

Document **All** Clause/Question **All** P L # **16**
 Commenter Berman, Victor Affiliation

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

I have been reading the material you mentioned as well as the package of tutorial documents just sent out for review by David Law. This material refers to WG 'members' and 'participants'. Is it intended that these be interchangeable? Or are there different requirements with respect to patents voting members vs. observers? Also, are there different rules for entity based WG's vs. individual?

In WG's that I have observed, following the IEEE principle of openness, non-WG members are free to attend and participate in the standards development meetings. These members can influence the content of draft standards even if they do not vote. Is there a potential problem with such 'observers' hiding behind their non-member status to reduce their requirement to disclose ownership of essential patents?

SuggestedRemedy

Response Response Status **C**

ACCEPT.

For the purpose of the patent policy the meaning of both 'member' and 'participant' is 'participant'. In all cases, other than where we quote the bylaws or case law, we have changed 'member' to participant.

Document **Companion** Clause/Question P L # **2**
 Commenter Ringle, Dave Affiliation IEEE

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

#110 from Bob Grow, please change the answers to parts 1 and 3. For 1., I'd prefer that the WG Chair instruct the Submitter to submit directly to the PatCom Administrator, else it will not be considered an Accepted LoA. For 3., Doesn't happen. Any interested party should check the online listing to determine Accepted LoAs. {As an aside, without any determinations of essentiality, this information is not very meaningful.}

[See also Grow comments #113-114 on flowchart].

Standards Companion:
 Content between lines 26-42 on page 1 requires revision.

On line 30, delete 'will inform you when a letter of assurance is received related to your working group and'.

On line 31, change 'it' to 'Accepted LoAs'.

On lines 31-34. No. Please change it so that the WG Chair instructs the Submitter to complete a proper submittal - directly from Submitter to PatCom Admin. Same for lines 40-42.

SuggestedRemedy

see above

Response Response Status **C**

ACCEPT.

The SuggestedRemedy to comment #110 on the last round of commenting reads:

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.

The new responses to these comments are:

1. The WG Chair should instruct the Submitter to submit directly to the PatCom Administrator, else it will not be considered an Accepted LoA.
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. Any interested party should check the online listing to determine Accepted LoAs.

All suggested changes have been implemented.

Document **Companion** Clause/Question P 1 L 4 # 21

Commenter Nielsen, Mary Lynne Affiliation IEEE

Comment Type E Comment Status A

I have a fair number of editorial comments. Many of them are to try and keep the feel of casual language that is the basis of the Companion versus the official rule.s

SuggestedRemedy

Replace 'are incorporated herein' with 'used in this document.' I would also suggest hyperlinking to the bylaws and ops man definitions themselves when the documents are mentioned earlier.

Response Response Status C

ACCEPT.

When this is text is added into the base document the hyperlinks will be added.

Document **Companion** Clause/Question P 1 L 16 # 22

Commenter Nielsen, Mary Lynne Affiliation IEEE

Comment Type E Comment Status A

SuggestedRemedy

Insert 'IEEE-SA Standards Board' before 'Patent Committee' (I think this is the first reference to PatCom in the Companion, so it's good to be official for the first mention.)

Add a comma after 'acceptable.'

Response Response Status C

ACCEPT.

Document **Companion** Clause/Question P 1 L 17 # 23

Commenter Nielsen, Mary Lynne Affiliation IEEE

Comment Type E Comment Status A

SuggestedRemedy

Delete the extra 's' in 'participants'

Replace 'cause' with 'let'

Response Response Status C

ACCEPT IN PRINCIPLE.

Part 1 - ACCEPT

Part 2 - ACCEPT IN PRINCIPLE

'.. make sure that ..'

Document **Companion** Clause/Question P 1 L 18 # 24

Commenter Nielsen, Mary Lynne Affiliation IEEE

Comment Type E Comment Status A

SuggestedRemedy

Replace 'to be informed of' with 'know'

Response Response Status C

ACCEPT IN PRINCIPLE.

'.. knows ..'

