

# 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. 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.

38 **Call for Essential Patents Claims at IEEE Standards Developing Meetings**  
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40 3. *What is a call for patents?*  
41

42 A call for patents is a reminder made by the chair, or the chair's designee, at an IEEE  
43 standards development meeting. The chair or the chair's designee informs the  
44 participants that if any individual believes that Patent Claims might be Essential Patent  
45 Claims, that fact should be made known to the entire working group and duly recorded  
46 in the minutes of the working group meeting.  
47

48 4. *How often should a Working Group chair issue a call for potential Essential Patent*  
49 *Claims?*  
50

51 A Working Group chair or his or her designee shall issue the call at every Working  
52 Group meeting. If the Working Group does not meet face-to-face or telephonically, the  
53 Working Group chair should issue a call to the Working Group via written  
54 communications (electronic or otherwise) on a regular basis. It is strongly  
55 recommended that the IEEE-SA Standards Board Patent Committee-developed slide  
56 set be used. Note that a call for patents shall be made at every standards development  
57 meeting. This includes, but is not limited to, working group and task force meetings.  
58

59 5. *Should a Call for Patents be issued at a Study Group or other meetings that occur*  
60 *before approval of a Project Authorization Request (PAR)?*  
61

62 No. However, it is recommended that the *Patent Slides for pre-PAR Meetings* be used  
63 in these meetings.  
64

65 6. *Our group gathers for several days during a single week. Does the chair have to*  
66 *announce the IEEE-SA Patent Policy every day?*  
67

68 The Working Group chair or his or her designee shall issue the call at every standards-  
69 developing meeting. If a group is meeting for consecutive days and the attendance is  
70 substantially the same for each day of the gathering, the policy only needs to be read  
71 once. If the chair plans not to read or display the policy each day, then in order to  
72 satisfy the requirement to issue a patent call, the chair may either (a) ensure that the  
73 policy or a URL for it has been sent out to all attendees prior to the meeting (and is  
74 available in the registration packet for any on-site registrants), or (b) announce each  
75 day that the meeting is subject to the IEEE-SA Patent Policy as read or displayed on  
76 the first day. Note, though, that this rule applies separately to each group that is  
77 meeting during the week. For example, if a working group holds a meeting during the  
78 same week as its task group and/or task force, the chair of each of those groups shall  
79 read or display the policy at that group's meeting.  
80

81 7. *How does the chair determine that the participation in a group that is meeting for*  
82 *consecutive days is substantially the same?*

83

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

87

88 8. *What if a group meets telephonically?*

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

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

98

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

102

### 103 **Letter of Assurance**

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105 10. *What is a Letter of Assurance?*

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

113

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

115

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

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

122

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?*

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, or technologies specified in, an existing IEEE Standard, amendment, corrigendum, edition, or revision referenced in an Accepted Letter of Assurance in a different IEEE Standard.

15. *How should Working Groups handle Letters of Assurance when re-using portions of a non-IEEE standard in 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 a non-IEEE standard in an IEEE Standard. The Working Group chair should not assume that any patent letters of assurance (or patent declarations) given to the developer of the non-IEEE standard will also apply to the IEEE Standard. In addition, there are specific requirements that must be incorporated into an IEEE Letter of Assurance in order for it to have the possibility of becoming an Accepted Letter of Assurance.

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

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

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

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

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

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

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

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

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

224

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

227

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

232

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

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

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

245

246 As noted in the answer to question 16, a participant only needs to notify the IEEE of  
247 the holder of a potential Essential Patent Claim if such participant is personally aware  
248 that his or her employer has a potential Essential Patent Claim. There is no duty for  
249 that employee (or anyone else in his or her organization) to conduct a patent search,

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

262  
263 23. *Can an individual participate in standards development activities if his or her employer*  
264 *is unwilling to submit a Letter of Assurance once requested or to provide the assurance*  
265 *indicated in the IEEE-SA Patent Policy in a Letter of Assurance?*

266  
267 Yes. As long as the participant complies with the requirement that he or she notify the  
268 IEEE that his or her employer is the holder of a potential Essential Patent Claim if the  
269 participant is personally aware that his or her employer is such a holder, the individual  
270 can continue to participate in standards development activities. See also question 19.

271  
272 24. *Does the IEEE-SA Patent Policy require participants or their employers to make an*  
273 *assurance or submit a Letter of Assurance?*

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

278 25. *Is the IEEE-SA's Patent Policy a disclosure policy?*

279  
280 The IEEE-SA's Patent Policy describes participants' obligations to identify holders of  
281 potentially Essential Patent Claims and the procedures for the IEEE to request Letters  
282 of Assurance.

