

IEEE-SA PatCom 22nd July 2006 - Comments

Document **Bylaws** Sub/Item P 1 L 5 # 21
 Commenter Marasco, Amy Affiliation Microsoft
 Comment Type E Comment Status R
 I think you need to add an "a" between "request" and "licensing".
 SuggestedRemedy
 Add the "a" as noted.
 Response Response Status C
 REJECT.
 The requested licensing assurance may relate to one of more patents and may come on one of more LoAs therefore we do not know beforehand if this is going to be singular or plural so we should leave this as it is.

Document **Bylaws** Sub/Item P 1 L 31 # 24
 Commenter Marasco, Amy Affiliation Microsoft
 Comment Type E Comment Status A
 I think that a word may be missing.
 SuggestedRemedy
 Add "additional" between "of" and "Patent".
 Response Response Status C
 ACCEPT.

Document **Bylaws** Sub/Item 6.0 P 1 L # 49
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type E Comment Status R
 The revisions represent substantial and material changes to IEEE SA organizational Bylaws and take PatCom way beyond its motions and mandate, and continue to move their target.
 The original Section 6 was clear to state IEEE SA position with respect to use of known Essential patents in its standards (which is simply allowed and not prohibited) and that IEEE will accept an assurance to handle the known potent Essential patents.
 How will IEEE receive notice a IEEE Standard may require use of Essential IPR if there is no clear intent of introducing a disclosure policy by IEEE SA and the LOA is not consistent and does not effect that type of notice? Clause 6 provides for notice a standard may require Essential IP and the LOA provides notice of ability to license Essential IP. This is very confused.

It is now unclear what exactly Section 6 of the Standards Board Bylaws is - IEEE position on patents, IEEE handling process of IPR notifications, required licensing assurance requirements and provisions for patent holders, timeliness for assurances, new IEEE SA procedures to provide LOAs to WGs (for what additional purpose if they're posted), new requirements making subsequent LOAs mandatory after one is made, IEEE disclaimers in the Bylaws, and a new disclosure/information policy on participants of any Essential IP owned by its employer even when it has no knowledge?

It is questionable whether as a whole this revised Policy (which is far beyond the proposed PatCom motion proposals) will meet ANSI guidelines.

SuggestedRemedy

Response Response Status C
 REJECT.

We believe this continues to meet the ANSI patent policy.

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Document **Bylaws** Sub/Item **6.0** P **1** L **3** # **35**
 Commenter Fromm, Jeff Affiliation HP

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

The proposed change in the first sentence removes the important connection between inclusion of essential patent claims and the receipt of a licensing assurance; that condition is implied many words below ("This assurance shall be provided ..."). As the inclusion of patented material is not unconditionally acceptable in the IEEE policy, that condition should continue to be stated in the first sentence. Otherwise, the first sentence would give the impression of a policy with a rather different expectation: "IEEE standards may include essential patents PERIOD" is quite different from "IEEE standards may include essential patents as long as a licensing assurance has been provided".

SuggestedRemedy

Continue to use the language in the first sentence of the existing policy, although that language might be simplified. For example, insert after "IEEE standards may be drafted in terms that include the use of Essential Patent Claims", the following: "provided the IEEE receives a licensing assurance from the patent holder or patent applicant on the IEEE Standards Board approved Letter of Assurance form."

Response Response Status **C**

REJECT.

This text in the draft aligns exactly to the construction of the ANSI patent policy.

Document **Bylaws** Sub/Item **6.0** P **1** L **10** # **50**
 Commenter Thompson, Geoff Affiliation Nortel

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

What is now the intent of the first sentence to factually state IEEE standards may be drafted in terms that include the use of Essential IPR? This changes its historical intent dramatically which was IEEE position to allow and not prohibit known patents in IEEE standards. That new sentence has almost been rendered meaningless.

SuggestedRemedy

Delete "be drafted in terms" and reinsert previous text.

Response Response Status **C**

REJECT.

In this sentence the word 'drafted' means 'written' and the use of the word 'drafted' is in alignment with the ANSI Patent policy which starts with a similar sentence.

Document **Bylaws** Sub/Item **6.0** P **1** L **10** # **51**
 Commenter Thompson, Geoff Affiliation Nortel

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

Since the timing of providing an LOA is mandatory, will IEEE reject LOAs that are not provided before reaffirmation if Essential IPR becomes known after reaffirmation?

SuggestedRemedy

Line 11 - add "and before reaffirmation"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Change '.. shall be provided prior to its reaffirmation, if the IEEE receives notice of a potential Essential Patent Claim after the standard's approval.' to read '.. 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.'

Document **Bylaws** Sub/Item **6.0** P **1** L **12** # **36**
 Commenter Fromm, Jeff Affiliation HP

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

Because the standard letter is titled "Letter of Assurance", it is ambiguous as to what is meant by "assurance" in the phrase "assurance cannot be obtained". One might misinterpret "assurance" to refer to whether an LOA was received. It should be more clear that this phrase ("assurance cannot be obtained") is referring only to LOAs that actually provide a licensing assurance. An LOA that indicates that no assurance is being provided is not an "assurance".

SuggestedRemedy

On page 1 in line 12, after "assurance cannot be obtained", insert "(either a Letter of Assurance is not provided or the Letter of Assurance indicates that assurance is not being provided)".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Make the parenthetical an e.g.

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Document **Bylaws** Sub/Item **6.0** P **1** L **14** # **99**
 Commenter Lang, Dan Affiliation Cisco Systems, Inc.
 Comment Type **E** Comment Status **R**
 minor clarification
 SuggestedRemedy
 before "assurance" insert "licensing"
 Response Response Status **C**
 REJECT.
 'This assurance' refers back to the 'licensing assurance' defined on line 5.

Document **Bylaws** Sub/Item **6.0** P **1** L **17** # **52**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **R**
 IEEE should not dictate scope of licensing terms of an assurance.
 SuggestedRemedy
 Delete "making, using, selling, offering to sell, importing, distributing or"
 Response Response Status **C**
 REJECT.
 We are using the patent statute language. This is to make sure that any disclaimer is broad enough to protect the implementers, users, sellers, importers and distributors.

Document **Bylaws** Sub/Item **6.0** P **1** L **17** # **38**
 Commenter Fromm, Jeff Affiliation HP
 Comment Type **S** Comment Status **R**
 The list of particular actions (making, using, etc.) makes this clause oddly non-parallel with the following clause on RAND where no specific actions are listed. The language could be simplified by eliminating this list and simply focusing on actions relating to the standard.
 SuggestedRemedy
 Replace "making, using, selling, offering to sell, importing, distributing or implementing a compliant implementation of the standard" with "practicing such claims for the purpose of complying with the standard".
 Response Response Status **C**
 REJECT.
 In the case of the RAND commitment you have to negotiate a license with the patent holder and during that negotiation ensure you obtain all the necessary rights. In the case of the disclaimer there is no such negotiation taking place and therefore we want to ensure the text is broad enough to protect all persons and entities listed in the patent statute.

Document **Bylaws** Sub/Item **6.0** P **1** L **19** # **53**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **A**
 6.sub-clause a) Option to attach terms should be added so consistent with LOA.
 b) It should be made abundantly clear that the provision of not-to-exceed rates is completely optional and not done at the request of IEEE or its WGs, nor assumed or implied part of RAND or manner to comply with the assurance requirements. Such optional, unilateral announcement of max rates should be separated from RAND.
 Provision of copies is not necessary when disclosure of the T&Cs are available and should be publically posted available for all if provided or at least available to those that request. Facilitating WG access to terms goes beyond the intent of merely permitting voluntary and unilateral announcement of such terms and WG process.

SuggestedRemedy
 Line 23-25 - Separate optional T&C provision into its own paragraph and change to " The Submitter may, at its complete discretion and option without request or coercion, provide...terms. IEEE shall neither facilitate nor take any position or presumption of the absence of such particularized licensing information in or with the Letter of Assurance in the development, adoption or use of its standards. An assurance meeting the provisions of either (a) or (b) above, without more, shall be sufficient for the inclusion in IEEE Standards of technology covered by Essential Patent Claims.

Line 25-26 Change to: "Copies of an Letter of Assurance are available through IEEE SA Patent Administrator and may be provided to any person upon request. In no circumstances shall any of the Letter of Assurance licensing terms or conditions be discussed at any working group meeting, forums or otherwise within the facilities or auspices of IEEE."

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

Line 23-25 suggested remedy: ACCEPT IN PRINCIPLE.

Change 'The Submitter may provide with its assurance a not-to-exceed rate commitment ..' to read 'At its sole option, the Submitter may provide with its assurance ..'

Line 25-26 suggested remedy: REJECT.

We believe that Working Groups should have access to accepted LOAs. We cannot control what happens outside IEEE meetings nor do we want to limit governance meeting from discussing these issues.

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Document **Bylaws** Sub/Item **6.0** P **1** L **22** # **37**
 Commenter Fromm, Jeff Affiliation HP

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

The core assurance of "reasonable" rates and "reasonable" terms and conditions is vital to ensuring that IEEE standards remain meaningfully open to all interested implementers. It reduces the potential for post-adoption abusive license demands. It will fail in this objective, however, if patent owners' own subjective determinations of what they deem reasonable can prevail without challenge. In short, subjectivity in its application would undercut the requisite and intended predictability of implementation environments. We should accordingly remove ambiguity in this regard, clarifying that the promise is one of "objectively" reasonable rates, terms and conditions.