Document **Companion** Clause/Question P 1 L 19 # 25
 Commenter Nielsen, Mary Lynne Affiliation IEEE

Comment Type E Comment Status A

This is somewhat of a run-on sentence, so I've tried to break up and clarify the text a bit, too.

SuggestedRemedy

On line 19, insert ""either"" after ""by and before ""the""

On line 19, delete the comma after 'participant' and insert 'or'

Transpose the comma and 'by' on line 20

On line 20, insert a period after ""represents"" and then add the following: ""They need to do this""

On line 21, insert ""of a potential essential patent or patent claim"" after ""aware.""

All this would then read, starting at line 19:

of which they are aware that are owned or controlled by either the participant or the entity the participant is from, employed by, or otherwise represents. They need to do this when called for at the meeting or at any other time they become aware of a potential essential patent or patent claim.

Response Response Status C

ACCEPT IN PRINCIPLE.

Will change to read 'Participants are expected to do this either as a result of the call for patents (e.g., by making the identification at or shortly after the meeting) when called for at the meeting or at any other time that they become aware of a potential Essential Patent Claims.'

Document **Companion** Clause/Question P 1 L 20 # 26
 Commenter Nielsen, Mary Lynne Affiliation IEEE

Comment Type E Comment Status A

SuggestedRemedy

Transpose the comma and 'by'

Response Response Status C

ACCEPT.

Document **Companion** Clause/Question P 1 L 21 # 27
 Commenter Nielsen, Mary Lynne Affiliation IEEE

Comment Type E Comment Status A

I don't understand what 'In contrast' means here as an introductory clause. It doesn't seem to truly contrast with the subject of the previous sentences.

SuggestedRemedy

Delete 'in contrast'

Response Response Status C

ACCEPT IN PRINCIPLE.

Will change to read 'In addition ..'.

Document **Companion** Clause/Question P 1 L 22 # 28
 Commenter Nielsen, Mary Lynne Affiliation IEEE

Comment Type E Comment Status A

SuggestedRemedy

Change ""cause"" to ""let"" and ""to be informed of"" to ""know""

Response Response Status C

ACCEPT.

Document **Companion** Clause/Question P 1 L 26 # 29
 Commenter Nielsen, Mary Lynne Affiliation IEEE

Comment Type E Comment Status A

SuggestedRemedy

Delete the ""-ly"" from ""potentially""

Response Response Status C

ACCEPT.

Document **Companion** Clause/Question P 1 L 32 # 30
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type E Comment Status A

SuggestedRemedy

Replace the second ""the"" with ""that""

Response Response Status C
 ACCEPT IN PRINCIPLE.

See comment #2.

Document **Companion** Clause/Question P 1 L 33 # 31
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type E Comment Status R

Determining whether or not the PatCom Admin has seen an LOA is something I don't think should be left to the working group participant. Better to have the Admin see it twice and know that it's been listed, then have the volunteer assume that it has been seen and be wrong.

SuggestedRemedy

Delete 'if it appears that a copy has not already been sent to the PatCom Administrator.'

Response Response Status C
 REJECT.

Document **Companion** Clause/Question P 1 L 34 # 3
 Commenter Ringle, Dave Affiliation IEEE
 Comment Type S Comment Status A

Lines 34-36: I agree with Mike Sirtori, comment #81. This text should be deleted or completely re-phrased.

SuggestedRemedy

consider deletion.

Response Response Status C
 ACCEPT IN PRINCIPLE.

Change to read 'For patent applications the LOA form includes a place for providing appropriate identifying information for patent applications.'.

Document **Companion** Clause/Question P 1 L 38 # 20
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type E Comment Status A

SuggestedRemedy

Add a comma after 'terms'

Response Response Status C
 ACCEPT.

Document **Companion** Clause/Question P 1 L 39 # 32
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type E Comment Status A

SuggestedRemedy

Insert ', and' after 'terms'

Response Response Status C
 ACCEPT.

Document **Companion** Clause/Question P 1 L 44 # 49
 Commenter Nielsen, Mary Lynne Affiliation IEEE

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

This comment applies through line 19 on page 2, but I can't figure out a clear way to represent that above.