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

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

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

292  
293 (b) *Does the employer need to talk to every person they have sent to the Working*  
294 *Group?*  
295

296 When the employer receives the request for a Letter of Assurance, the employer can  
297 state its licensing position with respect to any Patent Claims that might be or become  
298 Essential Patent Claims relating to the particular standard referenced in the Letter of  
299 Assurance. In the alternative, the employer can indicate that it is not aware of any  
300 Patent Claims that the employer may own, control, or have the ability to license that  
301 might be or become Essential Patent Claims, but **only if** the employer does a  
302 Reasonable and Good Faith Inquiry to determine the existence of any such Patent  
303 Claims. As described in clause 6.1 of the IEEE-SA Standards Board Bylaws, a  
304 “Reasonable and Good Faith Inquiry” includes, but is not limited to, the employer using  
305 reasonable efforts to identify and contact those individuals who are from, employed by,  
306 or otherwise represent the employer and who are known to the employer to be current  
307 or past participants in the development process of the [Proposed] IEEE Standard  
308 identified in the Letter of Assurance, including, but not limited to, participation in a  
309 Sponsor Ballot or Working Group. If the Submitter did not or does not have any  
310 participants, then a “Reasonable and Good Faith Inquiry” may include, but is not  
311 limited to, the Submitter using reasonable efforts to contact individuals who are from,  
312 employed by, or represent the Submitter **and** who the Submitter believes are most  
313 likely to have knowledge about the technology covered by the [Proposed] IEEE  
314 Standard. As described above, the employer only needs to engage in a Reasonable and  
315 Good Faith Inquiry if it wants to avoid providing an assurance based on its assertion  
316 that it is not aware of any Patent Claims that the employer may own, control, or have  
317 the ability to license that might be or become Essential Patent Claims.  
318

### 319 **Submitting a Letter of Assurance**

320  
321 27. *Do the terms “potential Essential Patent Claims” and “Patent Claims that the Submitter*  
322 *may own, control, or have the ability to license . . .” include claims described in patent*  
323 *applications?*  
324

325 Yes. The definition of Patent Claims includes pending patent applications.  
326

327 28. *At what point should a Letter of Assurance be submitted?*

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

331 29. *Who should submit a Letter of Assurance?*  
332



333 Any person or entity that believes that it holds a potential Essential Patent Claim is  
334 encouraged to submit a Letter of Assurance.

335  
336 The IEEE will request licensing assurance on the IEEE-SA Standards Board approved  
337 Letter of Assurance form from any person upon being notified that an IEEE Standard  
338 may require the use of a potential Essential Patent Claim. Although the IEEE  
339 encourages any person receiving a request for assurance to submit the Letter of  
340 Assurance, the IEEE may not use any coercion in requesting the assurance. This  
341 means the IEEE cannot require that a person submit a Letter of Assurance or provide a  
342 particular assurance with respect to ownership, enforcement, or licensing of an  
343 Essential Patent Claim in order to participate in an IEEE standards development  
344 activity.

345  
346 A Submitter of a Letter of Assurance is required to submit a Letter of Assurance if,  
347 after providing a Letter of Assurance to the IEEE, the Submitter becomes aware of  
348 additional Patent Claim(s) not already covered by an Accepted Letter of Assurance as  
349 further described in the answer to question 31.

350  
351 30. *Who should sign a Letter of Assurance?*

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

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

361  
362 If a Submitter becomes aware of additional Patent Claim(s) that are not already  
363 covered by an Accepted Letter of Assurance, that are owned, controlled, or licensable  
364 by the Submitter, and that may be or become Essential Patent Claim(s) for the same  
365 IEEE Standard, then such Submitter shall submit a Letter of Assurance stating its  
366 position regarding enforcement or licensing of such Patent Claims. For the purposes of  
367 this commitment, the Submitter is deemed to be aware if any of the following  
368 individuals who are from, employed by, or otherwise represent the Submitter have  
369 personal knowledge of additional potential Essential Patent Claims, owned or controlled  
370 by the Submitter, related to a [Proposed] IEEE Standard and not already the subject of  
371 a previously Accepted Letter of Assurance: (a) past or present participants in the  
372 development of the [Proposed] IEEE Standard; or (b) the individual executing the  
373 previously Accepted Letter of Assurance. See also question 29.