SuggestedRemedy

Insert "objectively" before "reasonable" twice on page 1 in line 22.

Response Response Status **C**

REJECT.

Rejected last time round. This is just a restatement of the same request.

Document **Bylaws** Sub/Item **6.0** P **1** L **24** # **39**
 Commenter Fromm, Jeff Affiliation HP

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

License fee information need not be in the form of a 'rate'.

SuggestedRemedy

Replace "not-to-exceed rate" with "not-to-exceed license fee".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Change to read 'not-to-exceed license fee or rate'. This change will be made in the LoA and Operations Manual as well if/where required.

Document **Bylaws** Sub/Item **6.0** P **1** L **28** # **100**
 Commenter Lang, Dan Affiliation Cisco Systems, Inc.

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

clarification and readability

SuggestedRemedy

after "those" insert "Affiliates the Submitter" and change "excluded as listed" to "excludes and lists".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Change '.. and its Affiliates except those explicitly excluded as listed on the relevant ..' to read '.. and its Affiliates except those Affiliates the Submitter excludes on the relevant ..'.

Document **Bylaws** Sub/Item **6.0** P **1** L **31** # **1**
 Commenter Sirtori, Michael Affiliation Intel

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

The term "submitter" is a defined term and should be capitalized in lines 31 and 33.

SuggestedRemedy

capitalize term "Submitter"

Response Response Status **C**

ACCEPT.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

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Document **Bylaws** Sub/Item **6.0** P **1** L **31** # **5**
 Commenter Sirtori, Michael Affiliation Intel

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

There is a significant issue of imputed knowledge related to when a "submitter becomes aware" of other patent claims. The "submitter" will typically be a corporate entity. When does that entity become aware of other patent claims? Who in the organization must become aware? Presumably a patent attorney in the company will become aware of a patent claim, but may not know it may become Essential, and may not know an LOA has been previously filed, and likely will not even know about this obligation. I know similar issues were discussed with respect to section D.2 of the LOA, but this is a different issue and not susceptible to the same solution. Also, what if the submitter fails to do this?

SuggestedRemedy

I do not think this clause is practical for large patent holding entities, and would suggest deleting the obligation entirely. The alternative is to define specifically what it means for a submitter to become aware of another patent, but it seems to me that requires that some individual in the organization have knowledge of all of: (i) the new patent claim, (ii) its possible essentiality to the standard, and (iii) the previously-filed LOA.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

The following text has been added to the end of this paragraph to clarify awareness:

'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.'

Document **Bylaws** Sub/Item **6.0** P **1** L **31** # **54**
 Commenter Thompson, Geoff Affiliation Nortel

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

Awareness of potential Essential IPR cannot be broader upon Submitters identified as an organization. Awareness needs to be specific, clear and understood and limited to participants of the standard.

Disclosure obligations and agreements to make licensing assurances should also not be confused. But, if there is an imposed, non-negotiable obligation to make further LOAs in respect of the same standard that must at least be referenced to the same, not any, existing LOA.

SuggestedRemedy

Delete line 30-34 inclusive and replace with the following:

If, after submission of this Letter of Assurance, any representative of the Submitter participating in the development of the [Proposed] IEEE Standard identified in C above becomes personally aware of a patent or patent application having Patent Claims that may be or become Essential Patent Claims that are owned or controlled by the Submitter, the Submitter agrees to notify IEEE by submitting a subsequent Letter of Assurance.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

See comment #5.

Document **Bylaws** Sub/Item **6.0** P **1** L **32** # **40**
 Commenter Fromm, Jeff Affiliation HP

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

The concept "may become" is too uncertain to be the basis for an obligation.

SuggestedRemedy

Replace "may become" with "are likely to become".

Response Response Status **C**

REJECT.

We are intentionally defining this broadly to obtain as much information as possible.

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Document **Bylaws** Sub/Item **6.0** P **1** L **33** # **34**
 Commenter Fromm, Jeff Affiliation HP
 Comment Type **E** Comment Status **A**
 "covered by" is ambiguous; it might be misunderstood to imply that the patent issue has in some sense been 'covered', when, in fact, the LOA that "covers" the claims might state that no licensing assurance is provided.
SuggestedRemedy
 Replace "covered by an existing Letter of Assurance" with "the subject of an existing Letter of Assurance".
 Response Response Status **C**
 ACCEPT.
 In addition perform a global check for this and replace all instances.

Document **Bylaws** Sub/Item **6.0** P **1** L **34** # **41**
 Commenter Fromm, Jeff Affiliation HP
 Comment Type **S** Comment Status **A**
 The expectation regarding newly discovered claims is ambiguous. It is not clear whether the new LOA is expected to add the new claims to the earlier stated position, or whether the patent owner might state a different position with regard to the new claims. It should be clear that the LOA for the additional claims could state a position for those claims that differs from position(s) for claims that are the subject of earlier LOAs.
SuggestedRemedy
 Replace "covering such Patent Claims" with "stating its position regarding licensing of such Patent Claims".
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Change '.. submit a Letter of Assurance covering such Patent Claims.' to read '.. submit a Letter of Assurance stating its position regarding enforcement or licensing of such Patent Claims.'.

Document **Bylaws** Sub/Item **6.0** P **1** L **39** # **42**
 Commenter Fromm, Jeff Affiliation HP
 Comment Type **S** Comment Status **A**
 Whether reasonable license terms are available is relevant to the IEEE. To say that the IEEE will never be a party to discussion of license terms goes too far; there may be situations where reasonableness of terms is something about which the IEEE should have a better understanding. The IEEE's relationship to license terms should be like its relationship to patent validity: the IEEE should not be responsible for determination.
SuggestedRemedy
 Replace lines 39-43 with the following: "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 Patents Claims, or determining whether any licensing terms or conditions are reasonable or non-discriminatory."

Response Response Status **C**
 ACCEPT.
 The suggested text will also be used in the two alternative notices specified in subclause 6.3.1 of the Operations Manual.
 Note - Text deleted by this change is still covered by subclause 6.2, item b) of the Bylaws which states the policy that 'Copies of an Accepted LOA may be provided to the working group, but shall not be discussed, at any standards working group meeting.' as well as by Operations Manual subclause 5.3.8.

Document **Bylaws** Sub/Item **6.0** P **1** L **40** # **2**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **E** Comment Status **A**
 "Patents Claims" should be "Patent Claims"
SuggestedRemedy
 delete the plural "s" in Patents.
 Response Response Status **C**
 ACCEPT.

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Document **Bylaws** Sub/Item **6.0** P **1** L **40** # **55**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Add no responsibility for essentiality.

Accepted LOA adds no benefit to these disclaimers and application of disclaimers should not wait for acceptance. Using LOA is sufficient.

While patent holders may be free to announce T&Cs in their declarations, IEEE should not be asked to request such from Submitters.

SuggestedRemedy
 Line 40 - after "validity", add "essentiality,"
 Line 41 - after "neither", add "request,"
 Line 41 - after "party", add "or agent to negotiations, discussions or contracting of,"
 Line 41 - delete "in an Accepted LOA" and replace with "in or with a Letter of Assurance"
 Line 42 - after "IEEE", add "take any position,"
 Line 43 - delete "in an Accepted LOA"

Response Response Status **C**
 REJECT.

The Bylaws state that 'The IEEE is not responsible for identifying Essential Patent Claims'. The definition of a Essential Patent Claims includes a determination of essentiality however it does not include validity which is why this is excluded specifically.

Notes - In response to comment #53 line 23 was changed to reads 'At its sole option, the Submitter may provide with its assurance ...'. In response to comment #42 lines 41, 42 and 43 were deleted as it was already covered by subclause 6.2, item b) as well as by Operations Manual subclause 5.3.8.

Document **Bylaws** Sub/Item **6.0** P **2** L **1** # **6**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **S** Comment Status **A**

The clause requires participants in the standards process to make disclosures. I think this needs rework. The term "participants" needs clarification. Is it referring only to individuals? If yes, let's clarify it to say individuals. If it includes corporate entities as well (and I assume it does, because corporations participate in, for example, the CAG), then we have an imputed knowledge issue again. Who in the organization needs to know something before being required to disclose it? Some corporations may feel they need to submit a list of their entire patent portfolio in order to make sure they comply with this paragraph. No one would benefit from that. Also, we appear to be requiring that every participant (both individuals and entities) inform the IEEE of any potential Essential Patent Claims owned by everyone ("participant or others"). Is Intel supposed to inform IEEE of every potential Essential Patent Claim that TI or HP owns? That is the simple and literal reading of the clause, but I don't believe that is the intent. I also point out that this clause is drafted as a requirement.

SuggestedRemedy
 Some may suggest deleting this clause entirely, or returning to the pre-June language. We could consider revising it to read as follows:
 "In order for IEEE's patent policy to function efficiently, individual participants in the standards development process shall inform the IEEE of any potential Essential Patent Claims of which they are personally aware."

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

Paragraph changed to read:

'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.'

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

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Document **Bylaws** Sub/Item **6.0** P **2** L **2** # **56**

Commenter Thompson, Geoff

Affiliation Nortel

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

Making disclosure mandatory policy is not within motions proposed before PatCom. Mandatory disclosure is an impossible broad onus on participants to comply as drafted who can have no knowledge of all IEEE standards or all patents in its organization's portfolio. Searches should not be necessitated for participants to so inform IEEE, else it will become time-consuming, costly and difficult to provide early. This should be set up in a way to be reasonable, functional and encourage visibility and credible information claims of Essential Patents of IEEE members/participants known to participants developing the standard.

