

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 ~~seeking~~ 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?*
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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.
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48 4. *How often should a Working Group chair issue a call for potential Essential Patent
49 Claims?*
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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 ~~be issued~~ 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.
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59 5. *Should a Call for Patents be issued at a Study Group or other ~~pre-PAR~~ meetings that
60 occur before approval of a Project Authorization Request (PAR)?*
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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?*
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68 The Working Group chair or his or her designee shall issue the call at every standards-
69 developing Working Group meeting. If a group is meeting for consecutive days and the
70 attendance is substantially the same for each day of the gathering, the policy only
71 needs to be read once. If the chair plans not to read or display the policy each day,
72 then in order to satisfy the requirement to issue a patent call, the chair ~~may~~ must either
73 (a) ensure that the policy or a URL for it has been sent out to all attendees prior to the
74 meeting (and is available in the registration packet for any on-site registrants), or (b)
75 announce each day that the meeting is subject to the IEEE-SA Patent Policy as read or
76 displayed on the first day. Note, though, that this rule applies separately to each group
77 that is meeting during the week. For example, if a working group holds a meeting
78 during the same week as its task group and/or task force, the chair of each of those
79 groups ~~shall~~ must read or display the policy at ~~the beginning of~~ that group's first day of
80 meeting.

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

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

8. *What if a group meets telephonically?*

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

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

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

Letter of Assurance

10. *What is a Letter of Assurance?*

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

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

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

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. ~~For additional details, see section 6.3.5 of the IEEE-SA Standards Board Operations Manual, Applicability of Letters of Assurance to Amendments, Corrigenda, Editions, or Revisions.~~

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

167 | standard ~~cannot be stated to will~~ also apply to the IEEE Standard. In addition, there are
168 | specific requirements that must be incorporated into an IEEE Letter of Assurance in
169 | order for it to have the possibility of becoming an Accepted ~~IEEE~~ Letter of Assurance.

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

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

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

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

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

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

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

207
208 | 19. *What are examples of the means by which an individual participant can notify the IEEE*
209 | *(or cause the IEEE to be notified) that his or her employer is the holder of a potential*

210 *Essential Patent Claim incorporated in a [Proposed] IEEE Standard? Does the individual*
211 *participant need to identify the Essential Patent Claim specifically?*

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

231
232 20. *Can a response to the call for patents be made via email in advance or subsequent to a*
233 *meeting?*

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

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

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

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

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

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

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

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

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

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

~~No.~~ The IEEE-SA's Patent Policy describes participants' obligations to identify holders of potentially Essential Patent Claims and the procedures for the IEEE to request Letters of Assurance is a policy of assurance as further described in these frequently asked questions, ~~not a policy of disclosure.~~

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

295
296 (a) *Does the employer need to do a patent search?*

297
298 No. The policy expressly states that there is no duty to conduct a patent search; but
299 the employer may do so if it wishes.

300
301 (b) *Does the employer need to talk to every person they have sent to the Working*
302 *Group?*

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

326
327 **Submitting a Letter of Assurance**

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329 27. *Do the terms "potential Essential Patent Claims" and "Patent Claims that the Submitter*
330 *may own, control, or have the ability to license . . ." include claims described in patent*
331 *applications?*

332
333 Yes. The definition of Patent Claims includes pending patent applications.

334

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

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

339 29. *Who should submit a Letter of Assurance?*

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

343

344 The IEEE will request licensing assurance on the IEEE-SA Standards Board approved
345 Letter of Assurance form from any person upon being notified that an IEEE Standard
346 may require the use of a potential Essential Patent Claim. Although the IEEE
347 encourages any person receiving a request for assurance to submit the Letter of
348 Assurance, the IEEE may not use any coercion in requesting the assurance. This
349 means the IEEE cannot require that a person submit a Letter of Assurance or provide a
350 particular assurance with respect to ownership, enforcement, or licensing of an
351 Essential Patent Claim in order to participate in an IEEE standards development
352 activity.