374  
375 32. *Can the Letter of Assurance form be modified?*

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

378 33. *What happens when a Letter of Assurance is not accepted?*  
379

380 The Submitter will be informed by the PatCom Administrator that the Letter of  
381 Assurance was not accepted and why it was not accepted.  
382

383 34. *Do attachments submitted with a Letter of Assurance become a part of the Accepted*  
384 *Letter of Assurance?*  
385

386 | Yes. See also questions [5251](#) and 52.  
387

388 35. *Who can enforce an Accepted Letter of Assurance?*  
389

390 Users and implementers may seek to enforce the terms of any Accepted Letter of  
391 Assurance. In certain circumstances and at its sole discretion, the IEEE may also seek  
392 to enforce the terms of an Accepted Letter of Assurance.  
393

### 394 **Affiliates**

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396 36. *Who is an Affiliate?*  
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398 An Affiliate is an entity that directly or indirectly, through one or more intermediaries,  
399 controls the Submitter or Applicant, is controlled by the Submitter or Applicant, or is  
400 under common control with the Submitter or Applicant. For the purposes of this  
401 definition, the term “control” and its derivatives, with respect to for-profit entities,  
402 means the legal, beneficial, or equitable ownership, directly or indirectly, or more than  
403 fifty percent (50%) of the capital stock (or other ownership interest, if not a  
404 corporation) of an entity ordinarily having voting rights. “Control” and its derivatives,  
405 with respect to nonprofit entities, means the power to elect or appoint more than fifty  
406 percent (50%) of the Board of Directors of an entity. See clause 6.1 of the *IEEE-SA*  
407 *Standards Board Bylaws* available at  
408 <http://standards.ieee.org/develop/policies/bylaws/sect6-7.html#6.1>. For example, the  
409 parent corporation of a Submitter, any brother or sister corporation of the Submitter,  
410 and any Submitter subsidiary in which the Submitter owns more than 50% are  
411 considered Affiliates.  
412

413 37. *Does the Letter of Assurance bind the Submitter’s Affiliates?*  
414

415 Yes, other than those Affiliates specifically and permissibly excluded in a Letter of  
416 Assurance. Note that a Submitter cannot exclude Affiliates if the Submitter has  
417 indicated Reciprocal Licensing on an Accepted Letter of Assurance.  
418

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

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

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

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

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

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

445  
446 **Compliant Implementation**

- 447  
448 40. *Why does the definition of Compliant Implementation include the phrase “component,*  
449 *sub-assembly, or end-product”?*

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

- 456  
457 41. *Can a Submitter offer a license to an Essential Patent Claim for use only to conform to*  
458 *the IEEE Standard?*

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

464 in conforming with the IEEE Standard. The Submitter is free to offer a license that is  
465 broader than what the policy requires but must make available at least the license  
466 required under the policy.  
467

468 42. *Who determines whether a product is a Compliant Implementation?*  
469

470 Determination of whether a product is a Compliant Implementation is left to  
471 implementers, their customers, Submitters, and, if necessary, courts.  
472

473 **Reasonable Rates**  
474

475 43. *In discussing Reasonable Rates, what is an example of the value that is excluded in*  
476 *the statement: "...excluding the value, if any, resulting from the inclusion of that*  
477 *Essential Patent Claim's technology in the IEEE Standard"?*  
478

479 The IEEE-SA Patent Policy states that a "Reasonable Rate shall mean appropriate  
480 compensation to the patent holder for the practice of an Essential Patent Claim  
481 excluding the value, if any, resulting from the inclusion of that Essential Patent Claim's  
482 technology in the IEEE Standard." A Reasonable Rate does not include value arising  
483 from the cost or inability of implementers to switch from the Essential Patent Claim's  
484 technology included in the standard.  
485

486 For example, during the development of a standard, a working group considers  
487 alternatives and makes a decision based on many factors. Suppose two and only two  
488 alternative technologies are available, both patented and both offering the same  
489 performance, implementation cost, and all other qualities. Therefore, the value of the  
490 two options is exactly the same, although only one will be selected. Any additional  
491 value imputed to the selected option because of its inclusion in the standard is  
492 excluded.  
493

494 The policy does not mean that an Essential Patent Claim covering an invention created  
495 solely to enhance an IEEE standard can never have value.  
496

497 44. *In discussing Reasonable Rates, what is an example of the "value of the relevant*  
498 *functionality of the smallest saleable Compliant Implementation"?*  
499

500 The smallest saleable Compliant Implementation (e.g., a component, sub-assembly or  
501 end-product) that practices an Essential Patent Claim may have multiple functions.  
502 For example, if a smallest saleable Compliant Implementation implements IEEE  
503 Standard 1284™, RS-232 and USB but the Essential Patent Claim relates only to the  
504 circuit's IEEE 1284 parallel port function, then the "relevant functionality" is only that  
505 IEEE 1284 functionality. The parties should consider the value contributed by the  
506 Essential Patent Claim's claimed invention to that relevant functionality.  
507

