

Document **Companion** Clause/Question P 1 L 5 # 104
 Commenter John, D'Ambrosia Affiliation Force10 Networks

Comment Type **E** Comment Status **R**

As a technical document, shouldnt this be written in the third party?

SuggestedRemedy

Rewrite completely in 3rd party throughout entire document

Response Response Status **C**

REJECT.

This is not a technical document but instead IS USED to guide a person through the standards process [<http://standards.ieee.org/guides/companion/part1.html#intro>]. Further, we have only been chartered with revising that part of the companion that relates to the patent policy. It is beyond the scope of our work to change the entire document.

Document **Companion** Clause/Question P 1 L 6 # 93
 Commenter Townsend, Rick Affiliation Alcatel-Lucent

Comment Type **S** Comment Status **A**

The text could be interpreted to read that material could not be included in a draft until an LoA was filed.

SuggestedRemedy

Add to the first sentence: "prior to the approval of the standard."

Response Response Status **C**

ACCEPT.

We will add '.. prior to the approval of the standard.'

Document **Companion** Clause/Question **Blank** P 1 L 8 # 4
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **A**

What does "deal with patent issues" mean?

SuggestedRemedy

Line 8 - after "issues" delete "and" and add "which the Working Group/IEEE has received notice of by requesting to obtain"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Delete the text '.. to deal with any patent issues and ..'.

Document **Companion** Clause/Question P 1 L 13 # 140
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated

Comment Type **S** Comment Status **A**

Says "best way to do this is use the slide set provided by the PatCom".
 Need to add sentence that other ways are permissible as long as same content is covered

SuggestedRemedy

Says "best way to do this is use the slide set provided by the PatCom".
 Need to add sentence that other ways are permissible as long as same content is covered

Response Response Status **C**

ACCEPT.

On line 14, after the text '.. provided by the Patent Committee (PatCom).' add the text 'Other approaches maybe acceptable but the same content has to be covered.'.

Document **Companion** Clause/Question **Blank** P 1 L 14 # 5
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **A**

FAQs say IEEE does not have a "disclosure" policy. Any patent or application identifying details are optional and not specified by policy. Also, the Companion is a WG instruction/process guide information and how to handle process, but not policy or implemented policy guide for participants (which is provided in Tutorial/Guidelines).

Refinements suggested for clarification with OpsMan procedures.

What is the IEEE Standards department?

SuggestedRemedy

Line 14-16 - delete "Participants/Members should....aware".
 Line 16-18 - delete "If the...the chair should" and replace with "If an individual participant informs the working group of a holder or applicant of potential essential patents in respect of the [Proposed] IEEE standard, the IEEE Standards call for patent process requires the chair to..."
 Line 20-21 - delete "as required....policy."
 Line 21-24 - delete "If the...form." and replace with "The chair should ask such patent holder to complete and submit a letter of assurance and place it on file with the IEEE Standards Department. Any such letter of assurance provided may include patent or patent application details or disclose the existence of unpublished patent applications, if and when possible, at the option of the submitter. Such information will be posted by the IEEE SA Patent Administrator to the IEEE SA patent website."

Response Response Status **C**

ACCEPT IN PRINCIPLE.

ACTION ITEM - Claire to provide new text.

There will be no mention of disclosure in the Standards Companion as these changes remove the word 'disclose' from line 15 - it is shown in strikeout. This text matches the related text in the FAQs in that respect.

It is not unreasonable to tell the Chair and Vice Chair what is expected of participants. In addition the standards companion is available publicly and is a useful document for participants to inform themselves of the process.

Line 14 - 16 REJECT.
 This text matches the description of the Call for Patents defined in the IEEE-SA Standards Board Operations Manual.

Line 16 - 18 ACCEPT IN PRINCIPLE.
 Will change 'If the working group does find out about ..' to read 'If the working group learns of ..'.

Line 20-21 REJECT.

This is what a request for an LOA is. Note that there is a sidebar to this part of the companion that states 'PatCom strongly recommends that you use the sample patent letter of assurance request letter ..'.

Line 22 - ACCEPT IN PRINCIPLE.

Will add the text 'Such information will be posted by the IEEE SA Patent Administrator to the IEEE SA patent website.' In addition will change '.. Department ..' to read '.. Association..' on line 22 as well as throughout.

Document **Companion** Clause/Question P 1 L 16 # 106
 Commenter John, D'Ambrosia Affiliation Force10 Networks

Comment Type **E** Comment Status **A**

wording is awkward
 Participants should identify any holders of potential essential patent claims that they are aware of when called for at the meeting or at any other time they become aware.

SuggestedRemedy

reword
 Participants should identify any holders of potential essential patent claims that they are aware of when called for at the meeting or at any time when becoming aware of a potential essential patent claim.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

See comment #5.

Document **Companion** Clause/Question P 1 L 20 # 145
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated

Comment Type **E** Comment Status **A**

Letter of assurance needs to be capitalized

SuggestedRemedy

Letter of assurance needs to be capitalized

Response Response Status **C**

ACCEPT IN PRINCIPLE.

See comment #5.

Document **Companion** Clause/Question P 1 L 21 # 110
 Commenter Bob, Grow Affiliation Intel

Comment Type **S** Comment Status **A**

Continued confusion on the Chair receiving the LOA.

SuggestedRemedy

Need it clear:

1. What happens if an LOA is delivered to the WG Chair.
2. If an LOA must be submitted to both the WG Chair and Staff to be valid
3. If either is acceptable, required notifications of staff to WG Chair and WG Chair to staff, and either to LOA submitter if appropriate.
4. Make all documents consistent on this point.

Response Response Status **C**

ACCEPT.

1. The WG Chair should supply a copy of the LOA to the PatCom Administrator if it appears a copy hasn't already been sent to the PatCom Administrator.
2. No. A LOA only has to be sent to PatCom Administrator. See definition of Accepted LoA in subclause 6.1 of the IEEE-SASB Bylaws.
3. The PatCom Administrator will inform the WG Chair when a LOA is received related to that WG.

Will change to read '.. the chair should contact an appropriate authority for the patent holder to request that the patent holder submit a letter of assurance to the PatCom Administrator as required by the IEEE Standards patent policy.'

Document **Companion** Clause/Question P 1 L 22 # 81
 Commenter Sirtori, Michael Affiliation Intel

Comment Type **S** Comment Status **R**

This comment is to page 1 of the Standards Companion.

Use of the word "should" in lines 22 and 24 are misleading. There is no duty to include patent numbers or identifying application information. Submitters may include that information, and IEEE may encourage them to include it, but to say that they should include it is ambiguous and can easily lead to an incorrect interpretation.

SuggestedRemedy

Change "should" to "may" in each of lines 22 and 24. Alternatively, state that "IEEE encourages submitters to disclose patent numbers and claim information, and analogous information with respect to patent applications, if and when possible."

Response Response Status **C**

REJECT.

You have suggested we encourage submitters to provide the patent numbers and claim information which is accomplished through the use of the word 'should'. Specifically, the IEEE Style Manual defines the word "should" to mean that a course of action is preferred but not necessarily required. If this were a duty, we would have used the word "shall" which we did not.

Document **Companion** Clause/Question **Blank** P 1 L 26 # 6
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **R**

Refinements are suggested as below

SuggestedRemedy

Line 26 - replace "A letter of assurance" with "An assurance stating a license will be made available on reasonable and non-discriminatory terms..."

Line 27 - after "If provided" add "with the assurance"

Response Response Status **C**

REJECT.

This is a non-normative guidance document and this level of specificity is not required.

Document **Companion** Clause/Question P 1 L 41 # 155
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type S Comment Status R
 1st bullet incomplete. What if the SDO has not identified any. What is SDO has not/does not follow its own policy? What course of action is necessary?
 SuggestedRemedy
 add clarification to explain scenario
 Response Response Status C
 REJECT.
 The normal requirements to do a call for patents covers all content in the draft, including any content that may have been incorporated by reference.
 This is an additional requirement, over an above the call for patents, therefore no additional action as suggested is necessary.

Document **Companion** Clause/Question P 2 L 8 # 41
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type S Comment Status R
 Instruction is not consistent with 6.3.5 OpsMan and may leave IEEE without requested assurances. A compliant implementation of the standard incorporating a referenced standard by definition conforms to the referenced standard. An existing essential patent to the referenced standard should remain essential to that subpart when incorporated as unmodified and as a whole. But an assurance of licensing essential patents to practice the referenced standard sub-part applies only to the compliant implementation of that referenced standard part. That LOA and willingness to license essential patent claims may change and does not necessarily extend to implementations compliant with the whole standard incorporating the referenced standard.
 SuggestedRemedy
 Line 8-11 - Delete and replace with WG Chair instruction to initiate LOAs in case specified in 6.3.5 OpsMan.
 Response Response Status C
 REJECT
 See comment #44.

Document **Companion** Clause/Question P 2 L 11 # 107
 Commenter John, D'Ambrosia Affiliation Force10 Networks
 Comment Type E Comment Status A
 Use of "LoA"
 SuggestedRemedy
 stated as "LOA" everywhere else i saw
 Response Response Status C
 ACCEPT.
 Change all instances of 'LoA' to read 'LOA'.

Document **Companion** Clause/Question P 2 L 11 # 146
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type E Comment Status A
 LOA needs to be spelled out
 SuggestedRemedy
 Change LOAs to Letter of Assurances
 Response Response Status C
 ACCEPT IN PRINCIPLE.
 Will add a reference to the definitions in subclause 6.1 of the IEEE-SASB Bylaws. Since these definitions define 'LOA' this suggested change does not need to be made.

Document **Companion** Clause/Question P 2 L 14 # 94
 Commenter Townsend, Rick Affiliation Alcatel-Lucent
 Comment Type S Comment Status A
 The admonition to refrain from discussing licensing fees is an imperative.
 SuggestedRemedy
 Change "should" to "shall".
 Response Response Status C
 ACCEPT.

Document **Companion** Clause/Question P 2 L 14 # 82

Commenter Sirtori, Michael Affiliation Intel

Comment Type E Comment Status A

This comment is to page 2 of the Standards Companion.

Suggest changing "the patent" to "any patent" to make it clear it is not limited to any single patent.

SuggestedRemedy

Change "the patent" to "any patent".

Response Response Status C

ACCEPT.

Document **Companion** Clause/Question P 4 L 7 # 111

Commenter Bob, Grow Affiliation Intel

Comment Type S Comment Status A

This confuses what is part of the standard. I believe the text used in not now added to the standard, but rather included in the front matter attached to the standard.

SuggestedRemedy

included in the standard's front matter.

Response Response Status C

ACCEPT IN PRINCIPLE.

Since, as noted in the comment, the frontmatter is not part of the standard, change '.. included within the standard:' to read '.. included in the frontmatter of the standard:'.

Document **Companion** Clause/Question P 4 L 44 # 112

Commenter Bob, Grow Affiliation Intel

Comment Type E Comment Status A

Wouldn't it be better to use the generic address rather than Dave's personal contact info?

SuggestedRemedy

Use generic contact for PatCom administrator to improve survivability of advertised contact information.

Response Response Status C

ACCEPT.

Change '.. the Secretary of the IEEE-SA Standards Board Patent Committee [David Ringle, d.ringle@ieee.org, ..' to read '.. the IEEE-SA Standards Board Patent Committee Administrator [patcom@ieee.org, ..'.

Document **FAQs** Clause/Question **Global** P L # 7

Commenter Lee, Michelle Affiliation Nortel

Comment Type S Comment Status A

Generally, the FAQs appear to be too complex and detailed for FAQs to assist WGs in standards development in IEEE. At times, questions and responses go beyond development inside IEEE SA and policy/procedures as written, and appear confusing and inconsistent with other materials. FAQs purpose should explain but should not inject new policy, practice or provide interpretations.

SuggestedRemedy

Suggest general editing process to review to limit questions to process implementing policy in development, ask whether question is necessary for development process and whether response is entirely consistent with policy/procedures and other WG/Guide materials.

Response Response Status C

ACCEPT IN PRINCIPLE.

We agree that the FAQ should not inject new policy. Please note that the FAQ have been restructured in response to comment #162.

Document **FAQs** Clause/Question **Global** P L # **162**
 Commenter Law, David Affiliation 3Com
 Comment Type **S** Comment Status **A**
 The FAQ should be restructured so that it is a replacement for the current 'Understanding Patent Issues During IEEE Standards Development [Guide]' found at the URL -[
<http://standards.ieee.org/board/pat/guide.html>].

SuggestedRemedy

The FAQs should be incorporated into the current 'Understanding Patent Issues During IEEE Standards Development [Guide]' web page as follows:

[1] The title and first two paragraphs, including the links, of web page should remain unchanged.

[2] 'What is an essential patent?' should be changed to read 'What is an Essential Patent Claim?' and the answer replaced with the answer to question 5 in the current FAQ draft.

[3] The heading 'Call for essential patents by the Working Group Chair' should be changed to read 'Call for essential patents claims at IEEE standards developing meetings'.

[4] The heading 'What exactly is a call for essential patents?' should be changed to read 'What exactly is a call for essential patent claims?'.

[5] The first paragraph under the heading should be changed to read:

'It's a reminder, made by the chair, or his or her designee, of an IEEE standards developing meeting. The chair informs the participants in the meeting that if any individual believes that a patent or patent application might be essential to the implementation of the standard, that fact should be made known to the entire working group.'

[6] The following paragraph should be replaced with the answer to current FAQ draft question 7 modified to read as follows:'The Chair, or his or her designee, of an IEEE Standards Development group shall issue the call at every meeting. If the group does not meet face to face or telephonically, the Chair should issue a call via e-mail or letter on a regular basis. It is strongly recommended that the IEEE Patent Committee-developed slide set be used. These slides are available from <http://standards.ieee.org/board/pat/pat-slideset.ppt>. Note a call for patents has to be made at every standards developing meeting. This includes, but is not limited to, working group, task force and study group meetings.'