353

354 ~~Additionally, a~~ Submitter of a Letter of Assurance is required to submit a Letter of
355 Assurance if, after providing a Letter of Assurance to the IEEE, the Submitter ~~of the~~
356 ~~Letter of Assurance~~ becomes aware of additional Patent Claim(s) not already covered
357 by an Accepted Letter of Assurance as further described in the answer to question
358 262631. ~~Any person or entity that believes that it holds a potential Essential Patent~~
359 ~~Claim is encouraged to submit a Letter of Assurance, even if not specifically requested~~
360 ~~to do so.~~

361

362 30. *Who should sign a Letter of Assurance?*

363

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

369

370 31. ~~What duty d~~Does a Submitter have to provide an additional assurance if it becomes
371 aware of ~~additional~~ Essential Patent Claims not already covered by an Accepted Letter
372 of Assurance?

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374 If a Submitter becomes aware of additional Patent Claim(s) that are not already
375 covered by an Accepted Letter of Assurance, that are owned, controlled, or licensable
376 by the Submitter, and that may be or become Essential Patent Claim(s) for the same

377 IEEE Standard, then such Submitter shall submit a Letter of Assurance stating its
378 position regarding enforcement or licensing of such Patent Claims. For the purposes of
379 this commitment, the Submitter is deemed to be aware if any of the following
380 individuals who are from, employed by, or otherwise represent the Submitter have
381 personal knowledge of additional potential Essential Patent Claims, owned or controlled
382 by the Submitter, related to a [Proposed] IEEE Standard and not already the subject of
383 a previously Accepted Letter of Assurance: (a) past or present participants in the
384 development of the [Proposed] IEEE Standard; or (b) the individual executing the
385 previously Accepted Letter of Assurance. See also question 29.
386

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

388 | No. In submitting a Letter of Assurance, useage of the ~~IEEE~~ LOA form is mandatory.
389 (Completing the form is not considered a modification.)

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

391
392 The Submitter will be informed by the PatCom Administrator that the Letter of
393 Assurance was not accepted and why it was not accepted.
394

395 | 34. *DoAre attachments submitted with a Letter of Assurance become a part of the*
396 *Accepted Letter of Assurance?*

397
398 | Yes. See also questions 51 and 52.
399

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

401
402 Users and implementers may seek to enforce the terms of any Accepted Letter of
403 Assurance. In certain circumstances and at its sole discretion, the IEEE may also seek
404 to enforce the terms of an Accepted Letter of Assurance.
405

406 **Affiliates**

407
408 36. *Who is an Affiliate?*

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410 An Affiliate is an entity that directly or indirectly, through one or more intermediaries,
411 controls the Submitter or Applicant, is controlled by the Submitter or Applicant, or is
412 under common control with the Submitter or Applicant. For the purposes of this
413 definition, the term "control" and its derivatives, with respect to for-profit entities,
414 means the legal, beneficial, or equitable ownership, directly or indirectly, or more than
415 fifty percent (50%) of the capital stock (or other ownership interest, if not a
416 corporation) of an entity ordinarily having voting rights. "Control" and its derivatives,
417 with respect to nonprofit entities, means the power to elect or appoint more than fifty
418 percent (50%) of the Board of Directors of an entity. See clause 6.1 of the *IEEE-SA*

419 Standards Board Bylaws available at
420 <http://standards.ieee.org/develop/policies/bylaws/sect6-7.html#6.1>. For example, the
421 parent corporation of a Submitter, any brother or sister corporation of the Submitter,
422 and any Submitter subsidiary in which the Submitter owns more than 50% are
423 considered Affiliates.

424
425 37. *Does the Letter of Assurance bind the Submitter's Affiliates?*

426
427 | Yes, other than those Affiliates **specifically and** permissibly excluded in a Letter of
428 Assurance. Note that a Submitter cannot exclude Affiliates if the Submitter has
429 indicated Reciprocal Licensing on an Accepted Letter of Assurance.