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

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

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

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

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

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

551

552 48. *In discussing Reasonable Rates, are other considerations allowable in addition to those*  
553 *listed?*

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

561  
562  
563 **Licensing Terms Provided with Letters of Assurance**

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

568  
569 The purpose of the policy is to facilitate the development of standards that will serve  
570 the interests of industry, government, and the public. Relative costs of implementation  
571 for different proposed technical approaches in comparison with the relative technical  
572 performance increases or decreases of those proposals is a legitimate topic for  
573 discussion and a legitimate basis for decision-making in the standards development  
574 process. The policy attempts to inform participants of this option as a possible way to  
575 increase certainty and precision in their understanding of relative costs. See also the  
576 answer to question 52 below.

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

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

584  
585 51. *Is a Submitter of a Letter of Assurance required to provide a not-to-exceed license fee*  
586 *or rate commitment?*

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

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

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

597 of Assurance does not imply that the IEEE has made any determination of the  
598 foregoing. As stated on the LOA form, to the extent there are inconsistencies between  
599 the Letter of Assurance form and any sample licenses, material licensing terms, or not  
600 to exceed rates provided with the LOA form, the terms of clause 6 of the IEEE-SA  
601 Standards Board Bylaws and the Letter of Assurance form shall control.  
602

- 603 53. *Can a Submitter demand, as a condition of granting a license to an Essential Patent*  
604 *Claim, a license to a prospective licensee's non-essential patent claims?*  
605

606 No. A Submitter cannot, as a condition of granting a license to an Essential Patent  
607 Claim, require a prospective licensee to grant licenses to patent claims that are not  
608 Essential Patent Claims for the referenced IEEE standard. The IEEE-SA Patent Policy,  
609 however, does not prevent parties from mutually and voluntarily agreeing to a cross-  
610 license covering any patents (e.g., a portfolio license).  
611

- 612 54. *Can a Submitter demand a prospective licensee take a license for the Submitter's non-*  
613 *essential patent claims?*  
614

615 No. A Submitter cannot, as a condition to granting a license to an Essential Patent  
616 Claim, require a prospective licensee to take licenses to patent claims that are not  
617 Essential Patent Claims for the referenced IEEE standard. The IEEE-SA Patent Policy,  
618 however, does not prevent parties from mutually and voluntarily agreeing to a cross-  
619 license covering any patents (e.g., a portfolio license).  
620

### 621 **Prohibitive Orders**

622

- 623 55. *The definition of Prohibitive Order says that it includes an "adjudicative directive that*  
624 *limits..." Would that include an order from a court that determines the amount of a*  
625 *reasonable royalty?*  
626

627 No. An order that merely determines a past or future royalty is not a Prohibitive  
628 Order.  
629

- 630 56. *Does the IEEE-SA Patent Policy give a patent holder a right to seek a Prohibitive*  
631 *Order?*  
632

633 No. The policy does not create a right that does not already exist in a specific  
634 jurisdiction. Whether and to what extent a Submitter would have a right to seek a  
635 Prohibitive Order depends on the law of each specific jurisdiction. An Accepted Letter  
636 of Assurance defines the circumstances in which the Submitter has voluntarily agreed  
637 not to seek or seek to enforce a Prohibitive Order, even if otherwise permitted in a  
638 specific jurisdiction.  
639

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

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

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

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

655  
656 59. *What is a first-level appellate review?*

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

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

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

671  
672 61. *What should a Submitter do if it faces an unwilling licensee?*

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

679  
680 **Working Groups and LOAs**

681  
682 62. *Can copies of Accepted Letters of Assurance be handed out at a standards*  
683 *development meeting?*

684



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

690  
691 63. *Can the link to the IEEE web site for an Accepted Letter of Assurance be provided?*  
692

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

695  
696 64. *Can the actual Accepted Letter of Assurance be displayed on a screen?*  
697

698 Yes, but it is not recommended. The Letter of Assurance consists of multiple pages of  
699 often very small type. Therefore, the display is not going to be legible except in the  
700 smallest of rooms. The lack of legibility may lead to impermissible questions or  
701 discussion. Nevertheless, displaying the Accepted Letter of Assurance as it resides on  
702 the IEEE web site is not a violation of the IEEE-SA Patent Policy provided a participant  
703 does not read aloud, present, or answer questions about the displayed Letter of  
704 Assurance.

705  
706 65. *Can a Working Group chair provide participants with a list of requested LOAs?*  
707

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

712  
713 66. *How does a participant know if IEEE has requested a Letter of Assurance from a  
714 particular company?*  
715

716 A participant may ask the Working Group chair for this information. Accepted Letters  
717 of Assurance are available on the IEEE's web site.