[7] Consider updating 'So what can you discuss about patents at a standards-development meeting?'

[8] Delete the questions under 'Letters of Assurance'. See below for replacements.

[9] Consider updating 'Steps in the standards development process that involve patents'.

[10] The remaining question in the FAQ should be grouped under the following headings as listed:

Under the heading 'Information for a Submitter' include questions 8, 9, 14, 23, 25, 27, 28, 29, 30, 31, 32, 33, 37, 38, 39, 40, 41, 42, 43
 Under the heading 'Participant duties' include questions 11, 12, 13, 15, 16, 18, 21, 26
 Under the heading 'Working Group Chair duties' include 7
 Under the heading 'Policy' include questions 17, 19, 34, 35, 36
 Under the heading 'Implementation of new policy' include 1, 2, 3.

Response**Response Status C**

ACCEPT IN PRINCIPLE.

See new draft.

Document **FAQs** Clause/Question **3** P **1** L **17** # **8**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **R**

Answer to Q3 - Not addressed in policy and there are no agreed transition procedures addressing issues like this. Response is inconsistent with Q2 that existing LOAs are honoured. Submitting update information related to the same pre-May 1 LOA is not a new assurance made after May 1. Pre-May 1 LOAs are also subject to the policy at the relevant time (ie. preMay 1). It is the same LOA under the same pre May 1 policy, simply with new information that PatCom practice will no longer reject after May 1. A new LOA is not required or to be requested to be submitted (per Q2). Accordingly, a new LOA form is not required since the existing LOA covers the same standard. There is also no optional "right" of licensee to choose between an LOA pre created by, agreed to or based in the present documents or at law. The new policy is not retroactive and according to IEEE applies to new LOAs made post May 1.

SuggestedRemedy

Line 17-20 - delete and answer instead: "Yes. Letters of Assurance are irrevocable once submitted and accepted, and assurances submitted before May 1 are honoured. Optional information may be provided at any time in the form of a letter attachment provided such new information is further to update the same existing pre-May 1 LOA for the identified IEEE Standard and will not be rejected by the IEEE SA Administrator"

Response**Response Status C**

REJECT.

We are not making anything retroactive, an existing LOA honored. The submitter of an existing LOA can however voluntarily, at its sole option, submit an additional LOA that updates the information provided on the existing LOA. The old policy did no preclude multiple LOAs, it was however silent on how to deal with them. The new policy now makes how to deal with them clear.

Document **FAQs** Clause/Question P 1 L 25 # 147
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type **E** Comment Status **A**
 letter of assurance in lower case
 SuggestedRemedy
 Change to Letter of Assurance
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 See comment #146.

Document **FAQs** Clause/Question 4 P 1 L 25 # 9
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 Use words from the definition for the sake of accurate consistency.
 SuggestedRemedy
 Line 25 - delete "intention" and replace with "position"
 Response Response Status **C**
 ACCEPT.

Document **FAQs** Clause/Question 5 P 1 L 32 # 10
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **R**
 Please be clear this is IEEE policy definition; it may not be judged to be a legal one.

The FAQs should explain Enabling Technology and the reason for its exclusion.

SuggestedRemedy

Line 32 - add "IEEE policy defines Essential Patent Claim to..."

Add new Question - "If an Enabling Technology is a normative portion specified in an IEEE Standard and required for the standard-compliant implementation, why are essential patents covering that Enabling Technology standard excluded from the definition of Essential Patent Claims and IEEE Patent Policy?"

Please explain in the FAQs what is an Enabling Technology, the reason for excluding Enabling Technology from definition and policy, that Essential Patent Claims do not exclude either (a) technologies covered by essential patent claims that may be necessary for functional use of a compliant product/portion (functional aspects or functionally necessary for use of a compliant implementation) even if not specified in the standard or (b) technologies explicitly set forth in the IEEE standard.

Response Response Status **C**
 REJECT.

The definition of Enabling Technology is provided in subclause 6.1 of the IEEE-SASB Bylaws which states "Enabling Technology" shall mean any technology that may be necessary to make or use any product or portion thereof that complies with the [Proposed] IEEE Standard but is neither explicitly required by nor expressly set forth in the [Proposed] IEEE Standard ..'.

As can be seen above, technology that is explicitly required or expressly set forth in the [Proposed] IEEE Standard cannot be classified as enabling technology. Including technology in the normative portion of a standard is explicitly requiring it.

The question posed as a suggested remedy therefore contains a statement that is not correct because it asks about Enabling Technology in a normative portion which by definition cannot be Enabling Technology.

Document **FAQs** Clause/Question P 2 L 14 # 148

Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated

Comment Type **E** Comment Status **A**

Call for patents has to be made.
Make terminology consistent with other pieces.

SuggestedRemedy

Call for patents must be madeà

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Will change 'Note a call for patents has to be made at ..' to read 'Note that a call for patents shall be made at ..'. In addition add the missing full stop to the end of the answer to Q7 on line 16 above.

Document **FAQs** Clause/Question 8 P 2 L 18 # 11

Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **R**

Suggest simplifying answer according to policy and consider breaking down question to sub-question about IEEE handling requests for assurance and prohibiting coercive requests.

SuggestedRemedy

Line 18-31 - delete and replace with Answer: "When IEEE is notified that a [Proposed] IEEE Standard may require the use of a potential Essential Patent Claim, IEEE will request a licensing assurance on the approved LOA form from the patent holder or applicant.

The IEEE-SA shall request this assurance without coercion. Assurances are not a required condition for individuals or firms to participate, or to allow the Working Group to consider the inclusion of the participant's essential patented technology, in the development of the relevant IEEE Standard. This means the IEEE, including its Work Groups, in its request for assurance cannot require or coerce a participant to provide a licensing assurance or to submit a Letter of Assurance position.

If that patent holder or applicant has participants submitting proposals in the development of the [Proposed] IEEE Standard and does provide an assurance, it should do so as soon as reasonably feasible in the standards development process.

IEEE will also make requests of others when notified, but also cannot guarantee assurances for the IEEE Standard will be provided by non-participants.

Response Response Status **C**

REJECT.

The existing text is consistent with policy. In addition paragraphs 3 and 4 from the suggested remedy are incorrect. Nothing in the policy is predicated on the fact that a patent holder or applicant has participants submitting proposals in the development of the [proposed] IEEE Standard. Further the IEEE-SA cannot guarantee assurances from anybody, whether they are participants or non-participants and therefore we don't want to make a statement that the IEEE cannot guarantee assurances from only non-participants.

Document	FAQs	Clause/Question	9	P	2	L	33	#	12
Commenter	Lee, Michelle			Affiliation					Nortel
Comment Type	S			Comment Status					A
Suggest simplifying the legalese. A person may not have authority/power of attorney to bind the submitter "and" each affiliate, but may be authorized to enter assurances for the corporate entity that holds the applicable essential patents which should be enough.									
SuggestedRemedy									
Line 33-35 - Delete and replace with "Only a person who is authorized to sign and bind the organization and/or its affiliates to the assurance should sign the Letter of Assurance."									
Response				Response Status					C
ACCEPT IN PRINCIPLE.									
Will be changed to read 'Only a person who is authorized to sign and bind the Submitter and/or its covered Affiliates to the assurance shall sign the Letter of Assurance.'									

Document	FAQs	Clause/Question	10	P	3	L	6	#	13
Commenter	Lee, Michelle	Affiliation Nortel							
Comment Type	S	Comment Status	D						
"At any time and by any means" should be clear to be part of process and proper information, not information notified outside process. WG Chair request instructions/directions are only in 6.3.2 OpsMan Call for Patents. IEEE also has the general responsibility under policy to make requests when IEEE is notified, not WG Chair.									
SuggestedRemedy									
Line 4 - Add "When IEEE is notified that a [Proposed] IEEE Standard may require the use of a potential Essential Patent Claim, IEEE will send a request for a Letter of Assurance. The IEEE will do so by [clarify request process]".									
Line 6 - delete "at any time and by any means" and replace with "by an individual of a Working Group of the fact that individual is personally aware..."									
Proposed Response	Response Status		W						
PROPOSED REJECT.									
Paragraph 2 of subclause 6.3.2 of the IEEE-SASB Operations manual states that 'The chair or the chair's delegate shall ask any patent holder or patent applicant of a Patent Claim that might be or become an Essential Patent Claim to'. There is no restriction in this subclause as to how the Working Group Chair becomes aware of these potential Essential Patent Claims, hence 'at any time and by any means' is correct.									
In respect to the process, the Standards Companion gives an example letter that a Chair can use to request a LOA.									

Document	FAQs	Clause/Question 11	P	3	L	9	#	14
Commenter	Lee, Michelle		Affiliation Nortel					
Comment Type	S		Comment Status A					
Who is a "recipient"? "any other recipients" are not part of WG meetings or the policy which applies only to individuals participating.								
Use language precisely from Call for Patents (6.3.2 OpsMan) and consistently.								
Question and response about participants are "uncertain about essentiality" is improper and IEEE should not ask or mislead participants to make statements against employers interests or make misleading IPR statements. If the individual is uncertain whether patent claim is essential or potential essential, he/she is uncertain and doesn't have awareness of potential Essential Patent Claims. To have personal awareness of potential Essential Patent Claim is not a possibility the individual may or may not know. Also, the policy does not say to notify IEEE of the "possibility" of potential essential patents or to notify IEEE even if uncertain.								
SuggestedRemedy								
Line 12 - at beginning, add "Individual..."								
Line 12 - delete "and any other recipients"								
Line 14 - delete "or other recipient"								
Line 17-19 - delete "If such...Claim" and replace with "The individual should inform IEEE their employer may hold potential Essential Patent Claims only if the individual is personally aware of a particular patent or application their employer holds that may be or become Essential Patent Claims if adopted."								
Response		Response Status C						
ACCEPT IN PRINCIPLE.								
Line 12 - ACCEPT.								
Line 12 - ACCEPT.								
Line 14 - ACCEPT.								
Line 17-19 - ACCEPT IN PRINCIPLE.								
The language you have quoted is from subclause 6.3.2 of the IEEE-SA Operations Manual 'Call for patents' and only relates to the obligation of what a participant has to do during the call for patents - and in that case it is only a 'should' inform the Working Group. There is however a 'shall' requirement to inform the IEEE of the name of the holder in the last paragraph of subclause 6.2 of the IEEE-SASB Bylaws - it is that requirement we are reflecting here. We will however match these lines to the contents of the last paragraph of subclause 6.2 of the IEEE-SASB Bylaws. [1] On line 16 add an additional condition (3) that no LoA is already on file. [2] On line 17 the text '.. still must ..' will be changed to read '.. still shall ..' to match the shall statement found in subclause 6.2 of the IEEE-SASB Bylaws.								

Document **FAQs** Clause/Question **12** P **3** L **23** # **15**
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **A**

An assurance is not a disclosure and submitting an LOA is not required by the individual or his/her employer to fulfill an individual participant's holder notification under the policy. FAQ can provide examples to assist individuals, but manner of compliance is not set or required by policy and IEEE should not instruct employees of member firms how to comply. The policy only asks individuals to inform not how or criteria/how to fulfill.

Response also needs some clean-up.

SuggestedRemedy

Line 23-33 - should only set out who to inform at IEEE to facilitate informing, not manner of compliance
 Line 23 - add "An individual..."
 Line 23 - after "employer", insert "or representing firm may be...", delete "is"
 Line 25 - delete "Letter of Assurance" and replace with "notice statement"
 Line 25-28 - delete sentences from "or otherwise notify the IEEE...Claim"
 Line 29 - delete text from "submit...otherwise"
 Line 29 - after "...the IEEE," add "but the individual personally knows of a specific patent or application having potential Essential Patent Claims that his/her employer holds,"
 Line 30 - replace "is" with "may be"
 Line 33 - delete "of...Claim" and after "identity of the" insert "patent, application or particular"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

We believe it is reasonable for the FAQ to give an example way of complying.

Line 25-33 - REJECT.

The duty is not discharged until a LOA is submitted or the IEEE has been notified.

Line 29 - REJECT.

A Letter of Assurance is one way of providing notice.

Line 29 - REJECT.

If you have a duty to submit a LOA it is not discharged until a LOA is received or the IEEE is notified.

Line 30 - ACCEPT.

Line 33 - ACCEPT.

Document **FAQs** Clause/Question **13** P **3** L **34** # **16**
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **A**

Same as Comment#18 above. Many employers do not want (and instruct employees) not to make discoverable statements against interest. Policy does not have same awareness for third party holders and is not based on "belief". 'Expectations' should not be set out in the FAQs outside/beyond the policy. Question is also misleading since there is no obligation.

IEEE should also encourage participants to provide credible information, if they do so, not needless fishing expeditions of third party requests that can unnecessarily complicate process.

SuggestedRemedy

Line 34/35 - delete Q "What...standard" and replace with "Do participants have to notify IEEE of third party patent holders?"
 Line 39 - add "Individual participants."; delete "and any other recipients"
 Line 39 - after "call for patents", delete "should...party" and replace with "are not obligated to do so but should notify the IEEE of the name of the third party if the individual participant has credible and specific information that party may be a patent holder in respect of the [Proposed] IEEE Standard.".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Line 34/35 - ACCEPT.

Line 39 - ACCEPT.

Line 39 - REJECT.

The Patent Policy doesn't include any requirements in relation to 'credible and specific information' and to include this would be adding policy through the FAQ. See also comment #83.

Document **FAQs** Clause/Question P 3 L 39 # 83
 Commenter Sirtori, Michael Affiliation Intel

Comment Type **S** Comment Status **A**

This is a comment about the PatCom FAQ, specifically about the answer to question 13.

This description of the duty to disclose third party patents says that participants SHOULD disclose. This is confusing and misleading. I actually think it is a flaw with the original drafting of the Bylaws.

I understood the intent of the PatCom at the time the Bylaws were adopted to be that participants should have no duty to report patents owned by other parties. If the FAQ drafting committee does not agree with that assessment, then this issue probably needs to be reopened in the PatCom. But if the FAQ drafting committee agrees with that assessment, then it must not confuse the issue by saying that participants "should" notify the IEEE of such patents. The use of "should" confuses the issue.