SuggestedRemedy

Move Line 1-4 to page 1, Line 2 after first sentence for proper flow and context.

Delete and replace line 1-4 with:

"In order for IEEE's patent policy to function properly, participants in the development of a [Proposed] IEEE standard should inform the IEEE of the existence of any patent or patent application held or controlled by participant or participant's represented entity or employer that may have Essential Patent Claims with respect to such [Proposed] IEEE Standard for which such participant's representative is or becomes personally aware.

In no circumstances does an IEEE participant, member or participant's represented entity or employer have any duty or requirement to conduct patent searches or inquiries".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

See comment #6. Added the condition 'of which they are personally aware'. We cannot see any implication that a search is required.

Document **Bylaws** Sub/Item **6.0** P **2** L **2** # **102**

Commenter Lang, Dan

Affiliation Cisco Systems, Inc.

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

Burden on participants of this paragraph should not extend to Essential Patent Claims addressed by an existing LoA.

participants will be relying on corporate legal department to make representation

SuggestedRemedy

after "Claims" insert "that are not covered by an existing Letter of Assurance and that are"

after "IEEE", insert ", or cause the IEEE to be informed,"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

1st Suggested remedy change: ACCEPT IN PRINCIPLE.

After 'claims' the text 'and not already the subject of an existing Letter of Assurance' will be inserted.

2nd Suggested remedy change: ACCEPT.

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Document **Bylaws** Sub/Item **6.0** P **2** L **2** # **88**
 Commenter Hoyler, Susan Affiliation QUALCOMM

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

The use of the word "shall" imposes an affirmative obligation on a participant to disclose patent claims that may be essential, including those owned by its employer. There is no concept of knowledge included in this language.

This language is not consistent with the bylaws, which contemplates a scenario where a LOA will be requested if a Patent Claim that may be essential is disclosed.

If the intent of the wording in this clause is intended to impose an affirmative obligation to the participant, then it would involve a radical change the the policy and in practice require a patent search. This language is also not consistent with that used in Section D of the LOA which is more passive. This requirement would also be inconsistent with the ANSI policy which suggests that a SDO should not require any participant in the development process to undertake a patent search of its own portfolio.

SuggestedRemedy

change "shall inform" to "shall use best efforts to inform" or "Shall use reasonable endeavors to inform"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

We have addressed these issues by changing the requirement to be based on individual personal knowledge, see comment #56.

Document **By-Laws** Sub/Item P **1** L **23** # **22**
 Commenter Marasco, Amy Affiliation Microsoft

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

The current wording sounds as if the only option is to provide a not-to-exceed rate, which then is accompanied by either a sample license or a summary of the terms.

SuggestedRemedy

Change wording so it reads: "The Submitter may provide with its assurance (i) a not-to-exceed rate commitment, (ii) a sample licnese agreement and/or (iii) material licensing terms."

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Change to read '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.'

Document **Defs** Sub/Item P **1** L **30** # **31**
 Commenter Marasco, Amy Affiliation Microsoft

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

Unless we can define quite clearly what is meant by "commercially feasible", then I have concerns about including it. This term seems rather context sensitive to me - for example, something that may be perceived to be commercially feasible to a big company may be out of line for a small company. Essentiality should be linked to the technology reflected in the standard and not dependent on any particular business model or commercial circumstances.

SuggestedRemedy

Either better define how "commercially feasible" will be measured or else consider deleting it.

Response Response Status **C**

REJECT.

We believe that commercial feasibility is an important factor for determining essentiality. The determination of commercial feasibility will be based on the facts and circumstances of the particular case and as with other determination of essentiality will untimely have to be determined by a final arbiter.

Document **Defs** Sub/Item **Accepted LOA** P **1** L **5** # **57**
 Commenter Thompson, Geoff Affiliation Nortel

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

The SA does not and should not have the discretion to take on the administrative and substantive burden of being tasked with determining or enforcing compliance, conformance or LOA statements which licensors can refuse to make. The SA is merely tasked with holding assurance statements on record.

Acceptance does not mean completion. LOA should not be held up unnecessarily, since the act of submission is the patent holder's declaration of interest. Wouldn't IEEE rather an LOA be made and finalized than delay process?

IEEE should not be rejecting or standing in the way of effecting a patent holder's compliance since such statements and obligations have legal consequences. As such, acceptance should be simply administrative receipt and posting of the LOA or its existence.

SuggestedRemedy

Delete "determined is complete in all material respects and" with "acknowledged as received or"

Response Response Status **C**

REJECT.

We believe that both the bylaws and LoA provide sufficient disclaimers that the IEEE is not determining or enforcing compliance, conformance or LOA statements.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

Document **Defs**
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Document Defs Sub/Item BlanketLoA P 1 L 19 # 59

Commenter Thompson, Geoff

Affiliation Nortel

Comment Type S Comment Status R

A Blanket LOA does not state a patent holder's ability to license. Definition is also not consistent with LOA use. It is also unnecessary to get into Submitter's interest in the IPR to define what is a Blanket LOA.

SuggestedRemedy

Line 19 - after "Assurance", add "submitted and that is identified by Submitter as a Blanket Letter of Assurance for a specifically referenced IEEE Standard."

Line 19-21 - delete "that applies...future".

Response Response Status C

REJECT.

Line 19 suggested remedy: REJECT

Referencing the defined term 'Blanket Letter of Assurance' in the definition of the term 'Blanket Letter of Assurance' is circular.

The definition of Blanket Letter of Assurance states it 'shall mean a Letter of Assurance' and the definition of Letter of Assurance states it is 'for a specifically referenced standard. The proposed addition of 'specifically referenced IEEE Standard' is therefore redundant.

Line 19-21 suggested remedy: REJECT

We want to retain the concept that Blanket letter of assurance applies to essential patent claims now and in the future.

Document Defs Sub/Item Enabling Tech P 1 L 24 # 60

Commenter Thompson, Geoff

Affiliation Nortel

Comment Type S Comment Status R

Clarify that an enabling technology is not expressed in the standard. It may be identified, but it is not required.

SuggestedRemedy

Line 24 - after "set forth in", add "or required by"

Response Response Status C

REJECT.

Adding the text 'or required by' doesn't seem to make sense, how can something be required, and therefore be conformance tested against, but not be expressly set forth in the standard. Adding this text doesn't add anything.

Looking at the comment text it seems what is being suggested is an 'and' rather than an 'or'. Based on this the text will be changed to 'but is neither explicitly required by nor expressly set forth in the [Proposed] IEEE Standard'.

Document Defs Sub/Item EssentialClaim P 1 L 30 # 4

Commenter Sirtori, Michael

Affiliation Intel

Comment Type S Comment Status R

It appears intended that Essential Patent Claim be determined "at the time of the [Proposed] IEEE Standard's approval". This can lead to unusual results. For example, what happens if a patent claim is essential at the time of the standard's approval because there is no available alternative solution, but a few years later an alternative becomes available. Is the patent claim still essential?

SuggestedRemedy

Delete ", at the time of the [Proposed] IEEE Standard's approval, "

Response Response Status C

REJECT.

Yes - the patent claim is still essential. This is what we intend - we want stability throughout the life of the standard. We will make this more clear by replacing the two instances of 'is' with 'was'.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

Document Defs

Sub/Item EssentialClaim

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Document Defs Sub/Item EssentialClaim P 1 L 31 # 101
 Commenter Lang, Dan Affiliation Cisco Systems, Inc.
 Comment Type E Comment Status A
 clarify definition of Essential Patent Claim as it relates to Enabling Technology.
 SuggestedRemedy
 After "any" insert "Patent Claim that is essential only for"
 Response Response Status C
 ACCEPT.

Document Defs Sub/Item Letter of Assur P 1 L 16 # 58
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type S Comment Status A
 Positions or assurances are not limited to licensing.
 SuggestedRemedy
 Delete "regarding licensing of" and replace with "with respect to its"
 Response Response Status C
 ACCEPT IN PRINCIPLE.
 Change to 'regarding licensing of' to 'regarding ownership, enforcement or licensing of'.

Document Defs Sub/Item Other P 1 L 40 # 89
 Commenter Hoyler, Susan Affiliation QUALCOMM
 Comment Type S Comment Status R
 An "encumbrance" is a legal term associated with the ownership of real property. It is commonly used to indicate a lien, claim, charge, or liability attached to the real property. In general, it is a right or interest in real property which may subsist in another to diminution of its value.

In the current context, it is incorrect to refer to the rights attaching to the IP as ðan encumbrance to the property.ö It may actually add value, depending upon the situation surrounding any transfer of the property depending upon the terms of the underlying license. Also, the term encumbrance is a legally loaded term, and may bring unintended consequences from its usage in this context.

As such, it is suggested that substitute language be used to replace the word ðencumbranceö and capture the true spirit of what is sought to be achieved.

Suggest different term. see also same comment regarding section G of LOA

SuggestedRemedy

Response Response Status C
 REJECT.

We think it is appropriate to use this term as we intend, through this language in the LoA, for the LoA to be transferred with the Essential Patent Claim in the same way that an encumbrance transfers with a piece of real property.