I am struggling with this entire section. A reference is just that--it's not a direct incorporation into the standard. So why would the working group have to determine the potential patent issues? I find this rather bewildering. Also, the concept of normative reference is something that's discussed in the Style Manual. Shouldn't this material belong there?

Then the details of it, such as lines 16-20 are just confusing to me.

SuggestedRemedy

Can we talk about this at PatCom? I can't think of a clean alternative, short of deletion, and I think the merits of including this material at the Companion document need to be discussed in some detail.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

A normative references incorporates what it references as a requirement of the referencing document otherwise it would not be a normative reference. We have changed the third paragraph to read 'If an IEEE standard incorporates another standard in whole and unmodified through a normative reference ..' to make it clear this only applies to normative reference.

Document **Companion** Clause/Question P 1 L 46 # 4
 Commenter Ringle, Dave Affiliation IEEE

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

Page 1, line 46, change 'shall' to 'should'. I do not see this requirement in the P&P.

I'd prefer to strike from page 1, line 44 through page 2, line 19. For the cases when a WG Chair is supposed to request info related to references, I am unsure when the recursion is supposed to stop. Those standards will also contain normative references.

On page 2, line 18, 'ordinarily' then raises the question of what is not ordinary?

SuggestedRemedy

Delete as suggested above. This section adds too much complexity and confusion to the process compared to whatever little value may be gained.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Will change 'shall' to 'should'. The 'ordinary' will remain since, while we don't see any, there may be some cases where this does not apply.

Document **Companion** Clause/Question P 2 L 39 # 33
 Commenter Nielsen, Mary Lynne Affiliation IEEE

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

I'm struggling with this wording. You need are suggested to use the model request letter, but required to send along a blank LOA to the requestor.

SuggestedRemedy

Change to 'PatCom strongly recommends that you use the sample patent letter of assurance request letter. In all cases, you are required to send along a blank letter of assurance when you request information on potential essential patent claim.'

Response Response Status **C**

ACCEPT.

Document **Companion** Clause/Question P 4 L # 1
 Commenter Ringle, Dave Affiliation IEEE

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

Cover letter to request LoA:

On page 1, line 37, add a '.

On page 1, line 39, delete 'also'.

On page 2, line 12, delete extra characters.

SuggestedRemedy

Response Response Status **C**

ACCEPT.

Document **Companion** Clause/Question P 4 L 9 # 34
 Commenter Nielsen, Mary Lynne Affiliation IEEE

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

SuggestedRemedy

Replace ""the use of which was"" with ""that are"" and insert ""to use"" after ""necessary""

Response Response Status **C**

REJECT.

This is defining how the IEEE defines a Essential patent claims and therefore has to mirror the language found in Clause 6.1 of the bylaws.

Document **Companion** Clause/Question P 4 L 11 # 50
 Commenter Nielsen, Mary Lynne Affiliation IEEE

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

How can you speak, in the working group stage, of the time of the proposed IEEE Standard's approval? The standard isn't approved when the working group is active; indeed, some working groups cease to exist upon approval of their project as a standard. So how can a chair of the working group know that future? I have to assume she's sending this letter while the working group is still actively developing or balloting the draft document. But the sentence speaks in the past tense, 'there was no commercially and technically feasible....,' for something that has yet to officially be approved.

SuggestedRemedy

This one really confuses me, and I don't have a ready suggestion to address it other than deleting the reference to the time of the standard's approval.

Response Response Status **C**

REJECT.

See comment #34.

Document **Companion** Clause/Question P 4 L 37 # 35
 Commenter Nielsen, Mary Lynne Affiliation IEEE

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

SuggestedRemedy

Insert a period after 'Association'

Response Response Status **C**

ACCEPT.

Document **Companion** Clause/Question P 5 L 8 # 36
 Commenter Nielsen, Mary Lynne Affiliation IEEE

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

SuggestedRemedy

Delete the ""s"" in ""Patents""

Response Response Status **C**

ACCEPT.