Participants are NOT required to report, and it is not appropriate for the IEEE to soft-pedal this in these guidelines. If any participant asks a direct question "Am I required to report known patents of third parties?" the answer is clearly no. There is no duty. To imply otherwise by citing good faith is inaccurate and misleading.

It is fine to add explanation to state that IEEE encourages such disclosure. But I do not think it is accurate for the IEEE to expect that participants will normally make such disclosure. I recall that at the time this was discussed in the PatCom meeting, some counsel present as observers indicated that they do not want their participants to disclose the existence of another party's patents, nor give any public indication that they are even aware of another party's patents. This is for their own protection from potential future intentional infringement patent claims by that third party owner. It seems to me that some company counsel are likely to instruct their participants specifically to not make any disclosure regarding anything they might know about a third party's patents. Given that information, and the fact that the draft bylaws were changed specifically to eliminate an express requirement for disclosure of a known third party patent, I don't think that IEEE should expect that every (or even many) participants (and certainly not those employed by companies with legal counsel and large patent risk profile) to make this sort of disclosure.

In light of that, this answer should be changed.

SuggestedRemedy

Change the answer to:

Participants and other recipients of a call for patents are not required to notify the IEEE that they are aware of any potential Essential Patent Claim held by a third party. Participants are permitted to make such disclosure at their own discretion, and although there is no requirement to do so, the IEEE encourages such action.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

The FAQ accurately reflects the Bylaws in respect to this should statement (last paragraph

of subclause 6.2 of the IEEE-SASB Bylaws). The FAQ cannot change this policy.

We will however make the following changes. The word 'strongly' will be deleted from line 39 and the text 'This encouragement is particularly strong as the third party may not be a participant in the standards process.' will be appended to the answer.

Document **FAQs** Clause/Question 13 P 3 L 40 # 74
 Commenter Ling, Hung Affiliation Alcatel-Lucent

Comment Type **S** Comment Status **R**

Informing on third party patents could potentially induce certain liability in some countries. The IEEE should advise participants to seek legal counsel, where appropriate, before doing so.

SuggestedRemedy

Add sentence:

"Participants may wish to seek legal counsel before making disclosures on potential third party essential patents."

Response Response Status **C**

REJECT.

Participants are always free to talk to their legal counsel. See also comment #83.

Document **FAQs** Clause/Question **14** P **4** L **1** # **17**

Commenter Lee, Michelle

Affiliation Nortel

Comment Type **S** Comment Status **A**

Question is confusing and answer too complex.

SuggestedRemedy

Line 1/2 - Delete and repose Q as "What does a Submitter of a previous LOA for an IEEE Standard need to do if any of its individuals continuing to participate in its development become personally aware of additional Essential Patent Claims?"

Line 3-14 - delete and replace with "The Submitter needs to provide a subsequent LOA for the same IEEE Standard if an existing LOA does not cover the additional Essential Patent Claim patent or application which its individual participant(s) is aware."

Response Response Status **C**

ACCEPT IN PRINCIPLE.

The suggested remedy provided in this comment is inconsistent with the policy. Paragraph 10 of subclause 6.2 of the IEEE-SASB Bylaws lists in item (a) past or preset participants. It is not limited to where individuals from the submitter continue to participate in its development.

We will however try and make the answer simpler by saying:

'As further described in Section 6.2 of the Bylaws, the Submitter of a Letter of Assurance is required to submit a Letter of Assurance if, after providing a Letter of Assurance to the IEEE, the Submitter of the Letter of Assurance becomes aware of additional Patent Claim(s) that are not already covered by an existing Letter of Assurance and that are owned, controlled, or licensable by the Submitter that may be or may become Essential Patent Claim(s) for the same IEEE Standard. The Submitter is deemed to be "aware" of such additional potentially Essential Patent Claims if any of the following individuals who are from, employed by, or otherwise represent the Submitter have personal knowledge of such claims: (a) past or present participants in the development of the [Proposed] IEEE Standard; or (b) the individual executing the previously submitted Letter of Assurance.'

Document **FAQs** Clause/Question **15** P **4** L **16** # **18**

Commenter Lee, Michelle

Affiliation Nortel

Comment Type **S** Comment Status **D**

FAQ response goes beyond policy. The policy does not require or expect or encourage patent searches to comply with any aspect of the policy. IEEE should not solicit questions or imply participants to even request voluntary searches of IEEE member firms, which is also likely inconsistent with ANSI essential requirements.

Individual knowledge of holders is also not and should not be rigidly based on awareness of specific claims.

SuggestedRemedy

Line 16 - delete "have...claim" and replace with "know?"

Line 17 - add "There is no duty in this situation."

Line 19-20 - delete "However,....Claim."

Proposed Response Response Status **W**

PROPOSED ACCEPT IN PRINCIPLE.

To clarify we will change 'participant' to 'individual participant' on lines 15 and 16.

Line 16 - REJECT.

The test used in the last paragraph of subclause 6.2 of the IEEE-SASB Bylaws is 'personal knowledge'.

Line 17 - REJECT.

There is a duty of good faith expected of participants in standards development meetings.

ACTION ITEM - Need to add good faith expectation in standards text being developed in Antitrust Ad Hoc.

Line 19-20. ACCEPT IN PRINCIPLE.

Based on the expectation of good faith described above we will reword the last sentence to read ".

ACTION ITEM - Claire to reword.

Document **FAQs** Clause/Question **16** P **4** L **21** # **19**
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **A**

Actions taken to respond to an IEEE request are voluntary. No due diligence requirements or criteria are set by policy. The question is inappropriate. Employers may do searches if they wish, but there is also no expectation or misleading suggestion of even voluntary searches to comply. The policy is clear there is no duty, which speaks for itself.

SuggestedRemedy

Line 21-23 - repose Q16 as "Does the policy or requests for assurances by IEEE require participants or potential holders to do patent searches or make inquiries?"

Line24-39 - delete and replace with A: "No. The policy expressly states there is no duty to conduct a patent search. The person/company requested also need not make inquiries of participants or other employees to respond to a request for licensing/non-enforcement assurance for Essential Patent Claims.

IEEE does not require or make requests of participants specifically for assurances of non-awareness of patents. But if a person/company wants to state it is not aware of any patents or applications having claims that might be or become essential, the IEEE policy allows the submitter to make such assurance after it makes a Reasonable and Good Faith Inquiry. This generally means the submitter use reasonable efforts to identify and contact current or past participants in the IEEE Standard, or employees who the submitter believes are most likely to know the technology covered by the IEEE Standard if it has/had no representative participants."

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Line 21-23 - ACCEPT IN PRINCIPLE.

Will change 'How much due diligence does ..' to read 'What does ..'.

Line 25 - REJECT.

It is a statement of fact that 'the employer may do so if it wishes'.

Line 29 - ACCEPT IN PRINCIPLE.

Will change the question to read 'Does the employer need to talk to everybody they have sent to the Working Group.'

Will change 'If the employer receives a request for a Letter of Assurance and wants to indicate ..' to read 'When the employer receives the request for a Letter of Assurance, the employer can state its licensing position with respect to any Patent Claims that might be or become Essential Patent Claims relating to the particular standard referenced in the Letter of Assurance. In the alternative, the employer can indicate ..'

Document **FAQs** Clause/Question P **4** L **29** # **84**
 Commenter Sirtori, Michael Affiliation Intel

Comment Type **S** Comment Status **A**

This is a comment to PatCom FAQ, answer 16b.

It is the combination of (i) not knowing what Patent Claims it may have, PLUS (ii) wanting to not give a specific assurance under LOA box D.1 that requires a submitter to make a "Reasonable and Good Faith Inquiry". Merely not being aware of specific Patent Claims does not require such an inquiry. Lots of companies are probably not aware of specific Patent Claims, and they may still give a Blanket LOA.

We need to clarify here in this FAQ that it is only the combination of factors that requires a "Reasonable and Good Faith Inquiry".

SuggestedRemedy

Change

"If the employer receives a request for a Letter of Assurance and wants to indicate that it is not aware of any Patent Claims ..."

to

"If the employer receives a request for a Letter of Assurance and wants to avoid providing an assurance based on its assertion that it is not aware of any Patent Claims ..."

Also make similar change in the last sentence of that answer. That is, change

"As an aside, an employer only needs to engage in a Reasonable and Good Faith Inquiry if [it] wants to indicate that it is not aware of any Patent Claims that the employer may own ..."

to

"As an aside, an employer only needs to engage in a Reasonable and Good Faith Inquiry if [it] wants to avoid providing an assurance based on its assertion that it is not aware of any Patent Claims that [it] may own ..."

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Suggest remedy part 1:

See comment #19.

Suggest remedy part 2:

Will change 'As an aside, an employer only needs to engage in a Reasonable and Good Faith Inquiry if [it] wants to indicate that it is not aware of any Patent Claims that the employer may own ..' to read 'As described above, the employer only needs to engage in a Reasonable and Good Faith Inquiry if wants to avoid providing an assurance based on its assertion that it is not aware of any Patent Claims that the employer may own ..'

Document **FAQs** Clause/Question P 5 L 8 # 141
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type **S** Comment Status **A**
 Does the IEEE determine whether a patent is essential when seeking an assurance?
 Clarify type of assurance
 SuggestedRemedy
 Response Response Status **C**
 ACCEPT.
 Change the text '.. when seeking an assurance?' to read '.. when seeking a Letter of Assurance?'.

Document **FAQs** Clause/Question P 5 L 15 # 85
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **S** Comment Status **A**
 This is a comment to FAQ # 18 answer.
 This answer is unclear about the duty to inform IEEE about the identity of holder of potential Essential Patent Claims, and clearly overstates the duty. They duty is not broad and universal. It only applies if the patent holder is the participant or its employer. There is no duty to inform about third party patent holders.
 This problem should be easy to clarify.
 SuggestedRemedy
 Change the final sentence of that answer to read:
 Participants do have a duty to inform the IEEE if they or their employer hold Essential Patent Claims. See questions 11, 13 and 21 for more information.
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Will change to read 'Participants do have a duty to inform the IEEE if they or an entity they are from, employed by or otherwise represent holds Essential Patent Claims. See questions 11, 13 and 21 for more information.'

Document **FAQs** Clause/Question 18 P 5 L 15 # 20
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 Assurances and individual notification of holders are completely separate. Individual notice is not a response to the Q18 asked and is handled elsewhere in FAQs, so it is also unnecessary to include here.
 SuggestedRemedy
 Line 14-16 - delete "Participants....#13."
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 See comment #85.

Document **FAQs** Clause/Question 19 P 5 L 18 # 21
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 Explain the difference between IEEE assurance policy and disclosure policy which IEEE does not have.
 SuggestedRemedy
 Line 18 - delete "is....in" and replace with "allows for the inclusion of technologies covered by essential patents in IEEE Standards. When IEEE receives notice that the [Proposed] IEEE Standard may require the use of a potential Essential Patent Claim, IEEE requests the holder to declare its licensing position in a letter of assurance for essential patent claims. IEEE policy is not a policy that requires or encourages participants or patent holders to disclose the existence of specific patents or applications or the details. At its option, a patent holder submitting a Letter of Assurance may provide information of essential patent particulars with the assurance. If provided, IEEE makes such patent information available on its patent website."
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 The answer will be re-written to read 'No. The IEEE's patent policy is a policy of assurance, as further described in these frequently asked questions, not a policy of disclosure.'

<i>Document</i>	FAQs	<i>Clause/Question</i>	21	<i>P</i>	5	<i>L</i>	26	<i>#</i>	22
<i>Commenter</i>	Lee, Michelle			<i>Affiliation</i> Nortel					
<i>Comment Type</i>	S	<i>Comment Status</i> A							
<p>Q21 is confusing and misleading for individual engineers to make statements potentially contrary to employer's legal opinions and they are not authorized to make. Assurances are also not required to fulfill individual notification of holder policy. Both are separate concepts on different "participants".</p> <p>Q18 already states that assurances are not required for individuals or members to participate. Also, as posed in Q21, it is circular. If the IEEE has made the request, then it is a pre-condition IEEE has been already notified of the employer and individual's notice of the employer holder is either fulfilled or exhausted.</p>									
<i>SuggestedRemedy</i>									
<p>Line 26-28 - Repose Q21 as "If the individual's employer or represented firm does not submit an LOA in response to an IEEE request for an assurance, can the individual participate?</p> <p>line 29-37 - delete and replace with "Yes. Assurances or response to an LOA request is not required for an individual or his/her employer firm to participate as a member in the standard's development. IEEE cannot coerce requested parties to provide an assurance. If the IEEE has made a request of the employer to provide an LOA for the applicable IEEE Standard, IEEE does not expect the individual participant in that IEEE Standard to also do so or to tell IEEE of the employer holder."</p>									
<i>Response</i>	<i>Response Status</i> C								
ACCEPT IN PRINCIPLE.									
<p>While we may not have correctly understood the comment, the IEEE-SA Bylaws place duties on participants to behave in certain ways, regardless of what their companies instruct them to do.</p> <p>Change the text on line 32 onwards that reads 'As noted to the answer to ..' to simply read 'See also FAQ 12.'.</p>									

Document	FAQs	Clause/Question	22	P	6	L	2	#	161
Commenter	Law, David			Affiliation 3Com					
Comment Type	S	Comment Status	A						
We should add more details about what might happen when a LoA cannot be obtained and this is referred to PatCom.									
SuggestedRemedy									
Suggest the following text is appended to the current answer.									
If the IEEE is aware of a potentially Essential Patent Claim and no corresponding Letter of Assurance has been received, the matter will be referred to the IEEE Patent Committee. The PatCom will review the circumstances and make a recommendation to the Standards Board. The IEEE-SA is extremely unlikely to approve a standard that includes the known use of an Essential Patent Claim or a serious risk of claims based on potentially Essential Patent Claims without an Accepted LOA.									
Response	Response Status			C					
ACCEPT IN PRINCIPLE.									
The text will be changed to read 'If the IEEE is aware of a potentially Essential Patent Claim and no corresponding Letter of Assurance has been received, the matter will be referred to the IEEE Patent Committee through the PatCom Administrator. The IEEE Patent Committee will review the circumstances and make a recommendation to the Standards Board. The IEEE-SA is extremely unlikely to approve a standard that includes the known use of an Essential Patent Claim or a serious risk of claims based on potentially Essential Patent Claims without an Accepted Letter of Assurance.' will be appended to the answer.'									