430
431 **Application of LOA to Successors of Essential Patent Claims Covered by LOA**

432
433 38. *What does the Submitter of an Accepted Letter of Assurance have to do if the*
434 *Submitter transfers one or more Essential Patent Claims covered by the Letter of*
435 *Assurance to a third party?*

436
437 | The Submitter ~~of an Accepted Letter of Assurance~~ is required to provide notice of **an**
438 **Accepted** Letter of Assurance to any assignee or transferee of any Essential Patent
439 Claims covered by the Letter of Assurance. That notice can be provided by notifying
440 the assignee or transferee that the Essential Patent Claims are subject to an Accepted
441 Letter of Assurance or by a general statement in the transfer or assignment agreement
442 that the Essential Patent Claims being transferred or assigned are subject to any
443 encumbrances that may exist as of the effective date of such agreement.

444
445 In addition, the Submitter shall require that the assignee or transferee agree to
446 provide the same notice to any subsequent assignees or transferees and require its
447 subsequent assignees or transferees to do the same.

448
449 39. *Does the Submitter have any responsibility to ensure that its assignees and*
450 *transferees provide notice of an Accepted Letter of Assurance to subsequent*
451 *transferees?*

452
453 No. As long as the Submitter provides the required notice to its assignees and
454 transferees and requires that its assignees and transferees agree to provide the
455 required notice and bind its assignees and transferees to the same, the Submitter is
456 not responsible for the actions of any downstream assignees and transferees.

457
458 **Compliant Implementation**

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460 40. *Why does the definition of Compliant Implementation include the phrase "component,*
461 *sub-assembly, or end-product"?*

462
463 Compliant Implementation is defined as "...any product (e.g., component, sub-
464 assembly, or end-product) or service that conforms to any mandatory or optional
465 portion of a normative clause of an IEEE Standard" to reflect how IEEE standards are
466 written and how they are implemented in the marketplace. The examples of any
467 product ("component, sub-assembly, or end-product") are included for clarity.
468

469 41. *Can a Submitter offer a license to an Essential Patent Claim for use only to conform to*
470 *the IEEE Standard?*

471
472 Yes. A Submitter's commitment is to make available licenses "to make, have made,
473 use, sell, offer to sell, or import any Compliant Implementation that implements the
474 Essential Patent Claims for use in conforming with the IEEE Standard." Therefore, a
475 Submitter may limit its license to cover only implementations that are created for use
476 in conforming with the IEEE Standard. The Submitter is free to offer a license that is
477 broader than what the policy requires but must make available at least the license
478 required under the policy.
479

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

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482 ~~Third-party organizations conduct conformity/compliance assessments for some IEEE~~
483 ~~Standards. For other IEEE Standards, there may not be any third-party compliance or~~
484 ~~conformance program. Ultimately, d~~Determination of whether a product is a
485 Compliant Implementation~~compliance or conformance~~ is left to implementers, their
486 customers, Submitters, and, if necessary, courts.
487

488 **Reasonable Rates**

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490 43. *In discussing Reasonable Rates, what is an example of the value that is excluded in*
491 *the statement: "...excluding the value, if any, resulting from the inclusion of that*
492 *Essential Patent Claim's technology in the IEEE Standard"?*
493

494 The IEEE-SA Patent Policy states that a "Reasonable Rate shall mean appropriate
495 compensation to the patent holder for the practice of an Essential Patent Claim
496 excluding the value, if any, resulting from the inclusion of that Essential Patent Claim's
497 technology in the IEEE Standard." A Reasonable Rate does not include value arising
498 from the cost or inability of implementers to switch from the Essential Patent Claim's
499 technology included in the standard.
500

501 For example, during the development of a standard, a working group considers
502 alternatives and makes a decision based on many factors. Suppose two and only two
503 alternative technologies are available, both patented and both offering the same
504 performance, implementation cost, and all other qualities. Therefore, the value of the
505 two options is exactly the same, although only one will be selected. Any **incremental**

506 additional value imputed to the selected option because of its inclusion in the standard
507 is excluded.