Document **FAQ** Clause/Question P L # 17
 Commenter Law, David Affiliation

Comment Type **E** Comment Status **D**

The following comment was made at the IEEE 802 Tutorial:

Some groups have one-hour teleconference - we obviously can't show the slide s; do we need to have a two-hour call, with an hour for reading the slides?

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED ACCEPT.

Add the following to the FAQ:

What if a group meets telephonically?

If the Working Group meets telephonically, you can send the slides in an email to the participants in advance of the call, or include a link in the meeting announcement. The chair must then ask at the start of the call whether there is anybody participating that has not read the policy. If someone says they have not, then the chair must either (a) read the policy aloud, or (b) send the policy or URL electronically and pause the call until all participants have read the policy.

Document **FAQ** Clause/Question P **0** L **0** # **55**

Commenter O'Hara, Bob

Affiliation

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

Clarify when you have to read it - is once at the start of a week-long meeting of a WG enough?

SuggestedRemedy

Response Response Status **C**

ACCEPT.

Add the following to the Q&A:

Our group gathers for several days during a single week. Does the chair have to announce the policy every day?

The Working Group Chair or his or her designee shall issue the call at every Working Group meeting. If a group is 'meeting' for consecutive days and the attendance is substantially the same for each day of the gathering, the policy only needs to be read once. If the chair plans not to read or display the policy each day, then the chair must either (a) ensure that the policy or a URL for it has been sent out to all attendees prior to the meeting (and is available in the registration packet for any on-site registrants), or (b) announce each day that the meeting is subject to the patent policy as read or displayed on the first day. Note, though, that this rule applies separately to each 'group' that is 'meeting' during the week. For example, if a working group holds a meeting during the same week as its task group, task force, and/or study group, the chair of each of those groups must read or display the policy at the beginning of that group's first day of 'meeting.'

Document **FAQ** Clause/Question P **0** L **0** # **56**

Commenter Law, David

Affiliation

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

This comment was made at the IEEE 802 tutorial.

This appears in the old policy and still seems to be here. There is a discrepancy between the policy and the LOA, one of which says 'demonstrably free of discrimination' and 'nondiscriminatory'.

SuggestedRemedy

Response Response Status **C**

REJECT.

The terminology used in LOA is consistent with policy defined in the Bylaws. The Bylaws state in subclause 6.2 item (b) '.. that are demonstrably free of any unfair discrimination ..' and option 1a and 1b on the LOA both state '.. that are demonstrably free of unfair discrimination ..'.

Document **FAQs** Clause/Question P **1** L **14** # **51**

Commenter Nielsen, Mary Lynne

Affiliation IEEE

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

The whole first sentence in the answer is unnecessary.

SuggestedRemedy

Delete the sentence. Go straight into the the definition of an essential patent claim to answer the question directly.

Response Response Status **C**

ACCEPT.

Document **FAQs** Clause/Question P **1** L **15** # **37**

Commenter Nielsen, Mary Lynne

Affiliation IEEE

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

SuggestedRemedy

The outer parentheses here should be brackets.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

The bracket will be replaced with square brackets.

Document **FAQs** Clause/Question P 1 L 20 # 38
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **A**

SuggestedRemedy

I'll say it here, but for terms like ""Enabling Technology"" that are capitalized, shouldn't you link to the definition on first use in each answer? Someone coming in from the cold may have no clue what that ""officially"" means.

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

Capitalized defined terms will be hot linked when this is published in HTML.

Document **FAQs** Clause/Question P 2 L 15 # 52
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **S** Comment Status **R**

Shouldn't this make it clear that it's the working group chair during development and the sponsor chair if the standard is approved and there is no extant working group in existence? The answer seems to imply that the user understands that distinction, and also implies that a working group chair would need to send it for an approved standard, even if his or her working group has been dissolved.

SuggestedRemedy

Reword to correct.

Response Response Status **C**
 REJECT.

We do expect the user to be able to understand the distinction and do not believe this is the right place to address the timing of the various situations.

Document **FAQs** Clause/Question P 2 L 28 # 39
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **A**

SuggestedRemedy

It's ""IEEE-SA Standards Board.""