Document	FAQs	Clause/Question	22	P	6	L	5	#	23
Commenter	Lee, Michelle			Affiliation Nortel					
Comment Type	S	Comment Status	A						
Explain referral process (by who/how) and refine answer to be consistent with policy.									
SuggestedRemedy									
Line 5-6 - Delete and replace with "If an assurance cannot be obtained from a holder of an asserted potential Essential Patent Claim which IEEE is aware of, the Working Group Chair or NesCom (as applicable) will refer the matter to the IEEE Patent Committee."									
Response				Response Status C					
ACCEPT IN PRINCIPLE.									
See comment #161.									

Document **FAQs** Clause/Question **23** P **6** L **9** # **24**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Clarify to be consistent with policy.
 SuggestedRemedy
 Line 9 - add "If IEEE requests an LOA and the patent holder or applicant provides an assurance for Essential Patent Claims to the IEEE Standard, the IEEE encourages..."
 Response Response Status **C**
 REJECT.
 We want LoAs as soon as reasonably feasible regardless of whether they have been requested.

Document **FAQs** Clause/Question P **6** L **10** # **150**
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type **E** Comment Status **A**
 To make consistent with other questions, add "accepted"
 SuggestedRemedy
 Add "accepted" in front of Letter of Assurance
 Response Response Status **C**
 ACCEPT.
 Note - This comment seems to apply to Line 11 rather than line 10 as stated in the comment.

Document **FAQs** Clause/Question **24** P **6** L **11** # **25**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Stipulating who are parties that can enforce an LOA is not within IEEE jurisdiction or its standards development process. This is court procedural/standing issue and jurisdiction to determine parties that have the right to enforce a letter of assurance.
 SuggestedRemedy
 Line 11-14 - delete
 Response Response Status **C**
 REJECT.
 It is reasonable for IEEE to state who it believes has the right to enforce.

Document **FAQs** Clause/Question P **6** L **13** # **156**
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type **S** Comment Status **A**
 In certain circumstances and its sole discretion, The IEEE may also seek to enforce its terms.
 In which situations would IEEE become involved?
 Can you provide example? Is this appropriate for the IEEE to assume this risk?
 SuggestedRemedy
 Provide examples of the exception clause.
 Change "enforce its terms." To "enforce the accepted Letter of Assurance terms."
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.

As a general matter we expect that parties will resolve their difference privately but we cannot exclude the possibility that the IEEE may determine it appropriate to enforce a LoA.

Accept the change from '.. enforce its terms.' to '.. enforce the Accepted Letter of Assurance terms.'.

Document **FAQs** Clause/Question **25** P **6** L **15** # **26**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Please point out in the FAQ where in the policy use of the LOA form is "mandatory" and modification is prohibited.

SuggestedRemedy
 Line 15 - repose Q25 as "What is the standard form of a "Letter of Assurance"?"
 Line 17/18 - Delete and replace with "IEEE will request licensing assurances from patent holders/applicants on the IEEE-SA Board approved standard Letter of Assurance form. A Letter of Assurance is a document stating the submitter's assurance for Essential Patent Claims that is submitted in form acceptable to IEEE-SA. The SASB approved Letter of Assurance form is deemed acceptable."

Response Response Status **C**
 REJECT.

The first paragraph of subclause 6.2 states 'on the IEEE Standards Board approved Letter of Assurance form' and the form does not give you any room for modification. Further, the definition of Accepted LoA states 'shall mean a Letter of Assurance that the IEEE-SA has determined is complete in all material respects'. A modified LoA form, or a free form letter, will not be considered complete in all material respects.

Document **FAQs** Clause/Question P **6** L **17** # **149**
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type **E** Comment Status **R**
 Clarify the answer to "Can the Letter of Assurance form be modified?"
 Answer should match the slides.
SuggestedRemedy
 As of (date)xxxx, the LOA shall be provided on the IEEE-SA Standards Board approved form. Free-form LOAs are no longer accepted. The act of completing the form itself is not considered a modification.
 Response Response Status **C**
 REJECT.
 The requirement to only use the LOA form comes into force with the new patent policy on 30th April 2007 and we cover this date in FAQ1.

Document **FAQs** Clause/Question P **6** L **19** # **157**
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type **S** Comment Status **A**
 Need to add question about the process for remanding a LOA which is not "accepted"
SuggestedRemedy
 How will a participant be notified if its Letter of Assurance is not accepted? And if so, what is the expected method of responding?
 Response Response Status **C**
 ACCEPT.
 We will add new a question 'What happens when a LoA is not accepted?' with the answer 'The Submitter will be informed by the PatCom admin that the LoA was not accepted and why it was not accepted.'.

Document **FAQs** Clause/Question P **6** L **21** # **159**
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type **S** Comment Status **A**
 See comment #148 on Sept 12 comment resolution regarding clarification of what attachments are accepted or not.
SuggestedRemedy
 Need to include this as question with answer. (attachments and whether they are screened and accepted). Are any attachments in any form accepted?
 Response Response Status **C**
 ACCEPT.
 We will add a new question before FAQ34 which reads 'Are attachments part of the accepted LoA?' with the answer 'Yes. See also FAQ34 and FAQ35.'.

Document **FAQs** Clause/Question **29** P **7** L **1** # **27**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Q29-31 is beyond information to development process and specific manner in which to comply is voluntary. Other education materials/guides deal with this patent transfer revision generally. FAQ detail and hypotheticals how to comply are unnecessary.
SuggestedRemedy
 Line 1-35 - delete
 Page 8, Line 1-18 - delete
 Response Response Status **C**
 REJECT.
 These are specific question we have been asked to answer on a number of occasions and are provided only as examples.

Document	FAQs	Clause/Question	P	8	L	14	#	86
Commenter	Sirtori, Michael		Affiliation Intel					
Comment Type	S	Comment Status	A					
This is a comment to the answer to FAQ 29c.								
We should be clear about what the obligation is. A user or implementer may or may not be able to force Company D to provide licenses in accordance with Company A's original LOA. That issue is likely going to be decided by a court. But what they can do is force Company C to at least honor its commitment to provide the required notice to Company D.								
SuggestedRemedy								
Change the last phrase to: "users and implementers could seek to enforce Company C's obligation to provide the required notice to Company D."								
Response	Response Status		C					
ACCEPT IN PRINCIPLE.								
Will change to read 'users and implementers could sue Company C for its failure to provide the required notice to Company D.'								

Document	FAQs	Clause/Question	30	P	8	L	16	#	28
Commenter	Lee, Michelle			Affiliation Nortel					
Comment Type	S	Comment Status	R						
Same as comment #29									
SuggestedRemedy									
Line 16-20 -delete									
Response				Response Status	C				
REJECT.									
See comment #27.									
Note - As stated in the comment submission tool, comments are renumbered using a global numbering system when imported into the comment database with everybody else's comment. Based on that, Comment #29 mentioned in the comment text is actually Comment #27.									

Document	FAQs	Clause/Question	P	8	L	23	#	87
Commenter	Sirtori, Michael		Affiliation Intel					
Comment Type	S	Comment Status	A					
This is a comment to the answer to FAQ 31.								
As has several times been discussed and established in the PatCom meetings, an assignor need not actually ensure that its assignee carry out commitments that the assignee makes. It is enough that the assignor require that the assignee AGREE TO such commitments.								
We can make this clearer and more consistent with the actual policy.								
SuggestedRemedy								
Insert the words "agree to" after the word "transferees" in line 23.								
Response	Response Status		C					
ACCEPT.								

Document	FAQs	Clause/Question	32	P	8	L	26	#	30
Commenter	Lee, Michelle			Affiliation Nortel					
Comment Type	S	Comment Status	R						
The policy purpose stated is not agreed or specified intent/expectation of all participants. Antitrust policy that permits discussion of relative costs is simply that; that policy is not a stated purpose of the patent policy to permit disclosure of terms with a RAND assurance or vice versa.									
The patent policy that permits disclosure of terms is also voluntary at the sole option of the submitter of the assurance. Grand promises or representations of expectations that such a voluntary policy "is to facilitate" standards development that "will serve the interests of" and "permits participants greater certainty and precision" (particularly without testing and objective verification) seems misleading to participants, standards users and the public.									
SuggestedRemedy									
Line 26-35 - delete									
Response				Response Status	C				
REJECT.									
The text is effectively a repeat of the IEEE-SA mission statement which states 'The IEEE-SA provides a standards program that serves the global needs of industry, government and the public.' The IEEE-SA believe that this policy furthers its mission.									

Document **FAQs** Clause/Question **32** P **8** L **29** # **164**
 Commenter Law, David Affiliation 3Com
 Comment Type **S** Comment Status **A**
 Except for the three questions related to the implementation of the new policy the remainder of the questions shouldn't use the terminology 'new policy' as once it is introduced it will be THE policy.
 SuggestedRemedy
 Delete the text 'Under the new policy,'.
 Response Response Status **C**
 ACCEPT.

Document **FAQs** Clause/Question **33** P **9** L **2** # **31**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 Refine to be precisely consistent with policy
 SuggestedRemedy
 Line 2 - replace with "No. IEEE permits the submitter to provide not-to exceed royalty rates or other terms with its RAND assurance provided to IEEE, but that disclosure is voluntary at the sole option of the submitter to provide."
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 This text will be changed to read 'No. The IEEE-SA permits, but does not require, the Submitter to provide not-to-exceed royalty rates or other terms.'

Document **FAQs** Clause/Question **31** P **9** L **20** # **29**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Same comments as comment#29
 SuggestedRemedy
 Line 20-25 - delete
 Response Response Status **C**
 REJECT.
 See response to comment #27.

Document **FAQs** Clause/Question P **9** L **23** # **158**
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type **S** Comment Status **A**
 I am confused regarding the answer to 36a. When this particular topic was addressed in the Sept 06 PatCom meeting by me, and I asked why is it necessary to explicitly state that copies of an Accepted Letter of Assurance may be provided to the Working Group when the information resides on the IEEE website.
 At the Sept 06 meeting, I was told that the language was being inserted in case a company wanted to introduce a LOA that the group had not yet seen. This seems in conflict with what is written.
 SuggestedRemedy
 Clarify why this exception is being made as contrasted to the previous policy.

In the previous edition of the patent policy, it was a clear line. Now it is gray. Can distribute LOAs at meeting. Why was this change made?
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 You have listed some of the reasons that were given - but these were not the only reasons. Another reason often cited was that not all Working Groups have access to the internet during the course of their meeting. In this case, paper copies/disks are the only option. We believe that the old policy was mute on this subject; the new policy provides clarity.

Document **FAQs** Clause/Question P **9** L **23** # **160**
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated

Comment Type **S** Comment Status **A**

Combine a) and b) together as one question and provide answer.

Make second subquestion about whom the actor is providing the LOA. Will the PatCom administrator provide? WG Chair? The LOA submitter? WG Participant?

SuggestedRemedy

What does it mean to "provide" Accepted Letter of Assurance to the Working Group?

It is permissible to provide Accepted Letter of Assurances by handing out paper copies of an accepted Letter of Assurance or a datafile with an image of the Accepted Letter of Assurance as it resides on the IEEE website.

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

add whom question here

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Any participant can distribute a LOA in a meeting. This will be added to the answer to 36a. The URL question will remain as a separate question.

Based on the above the 2nd paragraph will read: "A participant may provide an Accepted Letter of Assurance to other participants by handing out paper copies of an accepted Letter of Assurance or a data file with an image of the Accepted Letter of Assurance as it resides on the IEEE website.".

Document **FAQs** Clause/Question **36** P **9** L **23** # **2**
 Commenter Zyren, James Affiliation Freescale

Comment Type **S** Comment Status **A**

FAQ #36a states that the LoA may be distributed in print form or displayed on a screen at meetings. The LoA form permits patent holders to provide sample license agreements or summaries of material licensing terms. Is this additional information (if provided) considered part of the approved LoA? If so, it should be made explicitly clear that sample license agreements and/or material licensing terms can also be handed out in paper form or displayed at WG meetings provided that this information is part of an approved and accepted LoA. Making this explicitly clear will avoid confusion at WG meetings.

SuggestedRemedy

Change the response to FAQ 36a to read as follows:

Yes. Handing out paper copies of an accepted Letter of Assurance (including a copy of the license or material licensing terms, if provided as part of the LoA as accepted by the IEEE) or a data file with an image of the Letter of Assurance as it resides on the IEEE website is permissible.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

See response to comment #160. Also want to make it clear who can do the distributing.

Document **FAQs** Clause/Question **36** P **9** L **31** # **92**
 Commenter Townsend, Rick Affiliation Alcatel-Lucent

Comment Type **S** Comment Status **A**

Ques: 36c

We agreed to pass out LoA and, in particular, the associated T&Cs. We did not agree to show it to the group. Showing the LoA in its small type and especially the T&Cs will only encourage questions and discussion. It will also legitimize those T&Cs by the WG chair and IEEE, a step we should not be taking - this is more like jumping out onmto the slippery slope.

SuggestedRemedy

The answer to the question should be NO.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

We will add '.. provided a participant does not read aloud, present, or answer question about ..' to answer 36c to further prevent entry into the slippery slope zone.

Document **FAQs** Clause/Question **36** P **10** L **3** # **32**

Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **R**

As stated, Q36d answer appears contrary to antitrust policy prohibiting discussion of specific terms.