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Document **Defs** Sub/Item **Statement of E** P **1** L **40** # **61**

Commenter Thompson, Geoff Affiliation Nortel

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

See Comment 15. Adding this to IEEE Bylaws is taking IEEE too far afield with unnecessary complexity and without justifiable improvement to IEEE policy or process.
(Also, it is too lawyeres. This should be readable by engineers.)

SuggestedRemedy

Delete definition in its entirety.

Response Response Status **C**

REJECT.

This is not going too far afield - we have real life examples of problems created by transfers or assigns - for example the Symbol bankruptcy case.

Document **Global** Sub/Item P L # **23**

Commenter Marasco, Amy Affiliation Microsoft

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

As a general matter, it appears that defined terms, when used, at not always capitalized.

SuggestedRemedy

A clean-up review may be in order.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Please help identify specific instances.

Document **Global** Sub/Item P L # **30**

Commenter Marasco, Amy Affiliation Microsoft

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

The assurance form seems to include a number of requirements for holders of essential patent claims that are not reflected in either the by-laws or operations manual. (E.g., a disclosure obligation (see D2) and an obligation to seek to bind successors-in-interest (see G)). Any obligation probably should be reflected in the policy itself.

Also, because the form reflects these types of obligations on patent holders, the form probably should not be able to be revised except with approval of the Board of Governors within IEEE SA.

SuggestedRemedy

See comment. Also, it might be helpful to put together a chart that compares the by-laws, the operations manual and the forms, and tracks the flow-down and consistency among these three documents.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

[1] Add to the start of the second paragraph of policy in the Bylaws '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 or control that might be or become Essential Patent Claims.'

[2] Move the 'Reasonable and Good Faith Inquiry' to the definition document and will not need to repeat this in the LoA.

[3] Add text to the Bylaws that '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)'

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Document **LoA** Sub/Item P **1** L **48** # **27**
 Commenter Marasco, Amy Affiliation Microsoft
 Comment Type **E** Comment Status **A**
 I think that terms are "offered" as opposed to "issued". The current wording is a bit unclear to me.
SuggestedRemedy
 Change to: "(Optional) Either a sample of such a license or a description of material terms that are substantially similar to what the Submitter would offer is attached."
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Change 'issued' to 'offered'.

Document **LoA** Sub/Item P **1** L **53** # **28**
 Commenter Marasco, Amy Affiliation Microsoft
 Comment Type **E** Comment Status **A**
 I think that terms are "offered" as opposed to "issued". The current wording seems a bit unclear. Also, the "optional" should appear at the beginning of each such optional option.
SuggestedRemedy
 Change to:
 "(Optional) These reasonable rates will not exceed _____ (e.g., percent of product price, flat fee, per unit)
 (Optional) Either a sample of such license or a description of material terms that is substantially similar to what the Submitter would offer is attached."
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Change 'issued' to 'offered' and move the (optional) to the beginning of the sentence.

Document **LoA** Sub/Item P **2** L **15** # **33**
 Commenter Marasco, Amy Affiliation Microsoft
 Comment Type **S** Comment Status **R**
 This sounds as if a company that did not have a participant in the process has to undertake a greater search and inquiry obligation than a company that actually did participate in the development of the standard (and has a greater familiarity with the standard). A non-participating company arguably has to have a number of employees (across an unclear spectrum of possibilities) read the standard and assess the IP portfolio.
SuggestedRemedy
 Consider inserting "one or more" between "to contact" and "individuals".
 Response Response Status **C**
 REJECT.

We do not think one or more is sufficient. Further, we believe there is not a requirements for the knowledgeable individuals to read the standard and access the IP Portfolio, instead we believe this would require one individual to review the standard and based on that identify who is most likely to have knowledge.

Document **LoA** Sub/Item P **2** L **29** # **29**
 Commenter Marasco, Amy Affiliation Microsoft
 Comment Type **E** Comment Status **A**
 What does "by the disclosure in the patent or patent applications" mean?
SuggestedRemedy
 I apologize, but I cannot think of a suggested fix as I really do not understand what is meant here.
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Change to read 'Essential Patent Claims in the patent or patent applications'

Document **LoA** Sub/Item **B** P **1** L **19** # **93**
 Commenter Hoyler, Susan Affiliation QUALCOMM
 Comment Type **E** Comment Status **A**
 Only one line provided for Address which seems insufficient for real world addresses. Depending on the format that the form will be provided for people to download, may need two lines.
SuggestedRemedy
 Provide two lines for address.
 Response Response Status **C**
 ACCEPT.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

Document **LoA**
Sub/Item **B**

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Document **LoA** Sub/Item **B** P **1** L **23** # **10**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **E** Comment Status **A**
 is this sentence gramatically correct?
 SuggestedRemedy
 Change "The IEEE does not review and does not endorse the contents nor confirms the continuing accuracy ..." to "The IEEE neither reviews, endorses the contents, nor confirms the continuing accuracy ...".
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Change to read 'Note: The IEEE does not endorse the content, or confirm the continuing accuracy or consistency of any contact information or web site listed above.'

Document **LoA** Sub/Item **B** P **1** L **23** # **44**
 Commenter Fromm, Jeff Affiliation HP
 Comment Type **S** Comment Status **A**
 The statement about the IEEE not reviewing made sense when it followed the statement about the IEEE not taking a position on the terms. Now that that context has been removed, the statement is odd. It seems that the IEEE will review the document, at least for formal matters. Whether the IEEE will read and do anything with regard to what it learns need not be stated in this document. The take-no-position statement is the one that is useful.
 SuggestedRemedy
 In LOA on page 1 line 23, strike "does not review and".
 Response Response Status **C**
 ACCEPT.

Document **LoA** Sub/Item **C** P **1** L **26** # **94**
 Commenter Hoyler, Susan Affiliation QUALCOMM
 Comment Type **E** Comment Status **A**
 title of section C is a bit confusing as currently written (PROPOSED)IEEE STANDARD OR PROJECT (AMENDMENT, CORRIGENDA, REVISION)
 Having amendment, corrigenda, revision in parentheses after Project seems to indicate that these are the types of project.
 SuggestedRemedy
 Have a definition of IEEE Standard in the Definitions section "IEEE Standard" when used in reference to a Letter of Assurance shall include proposed projects to formulate a new standard, projects to revise an existing standard, or amendement or corrigenda to an existing standard.
 Then on LOA, title of Section C, can be IEEE STANDARD OR PROJECT and in other parts of LOA can remove the (Proposed)IEEE Standard and additional listing.
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Yes, they are types of project.
 Change the header to read 'IEEE STANDARD OR PROJECT (e.g., AMENDMENT, CORRIGENDA, OR REVISION):'

Document **LoA** Sub/Item **C** P **1** L **28** # **104**
 Commenter Lang, Dan Affiliation Cisco Systems, Inc.
 Comment Type **S** Comment Status **R**
 Current text would potentially require submitters to make repeated disclosures where there are revisions.
 SuggestedRemedy
 Delete "The scope of this licensing position is limited to the following"
 Response Response Status **C**
 REJECT.
 Multiple disclosers are not require, see text in Operations Manual subclause 6.3.5.

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Document **LoA** Sub/Item **C** P **1** L **28** # **45**
 Commenter Fromm, Jeff Affiliation HP

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

In order to obtain assurances that are clearly meeting the expectations of the proposed policy as to revisions (OpsMan 6.3.5), the LOA ought to be clear that the assurance being provided relates to revisions of standards. Also, the phrase "The scope of" adds no meaning.

SuggestedRemedy

Replace "The scope of this licensing position is limited to the following:" with "This licensing position is limited to the following (including subsequent revisions of the standard):".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Change the text to read 'In accordance with Clause 6.3.5 of the IEEE-SA Standards Board Operations Manual, this licensing position is limited to the following:'

Document **LoA** Sub/Item **C** P **1** L **30** # **95**
 Commenter Hoyler, Susan Affiliation QUALCOMM

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

terminology for number and title inconsistent with that shown in E.1 Recommend making consistent

SuggestedRemedy

Patent/Application/Docket Number:
 Description (opt.)/Title:
 Claim:

Response Response Status **C**

REJECT.

This is where the Standard/Project number should be entered. But we have clarified this to read 'Standard/Project number:'.

Document **LoA** Sub/Item **D** P **1** L **33** # **62**
 Commenter Thompson, Geoff Affiliation Nortel

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

IEEE should make clear that it wants to obtain meaningful licensing declarations from likely patent holders in relation to the particular standard. No licensing declaration is necessary unless there is a known Essential Patent Claim for which the submitter has a licensing position, the submitter wants to provide a blanket license position or certify its non-awareness in compliance with policy. In addition, a non-awareness of Essential IPR assurance is not a licensing declaration for Essential IPR but this has been confused in the LOA.

Also D.1, "Submitter may have the ability to license" should capture patents held by Submitter but is problematic and ambiguous in full sentence context. It could be interpreted as having the ability to license Essential Patent Claims, rather than submitter potentially having IP that may become Essential for which it is declaring its position as checked in boxes below. I don't believe declaring the ability to license a patent claim is the intent of the LOA or policy.

SuggestedRemedy

1. Separate non-awareness declaration (D.2) from patent holder licensing declarations (D.1) by moving D.2 to a new Clause D. for Declaration of Non-Awareness of Essential Patent Claims and change current Clause D to Clause E.