508
509 The policy does not mean that an Essential Patent Claim covering an invention created
510 solely to enhance an IEEE standard can never have value.

- 511
512 44. *In discussing Reasonable Rates, what is an example of the “value of the relevant*
513 *functionality of the smallest saleable Compliant Implementation”?*

514
515 The smallest saleable Compliant Implementation (e.g., a component~~n integrated~~
516 ~~circuit, a service, a~~ sub-assembly ~~of multiple components into a circuit card or other~~
517 ~~intermediate end-~~product) that practices an Essential Patent Claim may have multiple
518 functions. For example, if a smallest saleable Compliant Implementation~~component~~
519 ~~integrated circuit~~ implements IEEE Standard 802.11~~1284~~[™], 4G-LTE~~RS-232~~[™] and
520 USB~~Bluetooth~~[™] but the Essential Patent Claim relates only to the circuit’s IEEE
521 802.11~~1284~~ parallel port function, then the “relevant functionality” is only that IEEE
522 1284~~802.11~~ functionality. The parties should consider the value contributed by the
523 Essential Patent Claim’s claimed invention to that relevant functionality.

- 524
525 45. *In discussing Reasonable Rates, what is an example of a “smallest saleable Compliant*
526 *Implementation that practices the Essential Patent Claim”?*

527
528 Determining the smallest saleable Compliant Implementation that practices the
529 Essential Patent Claim is a function both of the claims in the patent and of the product
530 or products that implement a standard. For example, assume a component is a
531 Compliant Implementation of IEEE 802.11™ and practices the Essential Patent Claim.
532 That component is then used in an airplane might include an entertainment system
533 that is then installed into an airplane.~~itself includes an IEEE 802.11 compliant chip that~~
534 ~~practices the Essential Patent Claim.~~ In this example, the component~~chip~~ is the
535 smallest saleable Compliant Implementation of IEEE 802.11.

- 536
537 46. *In discussing Reasonable Rates, what is an example of considering “...in light of the*
538 *value contributed by all Essential Patent Claims for the same IEEE Standard practiced*
539 *in that Compliant Implementation”?*

540
541 Many IEEE Standards require the use of multiple Essential Patent Claims to create a
542 Compliant Implementation. If the value of any given Essential Patent Claim is viewed
543 in isolation from other Essential Patent Claims, then the resulting determination of
544 value for that single patent may be inappropriate. For example, suppose a standard
545 requires implementation of 100 Essential Patent Claims of equal value held by 100
546 Submitters. If each Submitter were to be entitled to a royalty of 2% of the
547 implementation’s selling price, then the implementation would never be produced
548 because the total royalties (200% of the implementation’s selling price) would exceed
549 any possible selling price. Therefore, when a Submitter and an implementer are
550 considering whether a rate ~~determining whether a contemplated or offered rate would~~

551 | be a Reasonable Rate, the value of all the Essential Patent Claims should be
552 | considered. In practice, the number and value of the Essential Patent Claims and the
553 | structure of requested royalties won't be as simple as in the example. The values of
554 | the various Essential Patent Claims may vary; some, for example, may have higher
555 | value because they cover important functionality, while others may have a lower value
556 | because they address less important functionality. ~~h~~ Moreover, it may not be
557 | feasible for the parties or a court to identify literally "all" Essential Patent Claims.
558 | However, at some point, the parties in a negotiation (or a court in a dispute) can agree
559 | decide that they have sufficient information to make a determination.