Response Response Status **C**
 ACCEPT.

Document **FAQs** Clause/Question 8 P 2 L 28 # 13
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **S** Comment Status **A**

This is a comment to FAQ 8.

Why did the committee feel it was necessary to state that IEEE-SA is extremely unlikely to approve a standard that includes known use of essential patents without an accepted LOA? IEEE approves many standards every year, and many participants simply presume that all or most of them read on necessary claims owned by dozens of companies (including companies that don't participate in the standard setting process, and many companies that don't submit LOAs). This statement is going to set an expectation that may come back to haunt IEEE. I don't think it is necessary.

SuggestedRemedy

Delete the last sentence of Answer 8.

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

Will delete the 'serious risk' text. 'Extremely unlikely' will become 'will not' to match the policy.

Document **FAQs** Clause/Question P 2 L 32 # 40
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **A**

SuggestedRemedy

Change to ""Letters of Assurance""

Response Response Status **C**
 ACCEPT.

Document **FAQs** Clause/Question **13** P **4** L **1** # **7**
 Commenter Townsend, Rick Affiliation Alcatel-Lucent
 Comment Type **S** Comment Status **A**
 There may be situations in which squealing on another company might have undue consequences. So we should be not encouraging unfettered disclosures about a third party.
SuggestedRemedy
 Add 'Participants may want to seek legal advice before informing on 3rd party patents.' at the end of the response.
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 See comment #14 which adds 'Participants may make such disclosure at their own discretion.'

Document **FAQs** Clause/Question **13** P **4** L **5** # **14**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **S** Comment Status **A**
 This is a comment to FAQ 13.
 Please also see my comment regarding slide 7 of the Tutorial. This is the same issue.
 Can the committee please provide a one-word answer at the beginning of this response? Either yes or no.
 The issue of disclosure of third party patents was discussed at length in the PatCom meetings over the last year, and the bylaws were revised specifically to address concerns about this issue.
 Although it is fine for IEEE to encourage participants to disclose third party patents (since this entry impliedly recognizes that they are not required to do so) the addition of the phrase 'IEEE expects that they normally will do so' changes the entire tone of the response, and begs many more questions. If participants are normally expected to disclose, what would be the circumstances when they are not expected to disclose?
 If there is a duty to report known third party claims, be it arising out of good faith or IEEE's ethics rules or whatever, then let's be clear and say that. I do not happen to think such a duty exists. But in any event, readers of this FAQ will need clear guidance on this point, and the FAQ does not currently give it. It is fine to add explanation to state that IEEE encourages disclosure, but that should not override the direct answer.
SuggestedRemedy
 Change the response to:
 Participants are not required to notify the IEEE that they are aware of any potential Essential Patent Claims held by a third party. Participants may make such disclosure at their own discretion. Although there is no obligation to notify the IEEE of third party patent holders, the IEEE encourages participants to do so. This encouragement is particularly strong as the third party may not be a participant in the standards process.
 Response Response Status **C**
 ACCEPT.

Document **FAQs** Clause/Question **14** P **4** L **9** # **6**
 Commenter Townsend, Rick Affiliation Alcatel-Lucent

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

This is more complicated than it looks at first.

- 1) Suppose it's my contribution: Does my company have an IPR interest? That's answerable - no problem.
- 2) Suppose the contribution is from a colleague from my company: Does my company have an IPR interest? That's answerable - no problem.
- 3) Suppose the contribution is from another company: Does my company have an IPR interest? That's a much harder situation. Do I poll all my colleague participants to see if they know of any IPR for each of many contributions not from my company?

Suggest limiting the 'personally aware', best effort inquiry to one's own company's contributions. We can certainly include other companies' contributions but only on a 'personally aware' basis and not require a full inquiry among my company's participants.

SuggestedRemedy

Add 'regarding one's own company contributions' following 'sufficient inquiry' on line 25.

Response Response Status **C**

REJECT.

We don't want a person that makes no contributions (does nothing more than attend) to be allowed to be silent if a contributions from another participant appears to require potential essential patent claims that that person, or their employer, owns and they are personally aware of.