2. D.1 (page 1, line 42) - Delete "The Submitter MAY have the ability to license Patent Claims that might become Essential Patent Claims" and replace with the following: "The Submitter or its represented organization may have at least one patent or patent application it holds, controls or has the right to license (without requiring payment to a third party) with Patent Claims that may be or become Essential Patent Claims."

3. D.1 (page 1, line 43-44) - Amend to "With respect to such Essential Patent Claims, the Submitter declares its licensing position is as follows:"

Response Response Status **C**

ACCEPT IN PRINCIPLE.

1. Reject - This is not a licensing declarations but instead a position regarding you willingness to license, one of the position that can be taken is that you don't have anything to license.

2. Accept in principle: This has been reworded to read 'The Submitter may own, control or have the ability to license Patent Claims that might become Essential Patent Claims.'

3. Accept in principle: 'With respect to such Essential Patent Claims, the Submitter's licensing position is as follows (check A, B, C, or D and any applicable subordinate boxes):'

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

Document **LoA**
 Sub/Item **D**

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Document **LoA** Sub/Item **D** P **1** L **42** # **11**
 Commenter Sirtori, Michael Affiliation Intel

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

The first sentence in D.1. ("The Submitter MAY have the ability to license Patent Claims that might become Essential Patent Claims.") has two major contingencies and seems pretty weak. Consider simplifying the paragraph 1 by deleting that sentence entirely and simply adding the operative clause to the following sentence.

SuggestedRemedy

Response Response Status **C**

REJECT.

See comment #13.

Document **LoA** Sub/Item **D** P **1** L **42** # **13**
 Commenter Sirtori, Michael Affiliation Intel

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

The first sentence in D.1. ("The Submitter MAY have the ability to license Patent Claims that might become Essential Patent Claims.") has two contingencies and does not seem to add much value. Consider simplifying the paragraph 1 by deleting that sentence entirely and simply adding the operative clause to the following sentence.

SuggestedRemedy

Delete the first sentence of D.1. and revise the second sentence to read as follows: "With respect to any Patent Claim that becomes an Essential Patent Claim that the Submitter has the ability to license ...".

Response Response Status **C**

REJECT.

The section has been reworded but we want to retain the 'might' as some entities want the ability to simply submit an LoA with Item D.1 checked without having to actually check any of their patents.

Document **LoA** Sub/Item **D** P **1** L **46** # **46**
 Commenter Fromm, Jeff Affiliation HP

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

The core assurance of "reasonable" rates and "reasonable" terms and conditions is vital to ensuring that IEEE standards remain meaningfully open to all interested implementers. It reduces the potential for post-adoption abusive license demands. It will fail in this objective, however, if patent owners' own subjective determinations of what they deem reasonable can prevail without challenge. In short, subjectivity in its application would undercut the requisite and intended predictability of implementation environments. We should accordingly remove ambiguity in this regard, clarifying that the promise is one of "objectively" reasonable rates, terms and conditions.

SuggestedRemedy

Insert "objectively" before "reasonable" in LOA on page 1 in lines 46, 50, 51.

Response Response Status **C**

REJECT.

See comment #37.

Document **LoA** Sub/Item **D** P **1** L **48** # **47**
 Commenter Fromm, Jeff Affiliation HP

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

In any particular case, the Submitter and a licensee may agree to enter into a license with different terms. The point of license terms attached to an LoA is to identify at least one set of terms that the Submitter would be willing to accept.

SuggestedRemedy

In LoA page 1 replace (twice) in line 48 and in line 55 "that is substantially similar to what the Submitter would issue" with "acceptable to the Submitter".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Changed 'would issue' to read 'would offer'.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

Document **LoA**
 Sub/Item **D**

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Document **LoA** Sub/Item **D** P **1** L **53** # **12**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **E** Comment Status **A**
 We should use the same style and text formatting regarding the option to enter reasonable rates as we use for submitting sample licenses.
SuggestedRemedy
 At the line where we offer the Submitter the option to enter reasonable rates, indent the paragraph and build a little checkbox / / and write "(Optional)" at the beginning of the paragraph rather than "(optional)" at the end.
 Response Response Status **C**
 ACCEPT.

Document **LoA** Sub/Item **D** P **1** L **53** # **90**
 Commenter Hoyler, Susan Affiliation QUALCOMM
 Comment Type **E** Comment Status **A**
 Not clear that lines 53-54 are optional for the submitter to complete.
SuggestedRemedy
 Recommend that (optional) be inserted before "These reasonable rates..." so the submitter clearly recognizes that the completion of the "not to exceed clause" is at the discretion of the submitter.
 Response Response Status **C**
 ACCEPT.

Document **LoA** Sub/Item **D** P **2** L **11** # **91**
 Commenter Hoyler, Susan Affiliation QUALCOMM
 Comment Type **S** Comment Status **R**
 D2 lists what a company might do to demonstrate "a reasonable and good faith inquiry" Two examples are given. Would it also be sufficient if a company has an internal, written policy telling its employees to disclose any IP that the employees believe is technically and commercially necessary to practice an IEEE standard? Would this demonstrate "a reasonable and good faith inquiry" and be compliant with the intent of the policy?
SuggestedRemedy

Response Response Status **C**
 REJECT.
 The language for demonstrating a reasonable and good faith inquiry is a safe harbor - it is clear there may be other was to demonstrate a reasonable and good faith inquiry but the IEEE will neither opine nor judge whether another method is sufficient.
 Also see comment #16.

Document **LoA** Sub/Item **D** P **2** L **11** # **16**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **S** Comment Status **A**
 The second sentence of D.2. sets out a way a Submitter can demonstrate reasonable and good faith inquiry. Is this intended to be an example of one way a Submitter might do that, or is it the only way? If this process is exactly what "reasonable and good faith inquiry" means, we should be able to write this more clearly. If it is more like one safe harbor among other options, we should be able to make that clearer as well.
SuggestedRemedy
 Make it clear whether this is a definition or a safe harbor.
 Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Note - that due to comment #30 'Reasonable and Good Faith Inquiry' has become a defined term so now appears in the Bylaws rather than here in the LoA.
 This is intended as a safe harbor. To make this clear the definition reads "'Reasonable and Good Faith Inquiry' includes, but is not limited to, a Submitter ...".

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

Document **LoA**
Sub/Item **D**

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Document **LoA** Sub/Item **D** P **2** L **12** # **14**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **E** Comment Status **A**
 minor gramatical tweak
 SuggestedRemedy
 change "contacted" to "contact"
 Response Response Status **C**
 ACCEPT.

Document **LoA** Sub/Item **D** P **2** L **47** # **105**
 Commenter Lang, Dan Affiliation Cisco Systems, Inc.
 Comment Type **S** Comment Status **R**
 It would be clearer if the submitter identified specific Letters of Assurance that are not superseded by the Blanket Letter of Assurance.
 SuggestedRemedy
 After "supersede" delete to the end of the sentence and substitute "the following pre-existing or simultaneously submitted assurance(s) that address specific Patent Claims:
 Letter of Assurance date -----
 Patent Claims -----
 Letter of Assurance date -----
 Patent Claims -----
 Letter of Assurance date -----
 Patent Claims -----"
 Response Response Status **C**
 REJECT.
 See comment #103.

Document **LoA** Sub/Item **D.1.C** P **2** L **4** # **65**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **A**
 Not to assert positions should be consistent with licensing positions. All licensing positions in D1 only apply to compliant implementations of the standard. But only D.1C accounts for that. D.1A and D.1B covers "implementing" the Standard but D.1C covers non-assertion against making, using, selling, offering to sell, importing, distributing or implementing...". All declarations should be non-discriminatory and consistent, and be consistent with only rights covered by a patent.

SuggestedRemedy
 1. D.1A and D.1B (lines 47 and 52 respectively) - delete "to implement" and replace with "with respect to compliant implementations of"

2. D.1C (line4) - delete ",distributing or implementing"

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

Suggested remedy part 1: ACCEPT IN PRINCIPLE

Box 1 states with respect to Essential Patent Claim and the definition of Essential Patent Claim reads '.. 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 ..' Based on this strike 'to implement the [Proposed] IEEE Standard.' from A, B and ', in regards to a compliant implementation of the [Proposed] IEEE Standards,' from C.

Suggested remedy 2: REJECT

See comment #38.

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Document **LoA** Sub/Item **D.1A/B Optiona** **P 1** **L 48** # **63**

Commenter Thompson, Geoff

Affiliation Nortel

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

The threshold of "substantially similar" license terms the Submitter would issue is unnecessary threshold and one IEEE makes no comment on if there are issues. Attachment of whatever license terms the Submitter wants to provide is optional, not the condition of irrevocable license terms as attached in the sample. The ability to attach the license is sufficient for the purposes of IEEE holding LOA documents.

SuggestedRemedy

D.1.A Optional box and D.1B Optional box: Delete "...that is substantially similar to what the Submitter would issue"

Response Response Status **C**

REJECT.

We want to ensure that the Submitter is bound by the licensing terms they have voluntarily at their sole option provided but want to give them some flexibility to make insubstantial modifications.

Document **LoA** Sub/Item **D.1B** **P 1** **L 54** # **64**

Commenter Thompson, Geoff

Affiliation Nortel

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

D.1.B Optional Not to Exceed rate

Placing optional in brackets after the statement is ambiguous. Does it mean the not to exceed rate is optional or the form of the not to exceed rate (e.g. % of price/fee, per unit) is optional? Disclosure is completely unilateral and optional, and that must be clear in the LOA.