560 |
561 | 47. *In discussing Reasonable Rates, what are some examples of an "explicit or implicit*
562 | *threat of a Prohibitive Order?"*

563 |
564 | A patent holder's request that a court issue a Prohibitive Order against an
565 | implementer, who does not have a license, would be an example of an explicit threat.
566 | A patent holder's ~~remindersuggestion~~ to an implementer that ~~the patent holder could~~
567 | ~~seek~~ a Prohibitive Order might be available if the implementer does not agree to the
568 | requested rate would be an example of an implicit threat.

569 |
570 | 48. *In discussing Reasonable Rates, are other considerations allowable in addition to those*
571 | *listed?*

572 |
573 | Yes. While tThe IEEE-SA Patent Policy recommends considerations for use in determining
574 | a Reasonable Rate, ~~the~~ the policy does not prevent parties, courts, or other adjudicators
575 | from considering using additional factors considerations in negotiating license terms if both
576 | parties believe those additional factors are appropriate. For example, the policy
577 | recommends consideration of license agreements obtained without explicit or implicit
578 | threat of a Prohibitive Order (and where the circumstances and resulting license are
579 | otherwise sufficiently comparable), but the policy does not prevent consideration of any
580 | other licensing agreements.

581 | **Licensing Terms Provided with Letters of Assurance**

582 |
583 |
584 |
585 | 49. *A Submitter of a Letter of Assurance is permitted to provide a not-to-exceed license*
586 | *fee or rate commitment. What is the purpose of permitting a Submitter to provide a*
587 | *not-to-exceed license fee or rate commitment?*

588 |
589 | The purpose of the policy is to facilitate the development of standards that will serve
590 | the interests of industry, government, and the public. Relative costs of implementation
591 | for different proposed technical approaches in comparison with the relative technical
592 | performance increases or decreases of those proposals is a legitimate topic for
593 | discussion and a legitimate basis for decision-making in the standards development
594 | process. The policy attempts to ~~inform~~ provide participants of this option as a possible

595 | ~~way to increase with greater~~ certainty and precision in their understanding of relative
596 | costs. See also the answer to question 5254 below.

597 |
598 | 50. Does the IEEE make a judgment about whether any not-to-exceed rates provided with
599 | the Letter of Assurance are reasonable or non-discriminatory?

600 |
601 | No. The policy provides a definition of a Reasonable Rate and includes several
602 | recommended considerations. However, IEEE takes no position on, and has no
603 | responsibility for determining, the reasonableness of disclosed royalty rates.

604 |
605 | 50-51. Is a Submitter of a Letter of Assurance required to provide a not-to-exceed license
606 | fee or rate commitment?

607 |
608 | No. The IEEE permits, but does not require, the Submitter to provide not-to-exceed
609 | royalty rates or other terms.

610 |
611 | 51-52. Does the IEEE make a judgment about whether any terms provided with the Letter
612 | of Assurance are reasonable or non-discriminatory?

613 |
614 | No. The IEEE is not responsible for determining whether any licensing terms or
615 | conditions provided in connection with submission of a Letter of Assurance, if any, or in
616 | any licensing agreements are reasonable or non-discriminatory. Acceptance of a Letter
617 | of Assurance does not imply that the IEEE has made any determination of the
618 | foregoing. As stated on the LOA form, to the extent there are inconsistencies
619 | between the Letter of Assurance form and any sample licenses, material licensing
620 | terms, or not to exceed rates provided with the LOA form, the terms of clause 6 of the
621 | IEEE-SA Standards Board Bylaws and the Letter of Assurance form shall control.

622 |
623 | 52-53. Can a Submitter demand, as a condition of granting a license to an Essential Patent
624 | Claim, a license to a prospective licensee's non-essential patent claims?

625 |
626 | No. A Submitter cannot, as a condition of granting a license to an Essential Patent
627 | Claim, require a prospective licensee to grant licenses to patent claims that are not
628 | Essential Patent Claims for the referenced IEEE standard. The IEEE-SA Patent Policy,
629 | however, does not prevent parties from mutually and voluntarily agreeing to a cross-
630 | license covering any patents (e.g., a portfolio license).