Document **FAQs** Clause/Question P **4** L **27** # **53**
 Commenter Nielsen, Mary Lynne Affiliation IEEE

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

I'm struggling to connect the answer here with the answer in question 12.

12 says an employee fulfills his duty to the IEEE only if an LOA is submitted or his company lets the IEEE know they have a patent. 15 says you can participate in the working group if all you've done is notify the IEEE about a potential essential patent claim. The latter seems to imply that notifying is enough; the former, that fulfillment of an action is an active requirement.

SuggestedRemedy

Clarify the situation between questions 12 and 15.

Response Response Status **C**

REJECT.

All FAQ15 says is that you have to notify the IEEE to participate. FAQ12 simply provides some examples how to notify the IEEE, there are of course other ways.

Document **FAQs** Clause/Question P **5** L **9** # **54**
 Commenter Nielsen, Mary Lynne Affiliation IEEE

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

The question seems to imply that companies know who is participating in IEEE standards working groups. That is probably true for the entity development method. But that may not be true for the individual method. Indeed, companies have asked the IEEE to give them this type of information in the past because they haven't been able to track this themselves.

So I have a problem with the question saying 'the employer has sent to the Working Group.'

SuggestedRemedy

Need to reword the question.

Response Response Status **C**

REJECT.

The inability or unwillingness of companies to track standards participants is beyond the scope of PatCom.

Document **FAQs** Clause/Question P **5** L **28** # **41**
 Commenter Nielsen, Mary Lynne Affiliation IEEE

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

SuggestedRemedy

Insert 'its' between 'if' and 'wants'

Response Response Status **C**

ACCEPT.

Document **FAQs** Clause/Question P **5** L **31** # **42**
 Commenter Nielsen, Mary Lynne Affiliation IEEE

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

SuggestedRemedy

There seems to be some text missing from the last sentence here.

Response Response Status **C**

REJECT.

No missing text - formatting issue.

Document **FAQs** Clause/Question P **6** L **6** # **43**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **A**

SuggestedRemedy

It's ""IEEE-SA Standards Board""

Response Response Status **C**
 ACCEPT.

Document **FAQs** Clause/Question **26** P **7** L **10** # **8**
 Commenter Townsend, Rick Affiliation Alcatel-Lucent
 Comment Type **S** Comment Status **A**

Is the IEEE going to enforce LoAs? By suing? Rescinding membership? Both are dragonian steps and could involve IEEE in a lawsuit, not a good thing.

SuggestedRemedy

Replace ""seek to enforce"" with
 ""may request compliance to"".

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

While we agree with the comment the IEEE reserves the right to do this.

Document **FAQs** Clause/Question **32** P **9** L **32** # **9**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **E** Comment Status **A**

This is a comment to FAQ 32.

Technically, the policy doesn't actually permit greater certainty. It permits the disclosure of additional information, with the hope that from that information, participants may gain greater certainty.

SuggestedRemedy

Delete *permits participants to have* and change to *attempts to provide participants with*

Response Response Status **C**
 ACCEPT.

Document **FAQs** Clause/Question **36** P **10** L **35** # **15**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **S** Comment Status **A**

This is a comment to FAQ 36, subquestion c.

Can we please start this response with a one-word answer? Yes or No.

The Bylaws (page 3, line 11) are not ambiguous on this point. Copies may be provided. But display of the LOA is not allowed. That decision was made because PatCom recognized that display of the LOA or Ts and Cs will likely lead to questions and discussion, and we don't want to go down that path.

SuggestedRemedy

Change answer to:

No. Display of an LOA or any attached terms and conditions is not allowed. Such display will have a tendency to lead to impermissible questions and discussion. As noted in 36a above, copies of the LOA may be handed out, and that avoids problems about impermissible question and discussion (as well as logistical problems related to reading the small type on the form).

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

Will change to read 'Yes, but it is not recommended. The Letter of Assurance consists of three pages of often very small type. Therefore, the display is not going to be legible except in the smallest of rooms. The lack of legibility may lead to impermissible questions or discussion. Nevertheless, displaying the Letter of Assurance is not a violation of the patent policy provided a participant does not read aloud, present or answer questions about the displayed Letter of Assurance.'