718  
719 67. *Can a working group discuss the absence of a requested Letter of Assurance?*  
720

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

724  
725 68. *Can a participant make a presentation or answer questions about the not-to-exceed  
726 license fee or rate, material licensing terms, or sample license agreement?*  
727

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

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

732  
733 69. *What can standards development groups discuss about Letters of Assurance or*  
734 *submitted license terms?*

735  
736 Nothing. Note, however, that Accepted Letters of Assurance may be distributed as  
737 described in question 62. In addition, using one or more not-to-exceed rates as  
738 components in a presentation comparing relative costs is acceptable. Further  
739 information can be found in [Promoting Competition and Innovation: What You Need to](#)  
740 [Know about the IEEE Standards Association's Antitrust and Competition Policy](#).

741  
742 70. *Doesn't it make sense to discuss license terms as part of an overall evaluation of a*  
743 *proposed technology?*

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

751  
752 71. *What do I do if the standards development group launches into a discussion of patent*  
753 *licensing terms?*

754  
755 A participant should object to, and a Working Group chair shall close down, any  
756 discussion that is not permitted under IEEE-SA policies.

757  
758 72. *What should the chair do if a participant wants to modify the terms of an Accepted*  
759 *Letter of Assurance during the meeting?*

760  
761 An Accepted Letter of Assurance cannot be modified, either in the meeting or  
762 elsewhere. Anyone who wishes to submit an additional Letter of Assurance may do so  
763 (although any previous Accepted Letters of Assurance will continue to be available).  
764 The chair should instruct the individual to submit a new Letter of Assurance as  
765 provided in the [IEEE-SA Standards Board Operations Manual](#). See also response to  
766 question 78.

767  
768 73. *What about conversations in the hallway? Can participants discuss the particulars of*  
769 *license terms there?*

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

774 discuss regardless of where they are (such as prices that each of them as competitors  
775 will charge for compliant products). There are other topics that participants shall not  
776 discuss in IEEE-SA forums and shall not discuss in immediately adjacent spaces that  
777 might reasonably lead outside observers to believe it is just a continuation of the  
778 formal meeting. Further information can be found in [Promoting Competition and  
779 Innovation: What You Need to Know about the IEEE Standards Association's Antitrust  
780 and Competition Policy](#). Please also see IEEE-SA Standards Board Operations Manual  
781 5.3.10.

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

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

792  
793 *75. What can be discussed about patents in a standards development group meeting or in  
794 an IEEE-SA email reflector?*

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

804  
805 *76. Can someone submit a different Letter of Assurance for different Essential Patent  
806 Claims within the same standard?*

807  
808 Yes. A Submitter may submit separate Letters of Assurance providing its licensing  
809 positions for different potential Essential Patent Claims.

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

814  
815 Yes, except for any Essential Patent Claims identified in a previously or simultaneously  
816 submitted Accepted Letter of Assurance for the same IEEE Standard. See also  
817 question 83.

818

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

822

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

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

835

### 836 **Reciprocal Licensing**

837

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

840

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

848

849 80. *Can a Submitter select Reciprocal Licensing while excluding specific Essential Patent*  
850 *Claims from its licensing commitment?*

851

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

855

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

857

858 In situations similar to those described in question 80 above, Essential Patent Claims  
859 might not be available for licensing if they are owned by an excluded Affiliate. Since  
860 the Applicant has no ability to exclude any Affiliate or any Essential Patent Claims held  
861 by such Affiliate, the same limitation must be applied to the Submitter.

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**Blanket Letter of Assurance**

82. *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>.

83. *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.

84. *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**

85. *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.

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

905 The updated policy will apply to any LOAs (for any project or standard) submitted on  
906 or after the effective date. See also question 85.

907

### 908 **Essential Patent Claims during Ballot Resolution**

909

910 87. *During ballot resolution, what should be the response to a comment regarding the lack*  
911 *of an LOA?*

912

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

916

917 Furthermore, the IEEE is not responsible for the following, and the comment response  
918 should so state:

919

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

926

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

928

929 and that no discussions or other communications regarding the

930

- 931 – Essentiality of patent claims
- 932 – Interpretation of patent claims
- 933 – Validity of patent claims

934

935 shall occur during IEEE-SA working group standards-development meetings or other  
936 duly authorized IEEE-SA standards-development technical activities.

937

938 (Note: This is not a complete list of the items for non-discussion. Adapted from  
939 [5.3.10.2 Discussion of litigation, patents, and licensing](#) of the IEEE-SA Standards Board  
Operations Manual).