SuggestedRemedy

Include an optional check box with (Optional) in front of voluntary disclosure of "not to exceed rates" as with sample license terms.

Response Response Status **C**

ACCEPT.

Document **LoA** Sub/Item **D.2** **P 2** **L 9** # **66**

Commenter Thompson, Geoff

Affiliation Nortel

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

This definition and standard is not appropriate. Submitters have and should have no affirmative duty to search or inquire of patents from anyone, and any such imposed duty is cumbersome and unreasonable burden on organizations or participants. No non-affirming statement has every risen to this level. Reasonable and good faith inquiries are related to threshold standards for disclosure of potentially known Essential IPR, not to make statements asserting lack of knowledge of Essential IPR. These standards also do not reasonably go beyond working group participant knowledge, when organizations have numerous reps.

No organization or individual would complete this. Even if the individual submitter participant has no knowledge they would be best simply not to complete the LOA than contact those that it thinks possibly could have knowledge and make the assurance.

SuggestedRemedy

1. Separate non-awareness declaration (D.2) from patent holder licensing declarations (D.1) by moving D.2 to a new Clause D. for Declaration of Non-Awareness of Essential Patent Claims and change current Clause D to Clause E.

2. Also, delete and replace with more reasonable text:

The Submitter hereby declares that it or its represented organization is NOT aware, to the personal knowledge of any of its past or current representatives participating in the [Proposed] IEEE Standard identified above, of any patent or patent application, it holds, controls or has the right to license without requiring payment to a third party, that has Patent Claims that may be or become Essential Patent Claims.

Response Response Status **C**

REJECT.

We do not require a search, in fact the LoA states 'Nothing in this Letter of Assurance shall be interpreted as giving rise to a duty to conduct a patent search.'

Suggested remedy part 1: See comment #62.

Suggested remedy part 2: The Submitter is a organization so the suggested text would increase the burden as it would apply to the organization knowledge rather that just selected individuals knowledge as the current text requires.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

Document **LoA**

Sub/Item **D.2**

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Document **LoA** Sub/Item **E** P **2** L **24** # **67**
 Commenter Thompson, Geoff Affiliation Nortel

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

E is not just about scope of LOA but provides optional disclosure of patent information.

Also, I think this is just a carry-over from inclusion of the new definition of Essential Claims, but patent holder is not expected to identify or disclose claims that may become essential.

Disclosure is optional so all information set out in optional disclosure section is completely optional.

With respect to E1 - why would IEEE want to allow ability to exclude particular identified essential claims from the LOA? This exclusion is both unnecessary and undesirable. If the claim is essential, it is within the licensing commitment and that is its whole purpose.

SuggestedRemedy

Clarify:

1. Change E title to "SCOPE OF ASSURANCE AND OPTIONAL PATENT DISCLOSURE". Title box E1 and E2 to Specific Assurance and Optional Patent Disclosure and Blanket LOA respectively.

2. Line 24 - after "one or more", add "patents or patent applications having"

3. Line 24 - after "might", add "be or"

4. Line 28-29 - delete bracketed sentence "If no Patent Claim...below).

5. Line 27 - after "applies to the", add "patent(s) or patent application(s) below having" and after "Claims" delete "below".

6. Line 32, 36, 40 - move "(opt)" after "Title"

7. Line 33, 37, 41 - after "Claim", add "(optional)"

8. E2 (Line 48) - after "submitted", add "specific" and after "identifying", replace "a specific Patent Claim" with "the existence of a patent or application having potential Essential Patent Claims".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Suggested remedy part 1: REJECT

This is only about scope and the only way you can limit the scope of the assurance is by providing the information requested.

Suggested remedy part 2: REJECT

This is covered by the definition of Patent Claim.

Suggested remedy part 3: ACCEPT

This change will be performed globally.

Suggested remedy part 4: REJECT

We want to be clear that if no claims are listed then the LoA applies to all claims in the patent.

Suggested remedy part 5: REJECT

Covered by the definition of the Patent Claim.

Suggested remedy parts 6 and 7: ACCEPT.

Suggested remedy part 8: ACCEPT IN PRINCIPLE

Will change to read 'a Blanket Assurance shall not supersede any pre-existing or simultaneously submitted specific assurance identifying potential Essential Patent Claims'.

Document **LoA** Sub/Item **E** P **2** L **45** # **92**
 Commenter Hoyler, Susan Affiliation QUALCOMM

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

This clause regarding Blanket Letter of Assurance should specifically indicate that it is limited to the WGs in which a company participates. You can mine this concept from the by-laws, but it should also be clear in this portion of the LOA

SuggestedRemedy

Response Response Status **C**

REJECT.

Blanket Letter of Assurances apply only to a specifically referenced standard.

The definition of Blanket Letter of Assurance states it 'shall mean a Letter of Assurance' and the definition of Letter of Assurance states it is 'for a specifically referenced standard.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

Document **LoA**
 Sub/Item **E**

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Document **LoA** Sub/Item **E** P **2** L **47** # **17**

Commenter Sirtori, Michael

Affiliation Intel

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

Why limit the sentence to say that a Blanket Assurance shall not supersede any "pre-existing or simultaneously submitted" assurance identifying a specific Patent Claim. Why not say that it does not supersede any assurance identifying a specific Patent Claim?

SuggestedRemedy

Delete "pre-existing or simultaneously submitted".

Response Response Status **C**

REJECT.

That would allow you to submit after the fact a Blanket LoA that would have worse terms than a specific LoA giving the ability to decommit on what was previously said.

Document **LoA** Sub/Item **E2** P **2** L **45** # **68**

Commenter Thompson, Geoff

Affiliation Nortel

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

"This" is a bit unclear what it refers to, particularly as it is the blanket LOA option that is set out under the optional disclosure section. Needs some minor refinement.

Also, see comment #2. The LOA or blanket LOA is not a declaration of anyone's ability to license all Essential Patents, it's a declaration whether the submitter may have Essential Patents and is willing to so license.

SuggestedRemedy

E2 Line 45

- after "this," add "this Letter of Assurance is a Blanket Letter of Assurance."
- after "such," add "the Submitter declares that any patents having"

E2 Line 46

- after "future", add "hold, control or"
- replace "ability" with "right"
- after "license", add "without requiring payment to any third party, and to the extent within the specified scope of this Letter of Assurance"

E2 (Line 48) - after "submitted", add "specific" and after "identifying", replace "a specific Patent Claim" with "the existence of a patent or application having potential Essential Patent Claims".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

E2 Line 45 - REJECT

This text would broaden the licensing commitment to the entire patent, and therefore all claims, even if it is only a subset of them that are Essential Patent Claims. This is not our intent, we only want a commitment on Essential patent Claims.

E2 Line 46 - REJECT

It doesn't matter if you have to pay a 3rd party - that fee could for example be included within you RAND rate.

E2 Line 48 - ACCEPT IN PRINCIPLE

See comment #67, item 8

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

Document **LoA**

Sub/Item **E2**

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Document **LoA** Sub/Item **F** P **2** L **53** # **69**

Commenter Thompson, Geoff

Affiliation Nortel

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

Application to Essential Patent Claims of Affiliate has to be within the same scope as for Submitter and can't be potentially more broad. Language is also probably a bit more complex than it needs to be.

SuggestedRemedy

F alternate suggestion:

The Submitter agrees that (i) the statements made above under this Letter of Assurance apply to any Essential Patent Claims within the scope of this Letter of Assurance owned or controlled by an Affiliate; and (ii) the terms of this letter are binding on each such Affiliate; in each case, except Affiliates as identified below.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Will be changed to read: 'With respect to any Essential Patent Claims that an Affiliate has the ability to license, the Submitter agrees that (i) the licensing statements described in parts C and D above apply to any Essential Patent Claims within the scope of the assurance described in part E; and (ii) the terms of this letter are binding on each such Affiliate; provided, however, that such commitments shall not apply to Affiliates identified below.'

Document **LoA** Sub/Item **F** P **2** L **54** # **18**

Commenter Sirtori, Michael

Affiliation Intel

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

We changed the "owned or controlled" construction in other parts of the documents but it looks like we could change it here as well. This would use consistent drafting.

SuggestedRemedy

Change "that may be owned or controlled by an Affiliate" to "that such Affiliage has the ability to license".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

See comment #69.

Document **LoA** Sub/Item **G** P **3** L **17** # **73**

Commenter Thompson, Geoff

Affiliation Nortel

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

Signature authority and authority to agree to the statements of the LOA.

SuggestedRemedy

Line 17 - refine "have the authority to bind" to "are authorized to sign and have the full authority to enter and agree to the statements in this Letter of Assurance on behalf of"

Response Response Status **C**

REJECT.

We believe the stronger assertion is important.

Document **LoA** Sub/Item **G** P **3** L **19** # **70**

Commenter Thompson, Geoff

Affiliation Nortel

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

The LOA is assurance for the IEEE to adopt standards and handle known Essential IPR claims and to encourage patent holders to declare licensing interests.

Users/implementers may rely upon public assurance statements with legal effect, but I don't see how an additional LOA acknowledgement is of any consequence or necessary or helps IEEE any.

SuggestedRemedy

Response Response Status **C**

REJECT.

