

6. Patents

6.1 Definitions

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“Accepted Letter of Assurance” and “Accepted LOA” shall mean a Letter of Assurance that the IEEE-SA has determined is complete in all material respects and has been posted to the IEEE-SA web site.

“Affiliate” shall mean an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Submitter. For the purposes of this definition, the term “control” and its derivatives, with respect to for-profit entities, means the legal, beneficial or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the capital stock (or other ownership interest, if not a corporation) of an entity ordinarily having voting rights. “Control” and its derivatives, with respect to nonprofit entities, means the power to elect or appoint more than fifty percent (50%) of the Board of Directors of an entity.

“Blanket Letter of Assurance” shall mean a Letter of Assurance that applies to all Essential Patent Claims that a Submitter may have the ability to license at the time of submitting the Letter of Assurance or in the future.

“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 (e.g., semiconductor manufacturing technology, compiler technology, object-oriented technology, basic operating system technology, and the like).

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“Essential Patent Claim” shall mean any Patent Claim the use of which was necessary to create a compliant implementation of either mandatory or optional portions of the normative clauses of the [Proposed] IEEE Standard when, at the time of the [Proposed] IEEE Standard’s approval, there was no commercially and technically feasible non-infringing alternative. An Essential Patent Claim does not include any Patent Claim that is essential only for Enabling Technology nor any claim other than that set forth above even if contained in the same patent as the Essential Patent Claim.

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“Letter of Assurance” and “LOA” shall mean a letter stating the submitter’s position regarding ownership, enforcement or licensing of Essential Patent Claims, for a specifically referenced IEEE Standard, submitted in a form acceptable to the IEEE.

“Patent Claim(s)” shall mean one or more claims in issued patent(s) or pending patent application(s).

“Reasonable and Good Faith Inquiry” includes, but is not limited to, a Submitter using reasonable efforts to identify and contact those individuals who are from, employed by or

otherwise represent the Submitter and who are known to the Submitter to be current or past participants in the development process of the [Proposed] IEEE Standard identified in a Letter of Assurance, including, but not limited to, participation in a Sponsor-Ballot or Working Group. If the Submitter did not or does not have any participants, then a Reasonable and Good Faith Inquiry includes, but is not limited to, the Submitter using reasonable efforts to contact individuals who the Submitter believes are most likely to have knowledge about the technology covered by the [Proposed] IEEE Standard or knowledge of possible Essential Patent Claims.

“Statement of Encumbrance” shall mean a specific reference to an Accepted LOA or a general statement in the transfer or assignment agreement that the Patent Claim(s) being transferred or assigned are subject to any encumbrances that may exist as of the effective date of such agreement. An Accepted LOA is an encumbrance.

“Submitter” when used in reference to a Letter of Assurance shall mean an individual or an organization that provides a completed Letter of Assurance. A Submitter may or may not hold Essential Patent Claims.

6.2 Policy

IEEE standards may be drafted in terms that include the use of Essential Patent Claims. If the IEEE receives notice that a [Proposed] IEEE Standard may require the use of a potential Essential Patent Claim, the IEEE shall request licensing assurance, on the IEEE Standards Board approved Letter of Assurance form, from the patent holder or patent applicant. The IEEE shall request this assurance without coercion.

The Submitter of the Letter of Assurance may, after Reasonable and Good Faith Inquiry, indicate it is not aware of any Patent Claims that the Submitter may own, control or have the ability to license that might be or become Essential Patent Claims. If the patent holder or patent applicant provides an assurance, it should do so as soon as reasonably feasible in the standards development process. This assurance shall be provided prior to the Standards Board’s approval of the standard or shall be provided prior to a reaffirmation, if the IEEE receives notice of a potential Essential Patent Claim after the standard’s approval or a prior reaffirmation. An asserted potential Essential Patent Claim for which an assurance cannot be obtained (e.g., a Letter of Assurance is not provided or the Letter of Assurance indicates that assurance is not being provided) shall be referred to the Patent Committee for resolution.

This assurance shall be either:

- a) A general disclaimer to the effect that the patentee will not enforce any of its present or future Essential Patent Claims against any person or entity making, using, selling, offering to sell, importing, distributing or implementing a compliant implementation of the standard; or
- b) A statement that a license for a compliant implementation of the standard will be made available without compensation or under reasonable rates, with reasonable terms and

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conditions that are demonstrably free of any unfair discrimination. At its sole option, the
 Submitter may provide with its assurance any of the following: (i) a not-to-exceed license
fee or rate commitment, (ii) a sample license agreement, or (iii) material licensing terms.
 Copies of an Accepted LOA may be provided to the working group, but shall not be
 discussed, at any standards working group meeting.

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The Submitter and all Affiliates (other than those Affiliates excluded in a Letter of Assurance)
shall not sell or otherwise transfer any rights in any Essential Patent Claims, that are the subject
of such Letter of Assurance, that they hold, control or have the ability to license with the intent
of circumventing or negating any of the representations and commitments made in such Letter of
Assurance.

The Submitter of a Letter of Assurance shall agree (a) to provide notice of a Letter of Assurance
either through a Statement of Encumbrance or by binding any assignee or transferee to the terms
of such Letter of Assurance; and (b) to require your assignee or transferee to similarly provide
such notice and bind its assignees or transferees to provide such notice as described in (a) and (b)

This assurance shall apply to the Submitter and its Affiliates except those Affiliates the
Submitter excludes on the relevant Letter of Assurance.

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If, after providing a Letter of Assurance to the IEEE, the Submitter becomes aware of additional
 Patent Claim(s) not already covered by an existing Letter of Assurance that are owned,
controlled or licensable by the Submitter that may be or become Essential Patent Claim(s) for the
 same IEEE Standard but are not the subject of an existing Letter of Assurance, then such
 Submitter shall submit a Letter of Assurance stating its position regarding enforcement or
licensing of such Patent Claims. For the purposes of this commitment, the Submitter is deemed
to be aware if any one of the following individuals have personal knowledge of additional
potential Essential Patent Claims, owned or controlled by the Submitter, related to a [Proposed]
IEEE Standard and not already the subject of a previously submitted Letter of Assurance: (a)
past or present participants in the development of the [Proposed] IEEE Standard, (b) other
individuals from, employed by or representing the Submitter who are involved in the technology
of the [Proposed] IEEE Standard, (c) the person executing the previously submitted Letter of
Assurance, or (d) members of the Submitter's intellectual property management department.

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The assurance is irrevocable once submitted and accepted and shall apply, at a minimum, from
 the date of the standard's approval to the date of the standard's withdrawal.

The IEEE is not responsible for identifying Essential Patent Claims for which a license may be
 required, for conducting inquiries into the legal validity or scope of those Patent Claims, or
determining whether any licensing terms or conditions are reasonable or non-discriminatory.

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In order for IEEE's patent policy to function efficiently, individuals participating in the standards
 development process shall inform the IEEE or cause the IEEE to be informed of any potential
 Essential Patent Claims, of which they are personally aware and not already the subject of an
existing Letter of Assurance, owned or controlled by the participants or others including the
 entity the participant is from, employed by, or otherwise represents.