631 |
632 | 53-54. Can a Submitter demand a prospective licensee take a license for the Submitter's
633 | non-essential patent claims?

634 |
635 | No. A Submitter cannot, as a condition to granting a license to an Essential Patent
636 | Claim, require a prospective licensee to take licenses to patent claims that are not
637 | Essential Patent Claims for the referenced IEEE standard. The IEEE-SA Patent Policy,
638 | however, does not prevent parties from mutually and voluntarily agreeing to a cross-
639 | license covering any patents (e.g., a portfolio license).

~~54. Can a Submitter include a defensive suspension clause in a license agreement to protect the Submitter's access to Essential Patent Claims for the same IEEE Standard?~~

~~A defensive suspension clause is a provision in a patent license agreement permitting the licensor to suspend the license if certain triggering conditions are satisfied. An appropriately drafted defensive suspension clause that protects a Submitter's access to Essential Patent Claims for the same IEEE Standard may be included as a reasonable and non-discriminatory term or condition if it is otherwise consistent with the policy.~~

Prohibitive Orders

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

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

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

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

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

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

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

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

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

686

687 | A first-level appellate review is a proceeding conducted by a court at the next-~~higher~~
688 | judicial level (e.g., a court of appeals or a court of second instance) to review the
689 | ~~decision-adjudication~~ of the next-lower body (e.g., a trial court or a court of first
690 | instance).

691

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

694

695 | A failure to participate in an adjudication occurs, for example, when the prospective
696 | licensee is not subject to the jurisdiction of the court(s) with the power to determine
697 | and award reasonable compensation to the Patent Holder and does not voluntarily
698 | submit to such jurisdiction. Failing to comply ~~with the outcome of an adjudication~~
699 | occurs, for example, when ~~a trial court has made a decision, that decision has been~~
700 | ~~affirmed in whole or in relevant part through a first-level appellate review (or the time~~
701 | ~~for seeking such a review has passed without review being sought), and the~~
702 | prospective licensee refuses to pay past or future royalties as ~~so~~ determined in an
703 | completed adjudication as described in the policy.

704

705 | 61. *What should a Submitter do if it faces an unwilling licensee?*

706

707 | Whether a party is willing or unwilling is a matter of perspective, and the IEEE does
708 | not make any determinations of "willing" or "unwilling". A Submitter's party that who
709 | is dissatisfied with the progress of negotiations is not prevented, by its voluntary
710 | submission of a Letter of Assurance under the IEEE-SA patent policy, from
711 | commencing free to begin litigation, consistent with the policy.

712

713 | **Working Groups and LOAs**

714

715 | 62. *Can copies of Accepted Letters of Assurance be handed out at a standards*
716 | *development meeting?*

717

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

723

724 | 63. *Can the link to the IEEE web site for an Accepted Letter of Assurance be provided?*

725

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

728

729 | 64. *Can the actual Accepted Letter of Assurance be displayed on a screen?*

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Yes, but it is not recommended. The Letter of Assurance consists of multiple 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 may lead to impermissible questions or discussion. Nevertheless, displaying the Accepted Letter of Assurance as it resides on the 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.

65. *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.

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

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

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

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

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

No, except that using one or more not-to-exceed rates as components in a presentation comparing relative costs is acceptable. Further information can be found in [Promoting Competition and Innovation: What You Need to Know about the IEEE Standards Association's Antitrust and Competition Policy](#).