We note that no remedy was provided however we believe that many states would not allow 3rd parties to enforce the terms of an LoA unless the LoA explicitly states that 3rd parties have the right to do so. We believe that 3rd parties should have the ability to enforce the terms of the LoA.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

Document **LoA**

Sub/Item **G**

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Document **LoA** Sub/Item **G** P **3** L **20** # **19**

Commenter Sirtori, Michael Affiliation Intel

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

The last sentence of the first paragraph of G seems like a very significant policy choice. Why would this be only reflected in the form of LOA and not in the Bylaws themselves? LOA can be changed more easily than Bylaws can.

SuggestedRemedy

Add this concept to the Bylaws, not just the LOA.

Response Response Status **C**

ACCEPT.

Added to the bylaws: '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.'

Document **LoA** Sub/Item **G** P **3** L **20** # **48**

Commenter Fromm, Jeff Affiliation HP

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

Those who later come to rely on this assurance should also be acknowledged and thereby have their ability to enforce the terms of the letter noted.

SuggestedRemedy

Insert ", will rely upon" after "upon".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Change 'are relying upon' to read 'are relying or will rely upon'.

Document **LoA** Sub/Item **G** P **3** L **22** # **71**

Commenter Thompson, Geoff Affiliation Nortel

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

Patents, not Patent Claims, are subject of potential sale or transfer.

SuggestedRemedy

G (line 21) - after "any", add "patents or patent rights having"

Response Response Status **C**

REJECT.

You can sell or transfer Patent Claims.

Document **LoA** Sub/Item **G** P **3** L **25** # **15**

Commenter Sirtori, Michael Affiliation Intel

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

Consistently use "Submitter" instead of "you".

SuggestedRemedy

Change "You agree" to "Submitter agrees".

Also delete the stray close paren at the end of line 28.

Response Response Status **C**

ACCEPT.

Document **LoA** Sub/Item **G** P **3** L **25** # **97**

Commenter Hoyler, Susan Affiliation QUALCOMM

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

An "encumbrance" is a legal term associated with the ownership of real property. It is commonly used to indicate a lien, claim, charge, or liability attached to the real property. In general, it is a right or interest in real property which may subsist in another to diminution of its value.

In the current context, it is incorrect to refer to the rights attaching to the IP as òan encumbrance to the property.ö It may actually add value, depending upon the situation surrounding any transfer of the property depending upon the terms of the underlying license. Also, the term encumbrance is a legally loaded term, and may bring unintended consequences from its usage in this context.

As such, it is suggested that substitute language be used to replace the word òencumbranceö and capture the true spirit of what is sought to be achieved.

SuggestedRemedy

Response Response Status **C**

REJECT.

See comment #89.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

Document **LoA**

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Document **LoA** Sub/Item **G** P **3** L **25** # **96**
 Commenter Hoyler, Susan Affiliation QUALCOMM
 Comment Type **E** Comment Status **A**
 You agree should probably be the SUBMITTER
 SuggestedRemedy
 The Submitter agrees (a)....
 Response Response Status **C**
 ACCEPT.

Document **LoA** Sub/Item **G** P **3** L **25** # **72**
 Commenter Thompson, Geoff Affiliation Nortel

Comment Type **S** Comment Status **R**
 Agreements with respect to Patent transfer:

As this reads, the Submitter is obligated to notify any assignee or transferee to the terms of the LOA, not just transferees of Essential Patents that are within the scope of the LOA. This needs to be refined.

As long as the patent assignment is subject to the LOA and the patent holder effects compliance with that, the exact manner of compliance should be of no concern to IEEE. Further, there seems to be confusion between notice and binding assignees. The scope of the initial PatCom motion was limited to notice. Notice is not binding agreement, it is simply notice of potential assurances over the patent being transferred. However that is done should not matter. Why does IEEE need notice to be as specific as "Statement of Encumbrance"?

Requiring notification of particular LOAs in due diligence, particular notice requirements and particular provisions in contracts on patentees is unreasonably intrusive into contracting practices and negotiations in the ordinary course of business and may not be an enforceable restriction on any patent assignment, particularly if this non-negotiable by the Submitter.

SuggestedRemedy

Delete "You agree...(a) and (b)]." and replace with the following:

The Submitter agrees that any assignment or transfer of a patent or patent application having Essential Patent Claims that is known by the Submitter at the time of assignment or transfer and is covered and within the scope of the statements made by Submitter in this Letter of Assurance shall be subject to the agreements to grant licenses or non-assertions declared herein. The Submitter may choose the manner in which to comply with this agreement, but the inclusion in an agreement that the assignment or transfer may be subject to existing assurances of license or non-assertions agreed to by the Submitter with standards bodies shall be clearly sufficient.

Response Response Status **C**
 REJECT.

We agree that notice does not require that you bind successor or assigns but one way to provide notice is to do so. We therefore provide the two options, one is to provide a statement of encumbrance which doesn't bind successors or assigns (other than they are require to provide 'notice' to their successor or assigns) and the other is to bind successor or assigns. We have however made it clear that the Statement of Encumbrance can be a general statement.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

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Document **LoA** Sub/Item **G** P **3** L **30** # **74**
 Commenter Thompson, Geoff Affiliation Nortel

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

Awareness of potential Essential IPR cannot be broader upon Submitters identified as an organization. Awareness needs to be specific, clear and understood and limited to participants of the standard.

Disclosure obligations and agreements to make licensing assurances should also not be confused. But, if there is an imposed, non-negotiable obligation to make further LOAs in respect of the same standard that must at least be referenced to the same, not any, existing LOA.

SuggestedRemedy

Delete line 30-32 inclusive and replace with the following:

If, after submission of this Letter of Assurance, any representative of the Submitter participating in the development of the [Proposed] IEEE Standard identified in C above becomes personally aware of a patent or patent application having Patent Claims that may be or become Essential Patent Claims that are owned or controlled by the Submitter, the Submitter agrees to notify IEEE by submitting a subsequent Letter of Assurance.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

The Bylaws now details what becoming aware means. See comment #5.

Document **LoA** Sub/Item **G** P **3** L **30** # **20**
 Commenter Sirtori, Michael Affiliation Intel

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

What does it mean for a Submitter to become aware of Patent Claims not already covered? A Submitter is in many (all?) cases a corporate entity. People commonly argue that corporate entities have imputed knowledge of everything all of its employees know. An employee that knows of the existence of additional Patent Claims may not know about the IEEE standard or the previously filed LOA.

SuggestedRemedy

Consider defining what it means for a Submitter to become aware of another patent. See previous comment regarding line 31 of Bylaws.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

The Bylaws now details what becoming aware means. See comment #5.

Document **OpsMan** Sub/Item P **1** L **34** # **25**
 Commenter Marasco, Amy Affiliation Microsoft

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

Please make this language the same as the wording used in the by-laws so it is clear that licensing "for free" also can include other RAND terms.

SuggestedRemedy

Change to: "without compensation or under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination".

Response Response Status **C**

ACCEPT.

Document **OpsMan** Sub/Item P **2** L **39** # **26**
 Commenter Marasco, Amy Affiliation Microsoft

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

It is not clear that a blanket letter of assurance does not automatically apply to all IEEE standards.

SuggestedRemedy

Consider adding "for a specific [proposed] IEEE standard" between "Assurance" and "which".

Response Response Status **C**

ACCEPT.

Document **OpsMan** Sub/Item P **3** L **17** # **32**
 Commenter Marasco, Amy Affiliation Microsoft

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

The two sentences here seem to say that either a Blanket or a specific LoA that covers a patent claim, that is subsequently transferred, still continues to apply to that claim. I am confused how that could be enforceable, because that specific LoA was signed by someone/entity who likely no longer has the ability to license that claim.

SuggestedRemedy

While I am not sure what was intended here, maybe these sentences should be deleted and replaced with text that says that someone who has submitted a LoA and who later transfers the patent will provide some level of notification to the transferee that the patent claim may be encumbered.

Response Response Status **C**

REJECT.

This is covered by the requirement for a Statement of Encumbrance or binding of the transferee detailed in the text in the Bylaws which was formally in LoA. See item [3] in response to comment #30.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

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Document **OpsMan** Sub/Item **5.3.8** P **1** L **3** # **75**
 Commenter Thompson, Geoff Affiliation Nortel

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

IEEE needs to be very clear about these rules to protect and educate itself and participants, without constant lawyers having to advise and monitor numerous reps, and continue to leave participants to stay focused on technical work at hand. While this 5.3.8 is a good start, this text needs to be further discussed. We are uncomfortable that it doesn't go far enough and is not sufficiently clear and comprehensive. IEEE Antitrust Guidelines need to be supported if not referenced in this provision in the manual.

SuggestedRemedy

Line 3 - after "development", add "or within the auspices, forums or facilities of IEEE SA activities",
 Line 3 - change "avoided" to "prohibited"
 Line 5 - after "validity, ", add "rates/fees or"
 Line 6 - add "or private dispute"
 Line 7 - add "pricing, discounts, future product plans, bids or bid intentions, profits, margins, or"
 Line 7 - need to specify "other issues" generally so upfront and clear
 Line 8 - add "reasonableness of licensing terms or conditions"
 Line 9 - add "negotiations or agreements regarding licensing rates/fees or other terms or conditions"

Response Response Status **C**

REJECT.

This is redundant with what is already in 5.3.8 and 6(b) however we will recommend the ProCom consider the whole issue of Anti-Trust guidelines and compliance training.

Document **OpsMan** Sub/Item **6.3** P **1** L **12** # **76**
 Commenter Thompson, Geoff Affiliation Nortel

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

Are the terms of organization bylaws and corporate policy appropriate substantive part of IEEE SA Operations manual?