SuggestedRemedy
Line 3 - delete "except....acceptable".

Response Response Status **C**

REJECT.

Subclause 5.3.10.3 of the IEEE-SA Standards Board Operations manual approved at the December IEEE-SA Standards Board states 'When comparing different technical approaches in IEEE-SA standards development technical activities, participants may discuss the relative costs (in terms, for example, of percentage increases or decreases) of different proposed technical approaches ..' and goes on to state that 'The relative costs may include any potentially Essential Patent Claims ..'. Line 3 is therefore consistent with the IEEE-SA Standards Board Operations manual.

Document **FAQs** Clause/Question **36** P **10** L **6** # **3**

Commenter Zyren, James Affiliation Freescale

Comment Type **S** Comment Status **A**

FAQ 36e States that no discussion of LoAs is permissible other than acknowledging their existence. This could be construed as being inconsistent with permitting distribution of an LoA by means of displaying it on a screen at a WG meeting.

SuggestedRemedy
Response to FAQ 36e should be modified as follows:

"Nothing, other than distribution of the LoA as described in FAQ 36a above. In addition, using one or more not-to-exceed rates as components in a presentation comparing relative cost is acceptable.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Will spell out 'Letter of Assurance' and will correct the spelling of 'relative'.

Document **FAQs** Clause/Question **36** P **10** L **9** # **33**

Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **R**

Make clear that it is only the fact of the existence of an LOA if an LOA exists, to avoid improper requests of participants for LOAs.

Also same comment as comment #34 above.

SuggestedRemedy
Line 9 - replace "their existence" with "except that for LOAs that exist, the WG chair may state in the affirmative the fact that an LOA exists"
Line 9-10 - delete "In addition....acceptable".

Response Response Status **C**

REJECT.

See comment #3.

Document **FAQs** Clause/Question P **10** L **10** # **88**

Commenter Sirtori, Michael Affiliation Intel

Comment Type **S** Comment Status **A**

This is a comment to the answer to FAQ 36e.

Issues of using not-to-exceed rates in presentations or discussions will be critically important. This answer will be more complete if we simply inform the reader where to find additional important and detailed information.

SuggestedRemedy
Add the following sentence at the end of the first paragraph of the answer to 36.c:

More detail can be found in "What You Need to Know About The IEEE Standards Association's Antitrust and Competition Policy.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

This text will be added to the end of 36e.

Document **FAQs** Clause/Question **36** P **10** L **16** # **34**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 Appreciate the lawyer compliment! but not sure this is an appropriate FAQ type response.
 SuggestedRemedy
 Line 16-19 - rephrase
 Response Response Status **C**
 ACCEPT.
 Will delete.

Document **FAQs** Clause/Question **36** P **10** L **21** # **163**
 Commenter Law, David Affiliation 3Com
 Comment Type **S** Comment Status **A**
 Except for the three questions related to the implementation of the new policy the remainder of the questions shouldn't use the terminology 'new policy' as once it is introduced it will be THE policy.
 SuggestedRemedy
 Change 'The new policy ..' to read 'The policy ..'.
 Response Response Status **C**
 ACCEPT.

Document **FAQs** Clause/Question **36** P **10** L **24** # **90**
 Commenter Townsend, Rick Affiliation Alcatel-Lucent
 Comment Type **E** Comment Status **A**
 Ques 36 G:
 In our discussions we noted several times that filing multiple LoAs was OK and that the potential licensee could simply choose which one he/she wished to invoke. We should state that in straightforward language (see "witty and articulate" statement above). See also Ques 40.
 SuggestedRemedy
 Change the last 3 sentences to:
 "However, at a subsequent time the patent owner may provide an LoA with different terms. If multiple LoAs are issued by the patent owner, the potential licensee may choose which LoA and its associated terms they wish to invoke."
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Will add a pointer to FAQ40 at the end of this answer. See also comment #35.

Document **FAQs** Clause/Question **36** P **10** L **24** # **35**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 Chair instruction to submit a new LOA for "modification of terms" is not specified in ops man.
 There is a difference between modifying an assurance position and updating optional/voluntary information in respect of the same LOA (ie. if the LOA is a RAND LOA that is not changed by optional info). The two should not be confused.
 SuggestedRemedy
 Line 24-30 - delete.
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.

Change '(although the terms in Accepted Letters of Assurance will continue to be available)' to '(although any previous Accepted Letters of Assurance will continue to be available).'

Document **FAQs** Clause/Question P **10** L **37** # **89**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **E** Comment Status **A**
 This is a comment to FAQ 36h.
 Clarification that the prohibition on discussion of certain topics is absolute, even in adjacent spaces. I know it will be hard, if not impossible, to enforce, but we should confirm that is nonetheless the policy.
 SuggestedRemedy
 Change
 "shall not discuss in IEEE forums and should not discuss in immediately adjacent spaces" to
 "shall not discuss in either IEEE forums or immediately adjacent spaces"
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.

Change '.. should not discuss in immediately adjacent spaces that might lead outside observers ..' to read '.. shall not discuss in immediately adjacent spaces that might reasonably lead outside observers ...'

Document **FAQs** Clause/Question **36** P **11** L **9** # **36**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 Answer question and refine to make clear it is not just terms that can't be discussed in meetings.
 SuggestedRemedy
 Line 9 - add "No. The..."
 Line 13 - after "request" add "assurances, licensing terms or IPR information..."
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Line 9 - ACCEPT.
 Line 13 - ACCEPT IN PRINCIPLE.
 Will add '.. rates, terms or conditions ..'. Will also correct '.. meetings through ..' to read '.. meetings or though ..'. We cannot simply prohibit asking for IPR information as that would prevent us from doing a call for patents.

Document **FAQs** Clause/Question **36** P **11** L **18** # **37**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Make sure consistent with 5.3.10.3 as stated and slide set material
 SuggestedRemedy
 Line 18/19 - Use precise text from 5.3.10.3
 Response Response Status **C**
 REJECT.
 Repeating the IEEE-SA Standards Board Operations Manual word for word in the FAQ does not help to clarify. We believe that the text in line 18/19 is equivalent to that in the Operations Manual.

Document **FAQs** Clause/Question **37** P **11** L **24** # **165**
 Commenter Law, David Affiliation 3Com
 Comment Type **S** Comment Status **A**
 It is not just 'WG members' that submit LoAs.
 SuggestedRemedy
 Change 'Can a Working Group member submit ..' to read 'Can a Submitter submit ..' or 'Can a person submit ..'.
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Change '.. Working Group member..' to '.. someone..'.

Document **FAQs** Clause/Question **39** P **11** L **35** # **38**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 Make clear LOA applies only to standard referenced in it.
 SuggestedRemedy
 Line 35 - after "Claims" add "in respect of the IEEE Standard identified in the Letter of Assurance..."
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Add the text '.. referencing a standard or project ..' on line 34 after the second Assurance.

Document **FAQs** Clause/Question **40** P **12** L **6** # **39**

Commenter Lee, Michelle

Affiliation Nortel

Comment Type **S** Comment Status **A**

Clarify so as not to confuse between assurance position and terms.

Same comment as comment #37. Example scenario is confusing and providing optional information with a RAND assurance does not change the position of a RAND assurance, so new "assurance" should not be required and not rejected as permitted by policy.

SuggestedRemedy

Line 6 - after "particular", add "patent having"

Line 8 - after "multiple assurances" add "or supplemental optional information under a previous assurance"

Line 8 - replace "Patent Claim" with "Essential Patent Claims"

Line 11-14 - delete

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Line 6 - REJECT.

We may have misunderstood the comment but the suggested text here doesn't makes sense.

Line 8 - REJECT.

We do not allow supplemental optional information under a previous assurance. The additional optional information provided in an assurance is part of the assurance. See definite of LOA which states 'including any attachments'.

Line 8 - ACCEPT IN PRINCIPLE.

Will replace '.. Patent Claim ..' with '.. Essential Patent Claim ..'.

Line 11-14 - REJECT.

We believe this is a correct description of how a submitter can lower previously stated royalty rates.

Document **FAQs** Clause/Question **43** P **12** L **32** # **40**

Commenter Lee, Michelle

Affiliation Nortel

Comment Type **S** Comment Status **A**

Operating procedures for WG treatment of an LOA in standards development process do not apply to the interpretation or binding of the patent assurance terms. WG Chair instruction in 6.3.5 is not addressed in the FAQ Q43.

SuggestedRemedy

Line 32 - repose Q43 as "How should Working Groups handle existing Letter of Assurances provided to IEEE when developing an amendment, corrigendum, edition or revision of the particular standard referenced in the Letter of Assurance?"

Line 40 - at end, specify WG Chair instruction stated in 6.3.5.

Response Response Status **C**

ACCEPT.

Line 32 - ACCEPT.

Line 40 - ACCEPT.

Document **Flowchart** Clause/Question P L **24** # **114**

Commenter Bob, Grow

Affiliation Intel

Comment Type **E** Comment Status **R**

What if response doesn't go to staff but only to WG Chair as previously allowed?

SuggestedRemedy

Add "to staff" to reinforce intended destination.

Response Response Status **C**

REJECT.

See comment #110. The WG Chair and the PatCom administrator need to communicate about Patent issues at all times.

Document **Flowchart** Clause/Question **P** **L** **28** # **113**
 Commenter Bob, Grow Affiliation Intel
 Comment Type **S** Comment Status **R**
 Copy to WG Chair seems to be unenforceable.
 SuggestedRemedy
 Preferably with copy to WG Chair.
 Response Response Status **C**
 REJECT.
 See comment #110. The WG Chair and the PatCom administrator need to communicate about Patent issues at all times.

Document **Flowchart** Clause/Question **Blank** **P** **1** **L** # **43**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Under WG incorporation of another standard flow, how to WGs verify outside LOAs on file?
 SuggestedRemedy
 Please address particular WG process for non-IEEE normative references in flowchart.
 Response Response Status **C**
 REJECT.
 Explanatory text such as this is provided in the Standards Companion, not on the flowchart.

Document **Flowchart** Clause/Question **Blank** **P** **1** **L** # **45**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 Step "Any reason to assume EP?" when there is no LOA:
 What does this mean? How does IEEE plan to gather reasons to assume EP or determine there is or is not reason to assume EP? No LOA situations like these are to be referred to PatCom by policy - why/how/who does this determination step get done before required referral? Is PatCom going to review potential patent claims when matter is referred without an LOA? IEEE Committees are prohibited from discussing essentiality.
 SuggestedRemedy
 Explain and reconsider process when faced with no LOA for asserted potential essential patent at time of approval.

It seems to me if there is no LOA in these situations, WGs/Review committee send it straight to PatCom without this in between step. Further criteria for consideration at PatCom need also to be fleshed out.
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Add 'Potential' in front of 'Essential Patent' in this diamond.
 It is not correct however that 'No LOA situations like these are to be referred to PatCom by policy' as subclause 6.2 of the bylaws states ".
 The purpose of this question is that during the development of standard the technical approach may have changed such that what was originally an asserted Essential Patent Claim, for which there is no LOA on file for, is clearly no longer even applicable. Working Group should err on the side of conservatism when answering this question - if in doubt refer to PatCom.

Document **Flowchart** Clause/Question **Blank** **P** **1** **L** # **42**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Box 1/2 - WG chair and response is not to a call for "essential patent claims"
 SuggestedRemedy
 Box 1/2 - change to "....call for patents (6.3.2OpsMan)"
 Response Response Status **C**
 REJECT.
 The call that is being made is for essential patent claims.

Document **Flowchart** Clause/Question **Blank** P 1 L # 44
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **R**

Same comment as comment#48 - IEEE should not assume in all cases no further action/no request for an LOA for a compliant implementation of the whole standard even if have an LOA that conforms to a whole referenced subpart. Other essential patent claims in the same patent under the referenced LOA may apply to the whole standard incorporating the reference. The LOA may also only extend to the implementation of the referenced portions but not the product compliant with the whole IEEE standard incorporating that standard or incorporating by reference in a new application. That can leave IEEE implementers without an assurance IEEE otherwise could have requested.

SuggestedRemedy

Consider process further under flowchart for WG incorporating another standard in whole/unmodified form as a part of a larger/different IEEE standard.

Response Response Status **C**

REJECT.

We state that the reference must be to another standard in 'whole and unmodified'. Hence referencing a subpart of another standard is not covered by this path, but instead by the one to its right. Further, there is no concept of an LOA 'extending' to anything, an LOA only applies to compliant implementation of the standard cited.

We cannot see how incorporating another standard by reference, in whole and unmodified, cannot result in implementations that conform to the incorporated standard.

Take this example. Standard A has as a normative requirement conformance to standard B. Compliant implementations of standard A must therefore by definition also comply to standard B, if they didn't they would not be a compliant implementation of A. Hence as these implementation comply to standard B, the referenced standard, the LOA for standard B can be invoked since they are for compliant implementation of standard B.

Note - As stated in the comment submission tool, comments are renumbered using a global numbering system when imported into the comment database with everybody else's comment. Based on that, Comment #48 mentioned in the comment text is actually Comment #47.

Document **Flowchart** Clause/Question P 1 L 1 # 154
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated

Comment Type **S** Comment Status **A**

Call is made at every meeting. Text should be more explicit that it is required.

SuggestedRemedy

Call must be made at every meeting.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Will change to read:

Call shall be made at ever meeting.
 Call shall go out to all participants.
 Call shall only be for essential patent claims.

Document **Flowchart** Clause/Question P 1 L 22 # 103
 Commenter John, D'Ambrosia Affiliation Force10 Networks

Comment Type **E** Comment Status **R**

flowchart states
 "Call must go out to all participants"

Participants in the meeting or the WG?

SuggestedRemedy

Suggest replacing with
 "Call must go out to all meeting attendees"

Response Response Status **C**

REJECT.

The call may go out to all participants through email or other means for groups that do not meet regularly face to face. Also see comment #140.