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

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

775

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

778

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

785

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

788

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

791

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

794

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

801

802 73. *What about conversations in the hallway? Can participants discuss the particulars of*
803 *license terms there?*

804

805 The IEEE-SA regulates what goes on in forums that the IEEE-SA provides, such as
806 meeting rooms and email reflectors. The IEEE-SA has no ability to regulate purely
807 private conduct of its participants. There are some topics that participants should not
808 discuss regardless of where they are (such as prices that each of them as competitors
809 will charge for compliant products). There are other topics that participants shall not
810 discuss in IEEE-SA forums and shall not discuss in immediately adjacent spaces that
811 might reasonably lead outside observers to believe it is just a continuation of the
812 formal meeting. Further information can be found in [Promoting Competition and](#)
813 [Innovation: What You Need to Know about the IEEE Standards Association's Antitrust](#)
814 [and Competition Policy](#). Please also see IEEE-SA Standards Board Operations Manual
815 5.3.10.

816

817 74. *If a Letter of Assurance is submitted without the Submitter having exercised the option*
818 *of providing a not-to-exceed license fee or rate commitment or other license terms, is*

819 *it okay for a Working Group participant to request or encourage the Submitter to file*
820 *an additional Letter of Assurance to provide that information?*
821

822 No. Although relative cost comparisons can certainly note the absence of cost
823 information, participants shall not request license fees, terms, or conditions during
824 technical standards-development meetings or in other IEEE-SA forums for technical
825 discussions (such as email reflectors).
826

827 75. *What can be discussed about patents in a standards development group meeting or in*
828 *an IEEE-SA email reflector?*
829

830 You can discuss the technical merits of using the technology included even if it is
831 included within a potential Essential Patent Claim. You can discuss and compare the
832 relative costs of technology claimed in potential Essential Patent Claims. You must not
833 discuss subjects such as how a patent should be licensed, or essentiality, validity, or
834 interpretation of a patent claim. These are not appropriate topics for discussion in a
835 standards development committee. Further information can be found in [What You](#)
836 [Need to Know About IEEE Standards and the Law](#). Please also see IEEE-SA Standards
837 Board Operations Manual 5.3.10.
838

839 76. *Can someone submit a different Letter of Assurance for different Essential Patent*
840 *Claims within the same standard?*
841

842 Yes. A Submitter may submit separate Letters of Assurance providing its licensing
843 positions for different potential Essential Patent Claims.
844

845 77. *If a person submits a Letter of Assurance but doesn't identify a specific Essential*
846 *Patent Claim covered by the Letter of Assurance, are the assurances binding on all of*
847 *the Essential Patent Claims on the same IEEE Standard owned by the Submitter?*
848

849 Yes, except for any Essential Patent Claims identified in a previously or simultaneously
850 submitted Accepted Letter of Assurance for the same IEEE Standard.- See also
851 question 83.
852

853 78. *Can a Submitter change the terms of the assurance it has given after an LOA has been*
854 *accepted by the IEEE? For example, what if the Submitter decided to lower the not-to-*
855 *exceed price it would offer to license for an Essential Patent Claim?*
856

857 A Letter of Assurance is irrevocable once submitted and accepted and shall apply, at a
858 minimum, from the date of the standard's approval to the date of the standard's
859 transfer to inactive status. Thus, a Submitter cannot change the terms of an Accepted
860 Letter of Assurance for a particular Essential Patent Claim once it is accepted.
861 However, over time, a Submitter may provide multiple assurances for a given Essential
862 Patent Claim by submitting multiple Letters of Assurance for such claim, each of which
863 shall be binding on the Submitter. Each potential licensee may choose to invoke the

864 terms of any applicable Letter of Assurance accepted by the IEEE. Thus, the Submitter
865 | desiring to lower the not-to-exceed price that it would offer ~~forte~~ licens~~ing~~ ~~for anits~~
866 Essential Patent Claim can submit an additional Letter of Assurance with the revised
867 not-to-exceed price and each potential licensee may choose to invoke the terms of
868 either Letter of Assurance.

