are there
851 primarily to discuss the technical merits of competing solutions. Some knowledge of
852 relative cost is entirely appropriate, and the policy provides for exactly that. But
853 licensing issues can be complex and involve not just technical issues but legal and
854 business issues as well, and those discussions can require a different set of people
855 than are present for the technical meetings.

856
857 49-70. g) What do I do if the standards development group launches into a discussion of
858 patent licensing terms?

859
860 A participant should object to, and a Working Group ~~C~~chair shall close down, any
861 discussion that is not permitted under IEEE-SA policies.

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863 | ~~50.71. h)~~ *What should the chair do if a participant wants to modify the terms of an*
864 | *Accepted Letter of Assurance during the meeting?*

865 |
866 | An Accepted Letter of Assurance cannot be modified, either in the meeting or
867 | elsewhere. Anyone who wishes to submit an additional Letter of Assurance may do so
868 | (although any previous Accepted Letters of Assurance will continue to be available).
869 | The chair should instruct the individual to submit a new Letter of Assurance as
870 | provided in the [IEEE-SA Standards Board Operations Manual](#). See also response to
871 | question ~~43.0~~.

872 |
873 | ~~51.72. i)~~ *What about conversations in the hallway? Can participants discuss the*
874 | *particulars of license terms there?*

875 |
876 | The IEEE-SA regulates what goes on in forums that the IEEE-SA provides, such as
877 | meeting rooms and email reflectors. The IEEE-SA has no ability to regulate purely
878 | private conduct of its participants. There are some topics that participants should not
879 | discuss regardless of where they are (such as prices that each of them as competitors
880 | will charge for compliant products). There are other topics that participants shall not
881 | discuss in IEEE-SA forums and shall not discuss in immediately adjacent spaces that
882 | might reasonably lead outside observers to believe it is just a continuation of the
883 | formal meeting. Further information can be found in "[Promoting Competition and](#)
884 | [Innovation: What You Need to Know about the IEEE Standards Association's Antitrust](#)
885 | [and Competition Policy](#)". ~~..~~ [Please also see IEEE-SA Standards Board Operations Manual](#)
886 | [5.3.10](#).

887 |
888 | ~~52.73. j)~~ *If a Letter of Assurance is submitted without the Submitter's having exercised the*
889 | *option of providing a not-to-exceed license fee or rate commitment or other license*
890 | *terms, is it okay for a Working Group participant to request or encourage the*
891 | *Submitter to file an additional Letter of Assurance to provide that information?*

892 |
893 | No. Although relative cost comparisons can certainly note the absence of cost
894 | information, participants shall not request license fees, terms, or conditions during
895 | technical standards-development meetings or in other IEEE-SA forums for technical
896 | discussions (such as email reflectors).

897 |
898 | ~~53.74. k)~~ *What can be discussed about patents in a standards development group meeting*
899 | *or in an IEEE-SA email reflector?*

900 |
901 | You can discuss the technical merits of using the technology included even if it is
902 | included within a potential Essential Patent Claim. You can discuss and compare the
903 | relative costs of technology claimed in potential Essential Patent Claims. You must not
904 | discuss subjects such as how a patent should be licensed, or essentiality, validity, or
905 | interpretation of a patent claim. These are not appropriate topics for discussion in a
906 | standards development ~~ing~~ committee. Further information can be found in "[What You](#)

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907 [Need to Know About IEEE Standards and the Law](#)". Please also see [IEEE-SA](#)
908 [Standards Board Operations Manual 5.3.10.](#)

909
910 ~~54.75. 41.~~ *Can someone submit a different Letter of Assurance for different Essential*
911 *Patent Claims within the same standard?*

912
913 Yes. A Submitter may submit separate Letters of Assurance providing ~~different~~
914 licensing positions for different potential Essential Patent Claims.