Document **FAQs** Clause/Question P **11** L **8** # **44**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **A**

SuggestedRemedy

Period belongs inside the quotes.

Response Response Status **C**
 ACCEPT.

Document **FAQs** Clause/Question P 11 L 12 # 45
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **A**
 It's awkward to have two questions in the question area, then answer the first question immediately after the second. I read the text as if it answered the second question, and I couldn't understand it at first.
 SuggestedRemedy
 Split up.
 Response Response Status **C**
 ACCEPT.

Document **FAQs** Clause/Question P 12 L 6 # 46
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **A**
 SuggestedRemedy
 Period belongs inside the quotes.
 Response Response Status **C**
 ACCEPT.

Document **FAQs** Clause/Question P 12 L 7 # 47
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **A**
 SuggestedRemedy
 Replace 'an' with 'a'
 Response Response Status **C**
 ACCEPT.

Document **FAQs** Clause/Question 36 P 12 L 11 # 19
 Commenter Peterson, Scott Affiliation HP
 Comment Type **S** Comment Status **A**
 FAQ answer 36(i) incorrectly implies that a request for license terms is inherently coercive. The draft Antitrust Guidelines says, 'In addition to topics that are prohibited on purely compliance-law grounds, certain topics are not productively discussed in technical standards-development meetings. ... Specific patent license terms or other intellectual property rights, other than distribution of Accepted Letters of Assurance as permitted under the IEEE-SA patent policy'. To this end, it may also be appropriate to keep requests for such terms out of those meetings. Also, the parenthetical inappropriately implies that, when presenting a relative cost comparison, participants are required to hide the identification of particular LOAs that provided facts underlying comparisons that they present in a meeting. Such obfuscation of information hinders consideration by other participants of facts that are relevant to comparing competing alternatives - facts that would be available to all participants, but for the obfuscation. Such obfuscation impedes, rather than fosters competition. Those evaluating a comparison that another participant has presented should be able to refer to the LOAs that were the basis for the comparison; the presentation of the comparison should identify the LOAs on which the comparison is based.

SuggestedRemedy
 Replace the answer to FAQ 36(i) with the following: ""Although relative cost comparisons can note the absence of cost information, participants should not request license fees, terms, or conditions during technical standards-development meetings or in other IEEE-SA forums for technical discussions (such as email reflectors).""

Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 'No. Although relative cost comparisons can certainly note the absence of cost information, participants shall not request license fees, terms, or conditions during technical standards-development meetings or in other IEEE-SA forums for technical discussions (such as email reflectors).'

Document **FAQs** Clause/Question P 12 L 25 # 48
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **A**
 SuggestedRemedy
 Period belongs inside the quotes.
 Response Response Status **C**
 ACCEPT.

Document	Tutorial	Clause/Question	P	L	#
Commenter	Ringle, Dave				5
			Affiliation IEEE		
Comment Type	S	Comment Status	A		
Tutorial, slide 12, 6th bullet, 1st sub sub-bullet, reads awkwardly.					
<i>SuggestedRemedy</i>					
Change to 'This shall not be used to coerce those Patent holders who have chosen not to disclose maximum licensing fees into disclosing such information.'					
Response		Response Status	C		
ACCEPT.					

Document	Tutorial	Clause/Question	P	L	#
Commenter	Sirtori, Michael	7	7	34	10
			Affiliation Intel		

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

This is a comment to the Tutorial slide entitled 'Third party claims'.

We should state clearly what is the duty. What does it mean to say 'participants expect good faith'? That is not very helpful to most people. Please consider this example: let's say a participant knows about a third party patent. He read the patent. He read the spec. He truly believes that the spec reads on the patent. Does good faith, or the IEEE Code of Ethics, or dicta from Allied Tube, or anything else, require him to disclose it to IEEE? The answer is either yes or no. (Alternatively, if there are some circumstances when he is required to disclose it and some when he is not, I would personally like to understand that better, and I expect participants will too.)