869

870 **Reciprocal Licensing**

871

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

874

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

882

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

885

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

889

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

891

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

896

897 **Blanket Letter of Assurance**

898

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

900

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

907

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

910
911 If a Submitter has signed and submitted a Letter of Assurance specifically identifying
912 an Essential Patent Claim before or concurrently with signing and submitting a Blanket
913 Letter of Assurance ~~where Reciprocal Licensing has not been selected~~, the Blanket
914 Letter of Assurance cannot be invoked as to the specified Patent Claim. ~~If any of the~~
915 ~~Submitter's Accepted LOAs on a standard has selected Reciprocal Licensing, then an~~
916 ~~Applicant can invoke the terms of Reciprocal Licensing.~~

917
918 84. *Does a Blanket Letter of Assurance apply to Essential Patent Claims that my company*
919 *acquires after submitting the Letter of Assurance?*

920
921 ~~For LOAs that did not select Reciprocal Licensing~~ Yes, ~~a Blanket Letter of Assurance~~
922 ~~does apply~~ unless the acquired entity or the prior holder of the acquired Essential
923 Patent Claim has submitted a Letter of Assurance before the acquisition. Any Blanket
924 Letter of Assurance, ~~where Reciprocal Licensing was not selected and~~ submitted by the
925 acquired entity or the prior holder of the acquired Essential Patent Claim before the
926 acquisition, shall continue to apply to acquired Essential Patent Claims covered by such
927 assurance (but not to the acquirer's Essential Patent Claims). An acquiring party can
928 ask a seller of an acquired Essential Patent Claim or an acquired entity to submit
929 additional Letters of Assurance before closing of the acquisition. See IEEE-SA
930 Standards Board Operations Manual clause 6.3.4.

931
932 ~~If any Accepted LOAs on a standard have selected Reciprocal Licensing, then an~~
933 ~~Applicant can invoke the terms of Reciprocal Licensing.~~

934 **Implementation of updated IEEE-SA Patent Policy**

935
936
937 85. *What is the effective date of the updated IEEE-SA Patent Policy?*

938
939 The effective date of the updated IEEE-SA Patent Policy set forth in the [IEEE-SA](#)
940 [Standards Board Bylaws](#) and [IEEE-SA Standards Board Operations Manual](#) is 1 January
941 2015.

942
943 86. *Will the updated IEEE-SA Patent Policy apply to existing standards development*
944 *projects currently underway as well as new standards development projects?*

945
946 ~~Yes.~~ The updated policy will apply to any LOAs (for any project or standard) submitted
947 on or after the effective date. See also question 85.

948

949 **Essential Patent Claims during Ballot Resolution**

950
951 87. *During ballot resolution, what should be the response to a comment regarding the lack*
952 *of an LOA?*

953
954 If an LOA has not been requested from the indicated holder of a potential Essential
955 Patent Claim, the process for requesting an LOA should be followed (See [6.3.2 Call for](#)
956 *patents* in the [IEEE-SA Standards Board Operations Manual](#)).

957
958 Further more, the ~~comment response should state that the~~ IEEE is not responsible for
959 the following, and the comment response should so state:

- 960 – Identifying Essential Patent Claims for which a license may be required
- 961 – Determining the validity, essentiality, or interpretation of Patent Claims;
- 962 – Determining whether any licensing terms or conditions provided in connection
- 963 with submission of a Letter of Assurance, if any, or in any licensing agreements
- 964 are reasonable or non-discriminatory;
- 965 – Determining whether an implementation is a Compliant Implementation.

966
967 (Taken from the subclause 6.2 ~~Public notice~~Policy of the IEEE-SA Standards Board
968 Bylaws)

969
970 and that no discussions or other communications regarding the

- 971 – Essentiality of patent claims
- 972 – Interpretation of patent claims
- 973 – Validity of patent claims

974
975
976 shall occur during IEEE-SA working group standards-development meetings or other
977 duly authorized IEEE-SA standards-development technical activities.

978
979 (Note: This is not a complete list of the items for non-discussion. Adapted from
980 [5.3.10.2 Discussion of litigation, patents, and licensing](#) of the IEEE-SA Standards Board
981 Operations Manual).