915
916 ~~55.76. 42.~~ *If a person submits a Letter of Assurance but doesn't identify a specific*
917 *Essential Patent Claim covered by the Letter of Assurance, are the assurances binding*
918 *on all of the Essential Patent Claims on the same IEEE Standard owned by the*
919 *~~Submitter's company~~ Submitter?*

920
921 Yes, except for any Essential Patent Claims identified in a previously or simultaneously
922 submitted Accepted Letter of Assurance for the same IEEE Standard. See also
923 question 82.

924
925 ~~Yes.~~

926
927 ~~56.77. 43.~~ *Can a Submitter change the terms of the assurance it has given after ~~it~~an LOA*
928 *has been accepted by the IEEE? For example, what if the Submitter decided to lower*
929 *the not-to-exceed price it would offer to license for an Essential Patent Claim?*

930
931 A Letter of Assurance is irrevocable once submitted and accepted and shall apply, at a
932 minimum, from the date of the standard's approval to the date of the standard's
933 transfer to inactive status. Thus, a Submitter cannot change the terms of ~~the~~
934 Accepted Letter of Assurance for a particular Essential Patent Claim once it is accepted.
935 However, over time, a Submitter may provide multiple assurances for a given Essential
936 Patent Claim by submitting multiple Letters of Assurance for such claim, each of which
937 shall be binding on the Submitter. Each potential licensee may choose to invoke the
938 terms of any applicable Letter of Assurance accepted by the IEEE. Thus, the Submitter
939 desiring to lower the not-to-exceed price ~~the Submitter that it~~ would offer ~~to license~~ for
940 an licensing its Essential Patent Claim can submit an additional Letter of Assurance with
941 the revised not-to-exceed price and each potential licensee may choose to invoke the
942 terms of either Letter of Assurance.

Reciprocal Licensing

943
944
945
946 78. Many IEEE Standards have amendments and corrigenda and are revised every ten
947 years. How does the selection of Reciprocal Licensing work in these situations?

948
949 Reciprocity is based on licensing Essential Patent Claims "for the referenced IEEE
950 Standard, including any amendments, corrigenda, editions, and revisions." If a
951 Submitter checks the box selecting Reciprocal Licensing, the scope of that Reciprocal

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952 Licensing for both the Submitter and the Applicant is the entire IEEE Standard. Please
953 also note section 6.3.5 of the IEEE-SA Standards Board Operations Manual,
954 Applicability of Letters of Assurance to Amendments, Corrigenda, Editions, or
955 Revisions. See also questions 14 and 15.

957 79. Can a Submitter select Reciprocal Licensing while excluding specific Essential Patent
958 Claims from its licensing commitment?

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

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

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

Blanket Letter of Assurance

973 ~~57.81. 44.~~ *What is a "Blanket Letter of Assurance"?*

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

982 ~~58.82. 45.~~ *What happens if the Submitter submits a Blanket Letter of Assurance after*
983 *previously offering a specific Letter of Assurance?*

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

990 ~~59.83. 46.~~ *Does a Blanket Letter of Assurance apply to Essential Patent Claims that my*
991 *company acquires after submitting the Letter of Assurance?*

993 Yes, unless the acquired entity or the prior holder of the acquired Essential Patent
994 Claim has submitted a Letter of Assurance before the acquisition. Any Blanket Letter of
995 AssuranceEssential Patent Claim has submitted a Letter of Assurance before the

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996 acquisition. Any Blanket Letter of Assurance submitted by the acquired entity or the
997 prior holder of the acquired Essential Patent Claim before the acquisition, shall
998 continue to apply to acquired Essential Patent Claims covered by such assurance (but
999 not to the acquirer's Essential Patent Claims). An acquiring party can ask a seller of an
1000 acquired Essential Patent Claim or an acquired entity to submit additional Letters of
1001 Assurance before closing of the acquisition. See IEEE-SA Standards Board Operations
1002 Manual clause 6.3.4.

Implementation of ~~new policy~~updated IEEE-SA Patent Policy

1006 ~~60-84. 47.~~ *What is the effective date of the ~~new patent policy~~updated IEEE-SA Patent*
1007 *Policy?*

1009 The effective date of the ~~new patent policy~~updated IEEE-SA Patent Policy set forth in
1010 the IEEE-SA Standards Board Bylaws and IEEE-SA Standards Board Operations Manual
1011 is 1 ~~May 2007.~~ January 2015.