But assuming he is required to disclose it, why not just say that good faith and IEEE Code of Ethics etc. require disclosure of third party patents? In that case, there is no distinction from employer-owned patents, and participants are simply required to disclose all known patent holders, and we can just say that. BUT if that is the case, why did the PatCom specifically remove the requirement from the bylaws? There were very good reasons for this, all expressed and discussed in detail in PatCom meetings last year.

Assuming he is not required to disclose it (as is consistent with the bylaws), then why can't we just say that? If we want to nonetheless encourage participants to disclose, that is fine. But it is not an issue of good faith.

SuggestedRemedy

Change the lower half of the slide to:

- * If you personally know of a potential Essential Patent Claim that is not covered by and existing LOA:
 - then if the potential Essential Patent Claim is owned by a third party that is not your employer, you are not required to notify the IEEE
 - However, IEEE encourages you to ensure that they are informed of the holder
 - This encouragement is particularly strong, especially because the third party may not be a participant in the standards process

Response Response Status **C**

ACCEPT.

We are keeping the 'to inform' bullet points below this section which this comment doesn't seem to be.

Document **Tutorial** Clause/Question **8** P **8** L **31** # **11**

Commenter Sirtori, Michael

Affiliation Intel

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

This is a comment to the Tutorial slide entitled 'Timing'.

Regarding deadlines, what if a submitter wants to submit an LOA after these deadlines have passed? For example, what if in good faith they didn't know about a specific patent before the deadline, but now they have become aware, and they want to submit an LOA? Or what if they have not previously submitted an LOA, but then they purchase a patent at a later date after the deadline has passed? If they are willing to submit an LOA, are they precluded from doing so?

Should this issue have been addressed in the Bylaws? (I believe it is not addressed there.)

SuggestedRemedy

Change *Deadline* to *Delivery of Assurance*

Response Response Status **C**

ACCEPT.

Document **Tutorial** Clause/Question P **12** L **27** # **18**

Commenter Peterson, Scott

Affiliation HP

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

The first of the two third-level bullets incorrectly implies that presentation of comparative information about what has and has not been stated in LOAs is inherently coercive. Quite the contrary, such information is pro-competitive, and the institutionalized information hiding that is implied by that bullet impedes, rather than fosters, competition. Identification of information that is or is not provided in an LOA may result in a participant feeling that the alternative that that participant prefers is at a disadvantage because of what that participant has or has not provided in an LOA that it has submitted in support of its preferred alternative. That may be perceived by that participant as a kind of pressure: however, that is not the pressure of coercion; that is the pressure of competition.

This competitive pressure that the patent owner may feel has been acknowledged in a variety of contexts as being expected and appropriate. For example, it has often be pointed out that, while LOAs are voluntary, a proponent of a particular alternative will be motivated to provide an LOA because the question of whether or not an owner of a patent that is essential to the alternative has made the commitment reflected in an LOA is recognized as a competitive factor that is legitimately considered in the standards development process. That motivation is a legitimate competitive pressure; it is not coercion.

SuggestedRemedy

Strike the bullet that reads: 'This shall not be used to coerce Patent-holders who have chosen not to disclosed maximum licensing fees into disclosure.' And, strike 'however' from the immediately following bullet (and, possibly, merge that remaining bullet into the higher level bullet from which it depends).

Response Response Status **C**

REJECT.

The ProCom Ad Hoc on Antitrust was divided on this issue. Their position on this issue represented a middle ground. The tutorial reflects this.

Document **Tutorial** Clause/Question **16** P **16** L **34** # **12**

Commenter Sirtori, Michael

Affiliation Intel

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

This is a comment to Tutorial slide entitled 'Assurance of Nonawareness'

Clarify that in conducting a reasonable good faith inquiry, must a submitter poll anyone outside its company, or only its employees? For example, must a company attempt to contact former employees? I don't think that is required, is it?

SuggestedRemedy

Change *Those submitter believes* to *Those of its employees that submitter believes*

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Will change to read 'Those of its employees that the submitter believes'.