Document **Tutorial** Clause/Question P 1 L 13 # 105
 Commenter John, D'Ambrosia Affiliation Force10 Networks
 Comment Type **E** Comment Status **A**
 reference to standards-developing meeting

Does this include meetings of ad-hoc committees?

SuggestedRemedy
 please clarify

Response Response Status **C**
 ACCEPT.

An Ad Hoc is an IEEE standards development activity and therefore the call has to be made.

As a practical matter, if an Ad Hoc takes place at a meeting where the call has already been made to all participants, then the call does not necessarily need to be made again at the Ad Hoc. If however the Ad Hoc meets between regular meetings, then the call has to be made.

Will add 'Ad Hocs' to the list of standards development meetings where the call for patents shall take place listed on slide 5.

Document **Tutorial** Clause/Question P 3 L # 91
 Commenter Townsend, Rick Affiliation Alcatel-Lucent
 Comment Type **E** Comment Status **R**
 End of first paragraph
 Didn't we change the language applying to "coercion"? Potential coercion might not be applied to the IEEE but to the patent holder.

SuggestedRemedy
 Change to "without any coercion of the patent holder."

Response Response Status **C**
 REJECT.

This text is verbatim out of the Bylaws.

Document **Tutorial** Clause/Question P 4 L 14 # 95
 Commenter John, D'Ambrosia Affiliation Force10 Networks
 Comment Type **E** Comment Status **A**
 Necessary to create compliant implementation
 òAt time of the standards approval
 òEither mandatory or optional portions of standard
 òNo commercially and technically feasible non-infringing alternative

The last bullet "no commercially and technically feasible non-infringing alternative." thus makes the determination that it was decided during the course of the standard it was determined that there are no technical feasible non-infringing alternatives.

SuggestedRemedy
 Suggest re-ordering / wording

Included at time of the standards approval
 - necessary to create compliant implementation
 - either mandatory or optional portions of standard
 - no commercially and technically feasible non-infringing alternative

Response Response Status **C**
 ACCEPT IN PRINCIPLE.

- either mandatory or optional portions of standard
 - determined as of the time of the standards approval
 - necessary to create compliant implementation
 - no commercially and technically feasible non-infringing alternative

Also see response to comment #108.

Document **Tutorial** Clause/Question **Blank** P 4 L 16 # 46
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 Slide order of definition of "necessary to create compliant implementation" is a bit off in meaning. Suggest using precise text to match.

SuggestedRemedy
 Line 16 - delete
 Line 17 - after "portions of" insert "normative clauses of the"
 Line 18 - at front of bullet add "At time of the standards approval,"

Response Response Status **C**
 ACCEPT IN PRINCIPLE.

See comment #95.

Document **Tutorial** Clause/Question **Blank** P 4 L 21 # 47
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 Clarify Enabling Technology meaning
SuggestedRemedy
 Line 21 - after "Enabling Technology" add "except if functionally necessary or if explicitly required by/set forth in the standard"
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Will add 'Unless functionally necessary or a normative requirement of the standard'

Document **Tutorial** Clause/Question **Blank** P 4 L 32 # 48
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 Careful about confusion - Assurance of licensing only applies to Essential Patent Claims (not potential), aspects of policy applies to potential
 Typo in "Patient"
SuggestedRemedy
 Need to rephrase to make clear talking about definition of Essential Patents means essential claims, not what assurance applies to
 Line 32 - delete "Potential"
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Will delete 'potential'. Note however that an LOA is not just a statement about licensing, it is also about ownership and enforcement.

Document **Tutorial** Clause/Question **Blank** P 4 L 35 # 49
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 LOA form comment about PatCom practice of what will be accepted does not seem to fit this slide about inclusion or tutorial on policy
 Section 6.2 of the Policy also simply says IEEE shall request assurances on the "approved LOA form" and accept assurances submitted in "acceptable form to IEEE SA". Policy itself does not explicitly prohibit modification or mandate participants/submitters to use the approved LOA form, even if PatCom will as a matter of practice choose not to accept free form assurance letters "not in acceptable form to IEEE SA" which otherwise would provide assurances.
SuggestedRemedy
 Line 36-41 - delete
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 See response comment #26.
 Will change to read:
 - Modified Letter of Assurance form will not be accepted.
 - Filling in the form is not considered a modification.

Document **Tutorial** Clause/Question P 5 L # 153
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type **E** Comment Status **A**
 3rd bullet,
 1st indent
 Clarify bullet with punctuation
SuggestedRemedy
 When informed, Working Group chair shall contactà
 Response Response Status **C**
 ACCEPT.

Document **Tutorial** Clause/Question P 5 L # 151
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type **E** Comment Status **A**
 1st bullet, 2nd indent
 Clarify what the call is
 SuggestedRemedy
 Record that call for patents was made in minutes.
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Will change to read:
 Record in minutes that call for patents was made.

Document **Tutorial** Clause/Question P 5 L 29 # 96
 Commenter John, D'Ambrosia Affiliation Force10 Networks
 Comment Type **E** Comment Status **A**
 conference calls are listed. Does this include ad hoc conference calls or just official Task Force, Task Group, or SG phone conferences.
 SuggestedRemedy
 please clarify.
 Response Response Status **C**
 ACCEPT.
 Will add 'Ad Hocs' to the list on line 29.

Document **Tutorial** Clause/Question **Blank** P 5 L 32 # 50
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 As understood from other material, the policy and procedures (6.3.2) are not based on disclosure policies and do not call for participants to identify patents/applications early or otherwise. We would suggest IEEE WGs not record specific patent claims in the WG agreement minutes or awareness. If an issue is identified further to a call for patents, the 6.3.2 OpsMan instruction is to record the fact of a response and is explicitly clear for the WG Chair to contact the holder to request an LOA.

Refine slide to fit text of 6.3.2 as suggested.

SuggestedRemedy

Line 26 - add new "** Only WG chair or chair's delegate makes the call"
 Line 26 - add new "** Asks if any individual believes that a patent/application might be/have Essential Patent Claims that fact should be made known to the WG"
 Line 33 - delete "any potential...identified" and replace with "the fact notice was made and by whom, if a response is given"
 Line 34 - delete "Anybody....early" - already dealt with on next slides

Response Response Status **C**
 ACCEPT IN PRINCIPLE.

Line 26 - ACCEPT IN PRINCIPLE.
 Will add 'WG chair or designee makes the call'.

Line 26 - ACCEPT IN PRINCIPLE.
 Will add 'State that if an individual believes a patent claim might be an Essential Patent Claims, such individual should make the Working Group aware of this.'

Line 33 - ACCEPT IN PRINCIPLE.
 Change to read 'Record in minutes any response.'

Line 34 - ACCEPT IN PRINCIPLE.
 See response to comment #152.

Document **Tutorial** Clause/Question P **5** L **36** # **152**
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type **E** Comment Status **A**
 2nd bullet,
 1st indent
 Clarify what "at any time" means
 Any time during the meeting? Any time during the process?
 SuggestedRemedy
 expand on any time
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Will delete and instead on slide 8 will add:
 - Identification can be made at any time
 - Just inform the Working Group Chair
 - Whether in the meeting or otherwise

Document **Tutorial** Clause/Question P **5** L **41** # **97**
 Commenter John, D'Ambrosia Affiliation Force10 Networks
 Comment Type **E** Comment Status **A**
 Provide URL for standards companion.
 SuggestedRemedy
 Provide URL for standards companion.
 Response Response Status **C**
 ACCEPT.

Document **Tutorial** Clause/Question **Blank** P **6** L **3** # **51**
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 This may be IEEE expectation but "duty on participants" is a bit questionable title as the slide also addresses third party holders where there is no requirement and it is not clear to us how all IEEE participants are subject to a "duty" or agree to such participation obligations.

SuggestedRemedy

Line 3 - rephrase title to "Individuals are to inform IEEE of patent holders"

Response Response Status **C**
 ACCEPT IN PRINCIPLE.

Will split into two slides, one titled 'Duty on participants', one titled 'Third party claims'. For more details see response to comment #77.

The word 'should' is used to indicate that this course of action is preferred but not necessarily required.

Document **Tutorial** Clause/Question P **6** L **16** # **98**
 Commenter John, D'Ambrosia Affiliation Force10 Networks
 Comment Type **E** Comment Status **A**
 would be easier to read if bullets were broken out
 SuggestedRemedy
 list each of 3 points with carriage return between points
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 See response to comment #77.

Document **Tutorial** Clause/Question **Blank** P **7** L **3** # **52**
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **A**

Same comment as comment#52

Text could use some refinements to be consistent with policy text and for clarification/readability as below.

Also, while good faith is a laudable goal generally, in regard to third party information, other participant "expectations" should not be presumed without polling participants that expectation is agreed amongst them. IEEE should also not suggest a lack of good faith from non-response to improper questions or requests for statements against interests to the individual's employer member. Further in regard to third party holders, the policy does not specifically include criteria of personal awareness of potential Essential Patent Claims and IEEE antitrust policy prohibits discussion of essentiality of patents, which should include asking specific information of awareness of other's potential essential claims from participants that may draw such conclusions in WGs merely by a "yes" response.

All the policy asks for IEEE to be informed of holders. The slide needs to be carefully worded to request and explain this. Also an LOA is not a statement of disclosure of a holder, it is an assurance position. The policy does not ask for individuals to cause an LOA/assurance to be provided to IEEE and as such having individuals do so to comply with a holder information requests seems misplaced request to individuals for an assurance. It is also impossible for anyone to ensure a third party holder provides an LOA to IEEE. While an LOA may satisfy the information for IEEE and patent holder purposes, the slide should not cause individuals to ensure LOAs are received by IEEE.

SuggestedRemedy

Line 3 - rephrase title to "Individuals are to inform IEEE of patent holders"

Line 12-29 - delete and replace with:

"As an individual participating in IEEE SA standard development, you:

* shall ensure the IEEE is informed of the holder if you know that either you, your employer or the entity you represent owns a potential Essential Patent Claim of which you are personally aware"

* should ensure the IEEE is informed of any other potential Essential Patent holders"

Line 35 - delete and replace with: "Inform your company and have your company provide a statement to inform IEEE Patent Admin/WG Chair it may be the holder of a potential Essential Patent Claim of which you are personally aware"

Line 36 - add new ""You or your company may provide an authorized LOA to IEEE"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

In respect to good faith the IEEE-SA plainly expects participants to conduct themselves in good faith throughout the standards development process. This expectation arises both from the IEEE Code of Ethics and from the background legal rules. The Ethics Code makes

clear that members 'accept responsibility in making decisions consistent with the safety, health and welfare of the public,' to 'avoid real or perceived conflicts of interest whenever possible, and to disclose them to affected parties when they do exist,' and to 'improve the understanding of technology, its appropriate application, and potential consequences,' to give just a few examples. 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'; while participants can 'vigorously argu[e] accurate scientific evidence before a nonpartisan private standard-setting body,' and that they cannot, without antitrust risk, 'bias the process by, as in this case, stacking the private standard-setting body with decision makers sharing their economic interest in restraining competition.'

Line 3 - ACCEPT IN PRINCIPLE.

See comment #51.

Line 12-29 - ACCEPT IN PRINCIPLE.

See comment #77.

Line 35 - REJECT.

While this approach would satisfy the requirement we do not believe this is best practice. This list is just examples.

Line 36 - REJECT.

Current line is essential equivalent.

Document **Tutorial** Clause/Question P 7 L 12 # 77
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **S** Comment Status **A**

This comment is regarding the Introduction and guide to IEEE-SA patent policy:

This description of the duty to disclose third party patents is confusing and probably misleading. We should be clear that participants have no duty to report patents owned by other parties. We must not confuse the issue by saying that they "should" report. The use of "should" has a strong tendency to confuse the issue. The main point should not be lost that participants are NOT required to report. If this was not the intent of a specific change to the Bylaws made at the Sept PatCom meeting, then this issue should be reconsidered. It is not appropriate for the IEEE to soft-pedal this. If any participant asks a direct question "Am I required to report known patents of third parties?" the answer is clearly no. Good faith is not relevant. There is no duty. If an employee from Company X knows of an essential patent owned by Company Y, she need not inform IEEE. In fact she may be instructed by her Company X counsel not to disclose. If she does not disclose, her good faith, bad faith or indifferent faith is not relevant, and she cannot be attacked for that. To imply otherwise by citing good faith is inaccurate and misleading. There can be more explanation to state that IEEE encourages such disclosure, but that should not override the direct answer, and this guidance should be developed in a way that does not obfuscate that answer.

SuggestedRemedy

Edit the first main bullet and sub-bullets to read:

- If you personally know of a potential Essential Patent Claim that is not covered by an existing LOA
- Then if the potential Essential Patent Claim is owned by you or your employer, you have a duty to ensure that the IEEE is informed of the holder
- Then if the potential Essential Patent Claim is owned by a third party, IEEE encourages you to inform the IEEE of the holder

Delete the reference to good faith as it is not relevant.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Will split into two slides as follows:

First slide.

Title - Duty on participants

Quote - Option (a) from Bylaws 6.2 para 14.

Bullets:

- If you personally know of a potential Essential Patent Claim that is not covered by an existing LOA
- Then if the potential Essential Patent Claim is owned by you or the entity you are affiliated with, you have a duty to ensure that the IEEE is informed of the holder
- See IEEE-SA Standards Board Operation Manual subclause 5.3.3.1 'Disclosure of affiliation' from more definition of affiliation

-This includes corporate affiliates

Second slide.

Title - Third party patents

Quote - Option (b) from Bylaws 6.2 para 14.

Bullets:

- If you personally know of a potential Essential Patent Claim that is not covered by an existing LOA
- Then if the potential Essential Patent Claim is owned by a third party, the IEEE encourages you to ensure the IEEE is informed of the holder
- This encouragement is particularly strong
- The third party may not be a participant in the standards process
- Other participants expect good faith
- To inform the IEEE of the holder you could for example
- Inform the Working Group Chair
- Ensure that IEEE receives a LOA

In respect to the use of 'should' see response to comment #81. In respect to good faith see response to comment #52.