1013 ~~61-85. 48.~~ *Will the ~~new policy~~updated IEEE-SA Patent Policy apply to existing standards*
1014 *development projects currently underway as well as new standards development*
1015 *projects?*

1017 ~~As has long been the practice for all IEEE-SA Standards Board Bylaws and IEEE-SA~~
1018 ~~Standards Board Operations Manual changes, changes to policy will go into effect for~~
1019 ~~all Working Groups at the same time. This is usually 1 January of each year, but the~~
1020 ~~IEEE-SA Board of Governors set the effective date of these changes to be 1 May 2007.~~
1021 ~~Of course, any Letters of Assurance for a Standard/Project received before 1 May 2007~~
1022 ~~will be honored (i.e., there is no need for a Working Group Chair to request a Letter of~~
1023 ~~Assurance on the new form from a holder of a potential Essential Patent Claim if the~~
1024 ~~holder has already submitted an Accepted Letter of Assurance).~~

1026 ~~49. Can a participant provide a not-to-exceed license fee or rate commitment after 1 May~~
1027 ~~2007 for a Letter of Assurance that was submitted to the IEEE-SA prior to 1 May 2007?~~

1029 ~~Letters of Assurance are irrevocable once submitted and accepted. However, after 1 May~~
1030 ~~2007, a holder that has already submitted an Accepted Letter of Assurance may submit a~~
1031 ~~subsequent letter on the new Letter of Assurance form if it wants to update the~~
1032 ~~information on the previously submitted Letter of Assurance. In such a case, a potential~~
1033 ~~licensee would have the right to invoke the terms of either Letter of Assurance. See also~~
1034 ~~answer to question 43.~~

1036 ~~**Ballot resolution regarding**~~ The updated policy will apply to any LOAs (for any
1037 project or standard) submitted on or after the effective date. See also question 84.

1039 **Essential Patent Claims during Ballot Resolution**

1040
1041 ~~62.86. 50.~~ During ballot resolution, what should be the response to a comment regarding
1042 the lack of an LOA?

1043
1044 If an LOA has not been requested from the indicated holder of a potential Essential
1045 Patent Claim, the process for requesting an LOA should be followed (See [6.3.2 'Call for](#)
1046 [patents'](#) in the [IEEE-SA Standards Board Operations Manual](#)).

1047
1048 Further ~~more~~, the ~~IEEE is not responsible for the following, and the~~ comment response
1049 should ~~so~~ state ~~that the IEEE is not responsible~~:

- 1050 – ~~For identifying~~ Identifying Essential Patent Claims for which a license may be
1051 required

1052 ~~– For conducting inquiries into the legal validity or scope of Patent Claims~~

- 1053
1054 – Determining the validity, essentiality, or interpretation of Patent Claims;
1055 – Determining whether any licensing terms or conditions provided in connection
1056 with submission of a Letter of Assurance, if any, or in any licensing agreements
1057 are reasonable or non-discriminatory;
1058 – Determining whether an implementation is a Compliant Implementation.

1059
1060 (Taken from the subclause ~~6.3.1 'Public notice'~~ 6.2 Policy of the IEEE-SA Standards
1061 Board ~~Operations Manual~~ Bylaws)

1062
1063 and that no discussions or other communications regarding the

- 1064
1065 – ~~Essentiality of patent claims~~
1066 – ~~Interpretation of patent claims~~
1067 – ~~Validity of patent claims~~

1068
1069 shall occur during IEEE-SA working group standards-development meetings or other
1070 duly authorized IEEE-SA standards-development technical activities.

1071
1072 (Note: This is not a complete list of the items for non-discussion. Adapted from
1073 [5.3.10.2 'Discussion of litigation, patents, and licensing'](#) of the IEEE-SA Standards
1074 Board Operations Manual).