Document **Tutorial** Clause/Question **Blank** P **8** L **20** # **53**

Commenter Lee, Michelle

Affiliation Nortel

Comment Type **S** Comment Status **R**

Suggest for clarity and consistency the slide stick to provisions as written within the policy text, not to introduce extraneous comments or expectations which are not specified by policy or procedures.

SuggestedRemedy

Line 20 - change to "If provided, early assurance is encouraged as soon as reasonably feasible"
 Line 23 - delete
 Line 26 - Delete "Deadlines" and replace with "Timing of assurance for approval:"
 Line 32 - at end of line, add "if IEEE notified after approval"

Response Response Status **C**

REJECT.

Line 20 - REJECT.
 '.. as soon as reasonably feasible ..' is an encouragement to provide assurance early.
 Should sets expectation, see response to comment #81.

Line 23 - REJECT.
 We believe this is a statement of fact.

Line 26 - REJECT.
 This is a deadline as it is a mandatory requirement as signified by the 'shall' statement in the bylaws.

Line 32 - REJECT.
 This is not what the bylaws state as quoted in line 14.

Document **Tutorial** Clause/Question **Blank** P **9** L **18** # **54**

Commenter Lee, Michelle

Affiliation Nortel

Comment Type **S** Comment Status **A**

Refinements suggested for clarity when/what is referred to PatCom

SuggestedRemedy

Line 16 - add "If there is no LOA for an asserted potential Essential Patent Claim:"
 Line 18 - add "** WG Chair to refer matter to..."

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Line 16 - ACCEPT.

Line 18 - REJECT.
 There is no such restriction on the Bylaws.

Document **Tutorial** Clause/Question **Blank** P **10** L **4** # **55**

Commenter Lee, Michelle

Affiliation Nortel

Comment Type **S** Comment Status **A**

Slide omits highlighting written request availability of LOAs.

Discussion prohibitions should be precisely consistent with antitrust policy 5.10.3.2 text and guidelines to avoid misunderstanding between reference materials.

SuggestedRemedy

Line 19 - LOAs and attachments available to anyone on written request
 Line 21 - add at end "but not discussed or recorded in agreement minutes"
 Line 29 - rephrase to "WGs may discuss relative costs, including licensing costs of potential essential patent claims, of different technical approaches in comparison with the relative technical performance increases/decreases, provided objective & legitimate cost information and IEEE SA Antitrust Policy Guidelines are strictly followed"
 Line 30 - add new subbullet "**BUT technical considerations are to be the main focus of WGs"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Line 19 - ACCEPT.

Line 21 - REJECT.
 Lines 23 to 29 cover this. Assume 'Agreement minutes' simply mean minutes. Based on that documents distributed should be recorded in minutes.

Line 29 - ACCEPT IN PRINCIPLE.
 '.. of different technical approaches ..'. Add 'for more information see 5.3.10.3 of ops manual and Antitrust guidelines.'

Line 30 - ACCEPT IN PRINCIPLE.
 Will add 'Technical considerations remain primary focus'.

Document **Tutorial** Clause/Question P **10** L **29** # **78**

Commenter Sirtori, Michael

Affiliation Intel

Comment Type **S** Comment Status **A**

This comment is to slide #10 of the Introduction and guide to IEEE-SA patent policy.

The sub-bullet regarding discussion of relative costs is incomplete. It should be made clear that this type of information may be discussed in limited circumstances and ways, and that there is extensive guidance available elsewhere.

SuggestedRemedy

That sub-bullet ("Relative costs can include ...") should be revised to read:
Relative costs of different technical approaches, including licensing costs of essential patent claims, may be discussed under limited conditions and in accordance with specific guidelines. Detailed guidance is available in the document "What You Need to Know About The IEEE Standards Association's Antitrust and Competition Policy".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

See comment #55.

Document **Tutorial** Clause/Question P **11** L **28** # **79**

Commenter Sirtori, Michael

Affiliation Intel

Comment Type **S** Comment Status **A**

This comment is to slide #11 of the Introduction and guide to IEEE-SA patent policy.

There is no bullet acknowledging that a Submitter can state that it is unable or unwilling to grant licenses.

SuggestedRemedy

Add a main bullet stating that a Submitter can state that it is unable or unwilling to grant licenses.

Response Response Status **C**

ACCEPT.

Will add lead in that reads 'Shall be one of the following:' and add unable or unwilling as one of the options.

Document **Tutorial** Clause/Question **Blank** P **12** L **3** # **56**

Commenter Lee, Michelle

Affiliation Nortel

Comment Type **S** Comment Status **A**

"Terms of Assurance" may be confusing to participants between the assurance and terms of licensing.

Suggest consistently take from wording of policy provision for clarity when breaking down parts of the text in the slide summary. "optionally include" is ambiguous, but the policy text is clear.

SuggestedRemedy

Line 3 - Delete "Terms of"
Line 24 - add "Shall be either:"
Line 25 - delete "Either"
Line 35 - change to "- At its sole option, Submitter may provide with such assurance any of:"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Line 3 - ACCEPT IN PRINCIPLE.
Change to 'Letters of Assurance'.

Line 24 - ACCEPT IN PRINCIPLE.
See response to comment #79.

Line 25 - ACCEPT.

Line 35 - ACCEPT IN PRINCIPLE.
'At its sole option, Submitter may include'.

Document **Tutorial** Clause/Question **Blank** P **14** L **12** # **57**
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **A**

Make sure clear that the statement is made in the LOA and refine slide text to be precisely consistent with policy terms and definition of Reasonable and Good Faith Inquiry as suggested to avoid misinterpretation or different meaning from policy text.

SuggestedRemedy

Line 12 - after "state", add "in the LOA it is" and delete "they are"
 Line 14 - delete "potentially Essential" and after "Patent Claims" add "that might be or become Essential Patent Claims"
 Line 14 - delete "relates to project" and replace with "for the IEEE Standard referenced"
 Line 17 - replace "Must make" with "After"
 Line 23 - at end add "in IEEE Standard identified in LOA"
 Line 25 - at end add ", including Sponsor Ballot or WG"
 Line 29 - change to "inquiry may include those Submitter employees/representatives it believes likely to have knowledge of the technology covered by the IEEE Standard"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Line 12 - ACCEPT IN PRINCIPLE.
 Change to read 'Submitter may state in LOA that it is '.

Line 14 - ACCEPT.

Line 14 - ACCEPT IN PRINCIPLE.
 Delete "relates to project" as by definition references a standard/project.

Line 17 - ACCEPT.

Line 23 - ACCEPT IN PRINCIPLE.
 Will change to read '.. in project identified in the LOA'.

Line 29 - ACCEPT IN PRINCIPLE.
 Add 'For example at line 17.

Document **Tutorial** Clause/Question P **14** L **12** # **99**
 Commenter John, D'Ambrosia Affiliation Force10 Networks

Comment Type **E** Comment Status **A**

Incorrect tense
 LOA submitter may state they are not aware of any potentially Essential Patent Claims relates to project.

SuggestedRemedy

Replace "relates" with related

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Text deleted, see comment #57.

Document **Tutorial** Clause/Question **Blank** P **15** L **3** # **58**
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **A**

See proposed clarifying revisions in remedy.

SuggestedRemedy

Line 3 - add "and Patent Assignees" to title
 Line 27 - refine to "Submitter agrees not to sell/transfer Essential Patents subject to the LOA with intent to circumvent the assurance"
 Line 32 - identify who in IEEE is to contact request for affiliate LOA

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Line 3 - REJECT.
 This doesn't relate to assignees.

Line 27 - REJECT.
 This is a summary. Will add text on a new first slide to clarify that Bylaws and Ops man contain the normative requirements and should be consulted for the full details of the policy.

Line 32 - ACCEPT IN PRINCIPLE.
 Will change to read '.. may be contacted by the IEEE ..'.

Document **Tutorial** Clause/Question **Blank** P **16** L **3** # **59**
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **A**

"Durability" is a hoped for IEEE claim/promise, but there is no way to know the assurance will prove durable from these notice provisions. Suggest a title that describes the notice provision as well as the refinements proposed in the remedy to match the specific provision of the policy/LOA.

The policy does not require the agreement state the terms of a specific LOA.

SuggestedRemedy

Line 3 - replace "durability" with "Notice"
 Line 26 - add lead in "Submitter agrees to:"
 Line 27 - change to "notify Assignees/transferees of the existence of assurance"
 Line 31 - delete "and terms"
 Line 37 - change to "require the Assignee/Transferee to agree to similarly provide notice to subsequent Assignees/Transferees"
 Line 41 - after cascading insert "notice"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Line 3 - REJECT.
 Durability is the intent of this part of the policy.

Line 26 - ACCEPT.

Line 27 - ACCEPT.

Line 31 - ACCEPT.

Line 37 - ACCEPT.

Line 41 - ACCEPT.

Document **Tutorial** Clause/Question **Blank** P **17** L **3** # **60**
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **A**

Suggest the slide summary be a bit more specific and refined to be clear what the provision says and is for understanding. "Submitter" and "information" are vague in the slide summary out of context.

Also the policy/LOA cannot apply retroactively to assurances given which did not have such LOA provisions, so it should be made clear this update applies to LOAs submitted after the policy is in effect.

SuggestedRemedy

Line 3 - change title to "Agreement to Update Specific LOAs"
 Line 39 change to: "If after submitting a LOA the submitter's participant(s) in that IEEE Standard becomes aware of new potential Essential Patent Claims for the same standard, then the first LOA commits it to submit an LOA if not covered by a previous LOA"
 Line 42 - add "update applies to LOAs submitted after the policy takes effect, ie. LOAs received on or after May, 2007"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Line 3 - REJECT.
 There is a duty to update due to the shall statement '.. then such Submitter shall submit ..' in the excerpt from the Bylaw provided in the slide.

Line 39 - ACCEPT IN PRINCIPLE.
 This is not limited to just the Submitter's participant(s) in that IEEE Standard', the policy states 'If, after providing a Letter of Assurance to the IEEE, the Submitter becomes aware of additional Patent Claim(s) not already covered' for example the submitted '(a) past or present participants in the development of the [Proposed] IEEE Standard, or (b) the individual executing the previously submitted Letter of Assurance'.

Line 42 - REJECT.
 The first slide states the new policy comes into effect 30th April.

Document **Tutorial** Clause/Question P **17** L **39** # **80**
 Commenter Sirtori, Michael Affiliation Intel

Comment Type **S** Comment Status **A**

This comment is to slide #17 of the Introduction and guide to IEEE-SA patent policy.

It is not "new information" that should cause a submitter to submit a new LOA. It is specifically other Patent Claims that are not already covered by the existing LOA.

SuggestedRemedy

Change "becomes aware of new information" to "becomes aware of other patent claims".

Response Response Status **C**

ACCEPT.

Document **Tutorial** Clause/Question **Blank** P **19** L **20** # **61**
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **A**

"Correctly completed" is ambiguous and is not the same as IEEE SA determines "complete in all material respects" as stated by the definition of Accepted LOA.

SuggestedRemedy

Line 20 - change to "** IEEE Patent Admin determines LOA form is complete in all material respects"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Will change to read 'IEEE-SA determines LOA form is complete in all material respects' since it may not be just the PatCom administrator that is involved.

Document **Tutorial** Clause/Question P **19** L **22** # **100**
 Commenter John, D'Ambrosia Affiliation Force10 Networks

Comment Type **E** Comment Status **A**

"And LOA has been posted to web site"

SuggestedRemedy

Add URL

Response Response Status **C**

ACCEPT.

Document **Tutorial** Clause/Question **Blank** P **20** L **4** # **62**
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **A**

Title seems a bit odd as the slide addresses disclaimer of responsibility not IEEE responsibility

SuggestedRemedy

Line 5 - Change to "IEEE Public Notice Disclaimer"

Response Response Status **C**

ACCEPT.

Document **Tutorial** Clause/Question **Blank** P **20** L **26** # **63**
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **R**

Summary should be a bit more clear when notice is required according to 6.3.1 OpsMan.

SuggestedRemedy

Line 26 - at end add "required to appear when IEEE receives an assurance from claimed patent holder"

Line 36 - add at end "or for approval"

Response Response Status **C**

REJECT.

Line 26 - REJECT.

A public notice has to appear regardless of the receipt of a LOA or not - the receipt of one or more LOA only changes the text used.

Line 36 - REJECT.

Approval of what, the LoA?, the mandatory text?

Document **Tutorial** Clause/Question **P 20 L 34 # 108**

Commenter John, D'Ambrosia

Affiliation Force10 Networks

Comment Type **S** Comment Status **R**

It states
"And remember:
ûThe working group is not responsible for the above"

But on Page 4, it states
No commercially and technically feasible non-infringing alternative

SuggestedRemedy

Who ultimately determines if something is technically feasible to create compliant implementation? It would seem that the working group has some responsibility if it was decided to be included in the standard, and that this should be noted.

Response Response Status **C**

REJECT.

Note that the definition of Essential Patent Claim can be found in subclause 6.1 of the IEEE-SA Bylaws and includes '.. no commercially and technically feasible non-infringing alternative ..'.

The need to determine if there is 'no commercially and technically feasible non-infringing alternative' would occur if there was a dispute over a claim being essential and if this could not be resolved by any other means it would ultimately have to be resolved through litigation.

Remember, the Working Group is not permitted to discuss essentiality.

Document **Tutorial** Clause/Question **Blank P 21 L 6 # 64**

Commenter Lee, Michelle

Affiliation Nortel

Comment Type **S** Comment Status **A**

Slide referenced provision also addresses that no licenses are granted by an LOA, so title and slide should speak to that.

Slide should stay within bounds of policy as written and not create even the remotest suggestion of voluntary searches. The policy feature makes clear there is no duty (or even expectation" to comply; that should not be turned to a way to suggest that it is a way to comply. Leave that to participants. No need to state the obvious.

SuggestedRemedy

Line 6 - change title to "Patent searches not required/No Licenses by LOA"
Line 23 - change to "No duty or expectation to do so"
Line 25 - delete
Line 30 - add new "** No license is granted by submitting an LOA"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Line 6 - ACCEPT IN PRINCIPLE.
Will change the title to read 'Patent searches and no Licenses by LOA'

Line 23 - REJECT.
The policy is silent on expectation as is the slide.

Line 25 - REJECT.
This is a statement of fact.

Line 30 - ACCEPT.

Document **WG Slides** Clause/Question **P 1 L # 1**

Commenter Ringle, Dave

Affiliation IEEE

Comment Type **S** Comment Status **A**

The slide set could be read to imply that it is mandatory, because of the 'shall' immediately prior to bullet 1. I understand that the patent slide set is not mandated and that the WG Chair is free to conduct the Call for Patents in any manner that gets the message across, etc. I am unsure if this needs to be clarified or not.

SuggestedRemedy

Perhaps nothing, other than confirming the above interpretation.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Change the bullet 1 to read 'The IEEE-SA Strongly recommends that at each WG meeting the chair or a designee:'

Document **WG Slides** Clause/Question P 1 L # 144
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated
 Comment Type **E** Comment Status **A**
 footer could be made clearer
 SuggestedRemedy
 change from (not necessary to be shown)
 to:
 (optional to be shown)
 Response Response Status **C**
 ACCEPT.

Document **WG Slides** Clause/Question Highlights P 1 L 8 # 70
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **A**
 This appears to be a bit misleading read of the policy in highlighted short form and could lead to confusion. The policy generally asks individuals to inform IEEE of the holder of potential essential patent claims of which he/she is personally aware and for which there isn't an LOA. Please also point out how all participants agree to such obligation as a "duty".
 It is also debateable whether "should" means "strongly" encouraged.
 SuggestedRemedy
 Delete and replace with:
 "** Policy asks participating individuals to tell IEEE (or cause IEEE to be informed) of "holders" of a potential essential patent to the IEEE Standard:
 * You are required to inform IEEE if the holder of potential essential patent claims of which you are personally aware is you or your employer/representing firm
 * You are encouraged to inform IEEE if the potential essential patent holder is another person/company"
 * Only if there is no existing LOA
 * Inform IEEE of the holder name - you are not asked to identify patents/applications or state your belief of essentiality

Response Response Status **C**
 ACCEPT IN PRINCIPLE.

Note that participants agree to these obligation by participating.

We will however make the following changes. The word 'strongly' will be deleted from line 11 and the text 'This encouragement is particularly strong as the third party may not be a participant in the standards process.' will be added.

Document **WG Slides** Clause/Question P 1 L 9 # 101
 Commenter John, D'Ambrosia Affiliation Force10 Networks
 Comment Type **E** Comment Status **A**
 "Show slides...."
 SuggestedRemedy
 Previously the patent slides were to be read. Is being shown sufficient?
 Response Response Status **C**
 ACCEPT.
 Yes.

Document **WG Slides** Clause/Question **WG Chair** P 1 L 11 # 65
 Commenter Lee, Michelle Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Not sure why it is relevant to state the IEEE opinion that "policy is consistent with ANSI policy" in the WG instruction set.
 SuggestedRemedy
 Delete "is consistent with the ANSI patent policy and"
 Response Response Status **C**
 REJECT.
 It is relevant because the policy is consistent with ANSI policy.

Document **WG Slides** Clause/Question **Highlights** P 1 L 15 # 71

Commenter Lee, Michelle

Affiliation Nortel

Comment Type **S** Comment Status **R**

Some of the text should be refined to be very clear and consistent with Section 6.2 policy.

SuggestedRemedy

Line 15 - replace with: "IEEE, the Working Group Chair or delegate is required to request assurance when notified that a [Proposed] IEEE Standard may require the use of a potential Essential Patent Claim"

Line 19 - Delete "Terms of" so reads "Letter of Assurance shall be either:"

Line 25/26 - replace "shall be provided" with "Shall be requested by IEEE on..."

Line 27 - delete "optionally"; at end of bullet add "at the sole option of the submitter patent holder"

Line 28 - add "** apply to IEEE Standards referenced in the letter"

Line 29 - add shall not be "intentionally" circumvented...

Line 30 - insert "require notice to be brought..." and delete "future"

Line 34 - replace "submitter" with "...a submitter's representative participant"

Line 34 - replace "other" with "additional" and add "to the same IEEE standard but not covered by an existing LOA" at the end

Response Response Status **C**

REJECT.

This is a summary of the highlights of the policy. This slide states the URL where the full policy can be found and the slide set also includes the full policy verbatim.

Document **WG Slides** Clause/Question **WG Chair** P 1 L 15 # 66

Commenter Lee, Michelle

Affiliation Nortel

Comment Type **S** Comment Status **R**

Nowhere in the policy or Ops Manual is there an encouragement policy of early identification of essential patent claims. Slides not consistent with FAQs on this.

SuggestedRemedy

Delete lines 15 and 16; replace with precise text instruction for WG Chairs from Section 6.3.2 Ops Manual.

If this is wrong, please point the WG Chair to inform where in the policy or Ops Manual such policy is supported.

Response Response Status **C**

REJECT.

The Bylaws state 'If the patent holder or patent applicant provides an assurance, it should do so as soon as reasonably feasible in the standards development process.'. The word 'should' is used to indicate that this course of action is preferred, therefore this is an encouragement. The best way to achieve this desire, particularly in the case of patent holders that are not participants, is early identification.

Further, this is consistent with FAQ 23 which states 'At what point should the Letter of Assurance be submitted?' and is answered 'The IEEE encourages the submission of a Letter of Assurance as soon as reasonably feasible in the standards development process.'.

Document **WG Slides** Clause/Question **WG Chair** P 1 L 18 # 67
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **R**

The purpose of advising this disclaimer as an instruction to WG Chair advisory to WG attendees is unclear and is not consistent with procedural notice provided for in the IEEE OpsMan as far as I can tell.

While true that IEEE, the WG and WG Chair cannot ensure accuracy or completeness of assurances, it is also setting up a PatCom process to accept assurances that are complete in all material respects. These two sound a bit contradictory.

It seems IEEE process instructions should be to discourage participants from submitting misleading licensing assurances, if that is the worry, rather than try to shift the notice and disclaim responsibility of IEEE chosen policy/process to attendees.

SuggestedRemedy

Delete line 18-22

Replace with instructions to WG chair for the public notice to appear when IEEE receives assurance from a claimed patent holder pursuant to Section 6.3.1 as specifically stated.

Add purpose and explanatory context in WG Chair Instructions and in FAQs what this advisory statement to WG attendees serves in IEEE standards development process and meetings.

Response Response Status **C**
 REJECT.

This is a summary of the public notice text that appears in the OpsMan.

Document **WG Slides** Clause/Question **WG Chair** P 1 L 26 # 68
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **A**

"Advice" doesn't sound like the right word.

SuggestedRemedy

Replace "advice" with "information"

Response Response Status **C**
 ACCEPT.

Document **WG Slides** Clause/Question P 1 L 27 # 102
 Commenter John, D'Ambrosia Affiliation Force10 Networks

Comment Type **E** Comment Status **A**

3rd bullet, 2nd sub-bullet

"That an opportunity"

SuggestedRemedy

replace with

"That the chair or his delegate provided an opportunity"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

"That the chair or designee provided an opportunity"

Document **WG Slides** Clause/Question **WG Chair** P 1 L 28 # 69
 Commenter Lee, Michelle Affiliation Nortel

Comment Type **S** Comment Status **R**

This doesn't look completely consistent with the Section 6.3.2 OpsMan Call for patents or Section 6.2 Bylaw Policy, which does not ask participants to identify patent claims. Also, it's probably not a good idea to ask and record patent details in minutes, rather than record the fact of the individual participant belief pursuant to Section 6.3.2 OpsMan. Also, if patent holders are identified to the group, the chair has the responsibility to ask to complete and submit an LOA pursuant to IEEE LOA request process, not record in the minutes under 6.3.2

SuggestedRemedy

Delete and replace with:

"* That an opportunity was provided for any individual who believes that Patent Claims might become Essential Patent Claims to make that fact known to the working group;

* The fact notice was made and by whom, if a response is given."

Response Response Status **C**

REJECT.

With respect to the suggested remedy, we believe that 'participant' has to be used so that the slides cover the corporate process. The proposed remedy also fails to include that the call is also for patent applications and misses recording that there was an opportunity to identify claim(s) and/or Holder(s). While the policy does not ask this, there is nothing to prevent this from happening, therefore the opportunity did exist. The minutes have to record any response given.

Document **WG Slides** Clause/Question P 2 L 8 # 75
 Commenter Sirtori, Michael Affiliation Intel

Comment Type **S** Comment Status **A**

Comment to the Instructions to WG Chair slide entitled "Slide #1":

The extent of a participant's duty to disclose known patents is not treated consistently throughout these supporting materials. This description of the duty is probably most accurate. I think we need to be clear that participants have no duty to report patents owned by other parties. Saying they "should" report, or they "are strongly encouraged to report" or they "are allowed to report" are all possible variations, but the main point should not be lost that they are NOT required to report. I don't think it is appropriate for the IEEE to soft-pedal this. If any participant asks a direct question "Am I required to report known patents of third parties?" the short answer should be No. There can be more explanation to state that IEEE encourages such disclosure, but that should not override the direct answer. This guidance should be developed in a way that does not obfuscate that answer.

SuggestedRemedy

Edit the first bullet and two sub-bullets to read:

- Participants have a duty to tell the IEEE if they know of potentially essential patent claims they own or owned by their employer
- Participants are encouraged to tell the IEEE if they know of potentially essential patent claims owned by others

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Accept changes.

See also comment #70.

Document **WG Slides** Clause/Question P 2 L 9 # 73
 Commenter Ling, Hung Affiliation Alcatel-Lucent

Comment Type **S** Comment Status **A**

Slide #1 bullet 1: Participants have a duty to tell the IEEE if they know of potentially essential patent claims

The basis of "know" is not clearly spelled out on this slide, even though the Policy states it to be based on "personal awareness". It is advisable to state it clearly on the opening slide.

SuggestedRemedy

Remedy:

Participants have a duty to tell the IEEE if they know (based on personal awareness) of potentially essential patent claims

Response Response Status **C**

ACCEPT.

Document **WG Slides** Clause/Question P 2 L 25 # 143
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated

Comment Type **E** Comment Status **A**

1st subbullet .. provide on the IEEE-SA Standards Board approved form

SuggestedRemedy

.. provide on the IEEE-SA Standards Board approved LOA form

Response Response Status **C**

ACCEPT.

Document **WG Slides** Clause/Question P 2 L 36 # 142
 Commenter Hoyler, Susan Affiliation QUALCOMM Incorporated

Comment Type **E** Comment Status **A**

Working Group required to request assurance. This is not clear what type of assurance you mean. Is it LOA or licensing assurance? Should use consistent terminology throughout this slide when referring to "assurance"

SuggestedRemedy

Should use consistent terminology throughout this slide when referring to "assurance"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Change 'Blanket Assurance' to 'Blanket letter of Assurance'.

Document **WG Slides** Clause/Question **Other Gui** P **5** L **16** # **72**

Commenter Lee, Michelle

Affiliation Nortel

Comment Type **S** Comment Status **A**

Refine for consistency with antitrust policy in 5.3.10.2 OpsMan.

SuggestedRemedy

Line 16- add "Don't discuss LOAs, specific..." and at the end, add "or IP rights"

Line 20 - at beginning add "WGs may discuss relative costs,..."

Line 21 - after "...technical approaches", insert "in comparison with the relative technical performance increases/decreases, provided objective & legitimate cost information and IEEE SA Antitrust Policy Guidelines are strictly followed"

Line 21 - delete "may be discussed"

Line 22 - add "** BUT technical considerations are to be the main focus of standards development"

Line 23 - after "Don't discuss fixing", add "actual or potential"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Line 16 - REJECT.

Can't not discusses these as it would effectively prevent the presentation of this slide set since the policy does discusses LOAs and IP rights.

Line 20 - ACCEPT IN PRINCIPLE.

Will add '.. in standards development meetings.' at the end of the bullet point as it is not just Working Groups meetings.

Line 21 - ACCEPT IN PRINCIPLE.

See comment #76.

Line 21 - REJECT.

Subclause 3.5.10.3 states 'When comparing different technical approaches in any IEEE-SA standards development meetings, however, participants may discuss generally the relative costs (in terms of percentage increases or decreases) of different proposed technical approaches in comparison with the relative technical performance increases or decreases of those proposals.' and 'This may include, if different, the relative cost of any intellectual property required for manufacture or distribution of the final implementation, rather than the price at which compliant products may or will be sold.'

Line 22 - ACCEPT IN PRINCIPLE.

Add a new sub-sub-bullet "Technical considerations remain primary focus".

Line 23 - REJECT

We don't want to discuss any type of fixing of product prices and don't see the need to place any qualifiers on this.

Document **WG Slides** Clause/Question P **6** L **19** # **76**

Commenter Sirtori, Michael

Affiliation Intel

Comment Type **S** Comment Status **A**

This comment is to slide #5 of the Instructions for WG Chair

The sub-bullet regarding discussion of relative costs is incomplete. It should me made clear that this type of information may be discussed in limited circumstances and ways, and that there is extensive guidance available elsewhere.

SuggestedRemedy

A phrase should be added to the bullet to read:

Relative costs, including licensing costs of essential patent claims, of different technical approaches may be discussed under limited conditions and in accordance with specific guidelines. Detailed guidance is available in the document "What You Need to Know About The IEEE Standards Association's Antitrust and Competition Policy".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Will change 'See IEEE-SA Standards Board Operations Manual, clause 5.3.10 for more details.' to read 'See IEEE-SA Standards Board Operations Manual, clause 5.3.10 and "What You Need to Know About The IEEE Standards Association's Antitrust and Competition Policy" for more details.'