SuggestedRemedy

Delete "and is incorporated by reference herein".

The IEEE SA LOA request process and other procedures then should then be moved from Clause 6 Patents of the Bylaws to the appropriate place in Clause 6.3/6.3.1 of the Manual.

Response Response Status **C**

REJECT.

We don't see any procedures defined Clause 6 'Patents' of the Bylaws but we do believe that readers should be encouraged to read both documents. In addition the Operations Manual does not include a list of hierarchy of documents there we have added the 'incorporated herein by reference' to make the hierarchy clear.

Document **OpsMan** Sub/Item **6.3** P **1** L **16** # **81**
 Commenter Thompson, Geoff Affiliation Nortel

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

IEEE can record the date it "accepts" the LOA if it wishes for its own processes but that acceptance date is not binding or relevant for the purposes of factually showing the patent holder has provided patent disclosure or licensing assurance, where the date the LOA is submitted to IEEE will be sufficient in that respect. Keeping LOAs from the public or rejecting LOAs is neither in IEEE standards interests or its role in holding LOAs to make available to the public.

SuggestedRemedy

Response Response Status **C**

REJECT.

The date at which the loA is accepted is the date upon which it becomes a binding commitment and therefore does need recorded. Note that is stated in the Definitions section of the Bylaws (see Accepted LoA) that acceptance is not based on IEEE substantive review.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

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Document **OpsMan** Sub/Item **6.3** P **1** L **19** # **77**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Requesting an LOA from identified Affiliates should not be higher threshold than Clause 6 of the Patent Policy.
SuggestedRemedy
 Line 19 - change "another" to "an"
 Line 19 - at the end of the sentence, add "if IEEE receives notice that a [Proposed] IEEE Standard may require the use of a patent or patent application having potential Essential Patent Claims of an Affiliate of a Submitter of that Letter of Assurance."
 Response Response Status **C**
 REJECT.
 We do believe they should be subject to higher threshold because the entity excluding the affiliate has been identify as holding a potentially Essential Patent Claim.

Document **OpsMan** Sub/Item **6.3** P **1** L **29** # **78**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **R**
 IEEE holds LOAs for the public upon request. This needs some minor refinement.
SuggestedRemedy
 Line 29 - after "request," add "from any person"
 Response Response Status **C**
 REJECT.
 No additional content. If we were get a request for a copy of an LoA from a gorilla we will happily provide a copy to them.

Document **OpsMan** Sub/Item **6.3.1** P **1** L **41** # **79**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Clause 6.3.1 should be fairly consistent with Clause 6 of the Bylaws in the same respect. 6.3.1 includes the text to "create a compliant implementation of" where Clause 6 of the Bylaws do not. Compliance is unnecessary qualifier in this context, which disclaims IEEE responsibility to identify any needed Essential IPR to practice the IEEE standard.
SuggestedRemedy
 Line 41 - delete "to create a compliant implementation an" and replace with "to use or practice this"
 Response Response Status **C**
 REJECT.
 See definition of Essential Patent.

Document **OpsMan** Sub/Item **6.3.1** P **2** L **4** # **7**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **S** Comment Status **R**
 The term "reasonable and nondiscriminatory" has been changed to "reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination." This change has also been made in the text of sections D.1.A and D.1.B of the LOA. Why was this change made? Is it intended to be different from "reasonable and nondiscriminatory terms and conditions"? Is it intended to add any new obligations or shift a burden between parties? I am just trying to understand the thinking behind this change.
SuggestedRemedy
 Propose restoring Ops Man to previous language ("reasonable rates and nondiscriminatory, reasonable terms and conditions") and propose restoring text in D.1.A of the LOA to "reasonable and nondiscriminatory terms and conditions" and the text in D.1.B to "reasonable and nondiscriminatory rates, terms and conditions".
 Response Response Status **C**
 REJECT.
 This change was made to make it clear that reasonable terms and conditions can be associated with both a with and a without compensation license - this was not clear before.

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Document **OpsMan** Sub/Item **6.3.1** P **2** L **17** # **80**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Same comment to Clause 6.3.1, page 1, line 41.
 SuggestedRemedy
 Line 41 - delete "to create a compliant implementation an" and replace with "to use or practice this"
 Response Response Status **C**
 REJECT.
 See definition of Essential Patent.

Document **OpsMan** Sub/Item **6.3.2** P **2** L **23** # **82**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **R**
 Individuals are not usually aware of specific claims, when a single patent can have 10-20 claims or more. This should be clarified.
 SuggestedRemedy
 Line 23 - after "that", add "a patent having"
 Response Response Status **C**
 REJECT.
 See definition of Patent Claims as it is where we include the concept of patent(s) or pending patent application(s).

Document **OpsMan** Sub/Item **6.3.2** P **2** L **27** # **83**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **R**
 There needs to be clarification for the WG chair to know when to make the request for LOA.
 SuggestedRemedy
 Line 27 - add "When the Working Group is notified that a [Proposed] Standard may require the use of a known patent or patent application having Essential Patent Claims,"
 Response Response Status **C**
 REJECT.
 Redundant with the paragraph above as well as components of Clause 6 of the Bylaws which is referenced.

Document **OpsMan** Sub/Item **6.3.4** P **2** L **39** # **84**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **A**
 IEEE cannot require license commitments or particular scope of license terms. Patent holders are free to refuse to provide access and licenses to its patented technology particularly if such IPR was not voluntarily contributed to the standard. In other words, whether the Submitter provides a Blanket LOA and what is the defined scope of blanket LOA from its patent portfolio (that is reasonably foreseeable and not infinite) is at the complete option of the Submitter of the LOA. It is better to describe the minimum of a blanket for a standard in which the Submitter participates, and then leave open the ability of patent holders to provide broader blankets as they wish. For the purposes of 6.3.4, only their general purpose and provision is necessary to describe for IEEE WG operations. There is no additional benefit to IEEE Standards to prescribe a particular scope of blanket LOA.

The prime purpose fo 6.3.4 should be simply state that there is Submitter ability to provide either a specific LOA or a blanket LOA.

SuggestedRemedy
 Line 39 - add "A patent holder or patent applicant may provide the IEEE with a Letter of Assurance that may: (1) apply to specific known patents having Essential Patent Claims, (2) apply to any of the Submitter's current or future patents having Essential Patent Claims if and to the extent Submitter's proposals to include the patent technology is adopted by the IEEE Standard, or (3) declare the Submitter's non-awareness of patents having or potentially having Essential Patent Claims.

Line 39 - after "Assurance", add "when the Submitter specifies in the Letter of Assurance such letter is a Blanket Letter of Assurance. A Blanket Letter of Assurance and its scope is made at the voluntary option of the Submitter. In general terms, such Blanket Letter of Assurance may cover any patents having Essential Patent Claims that the Submitter holds, controls or has the right to license at the time of submitting the Letter of Assurance and in the future with respect to at least the IEEE Standard referenced in Letter of Assurance within which the Submitter contributes or participates in its development. A patent holder Submitter has the right to refuse to provide licenses to Essential Patent Claims it did not voluntarily include in the IEEE [Proposed] Standard."

Delete "which covers all Essential Patent Claims the Submitter may currently or in the future hold or control".

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

Change the text '.. Blanket Letter of Assurance which covers ..' to read '.. Blanket Letter of Assurance for a specific [Proposed] IEEE Standard which covers ..'.

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Document **OpsMan** Sub/Item **6.3.4** P **3** L **2** # **85**

Commenter Thompson, Geoff

Affiliation Nortel

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

LOAs are not provided for claims; they're assurances to license patents and patent rights.

The application of this is also not clear and I don't think the provision will be at clear or understood by anyone needing to follow the Operations Manual or agree to it through the LOA. Why would a Submitter provide multiple assurances for the same patent/patent claim if it has at least one essential claim but all of which are under the LOA?

A Submitter may provide separate disclosures of or assurances for specific patents otherwise within a blanket LOA it previously specified, but not alternative assurance positions for the same essential patents. IEEE should not be encouraging multiple different assurances if the intent is to provide clear LOAs.

It is also still not clear why or how IEEE has the jurisdiction to advise or permit licensees when it can or cannot invoke which LOA licensing position if it is not a party to such discussions or the scope of the license commitments? If the LOA applies, it applies and licensee is free to make that argument. But if there are overlapping LOAs, it will come down to negotiations.

Lastly, a Blanket LOA is about scope of which patents not an offer of particular terms. Whatever the terms specified by the LOA for specifically identified patents apply to those those patents (whether or not they're the same or different from the blanket scope).

SuggestedRemedy

This also could be simplified a great deal for instance as follows:

"If, with respect to the same referenced IEEE Standard, the Submitter provides both a Blanket Letter of Assurance and a Letter of Assurance specifically identifying the existence of a known patent or patent application in the Letter of Assurance, then the Submitter's specific Letter of Assurance applies to the known patents or patent applications identified. If the Submitter's licensing position for such identified patents or patent applications in the specific Letter of Assurance is different from the Submitter's Blanket Letter of Assurance with respect to the same IEEE Standard as referenced, then adopters of such adopted IEEE Standard are free to negotiate or accept either of Submitter's licensing positions in entering a license with respect to the specified patents or patent applications the Submitter specified in such Letter of Assurance.

Response Response Status **C**

REJECT.

The assumption in the first sentence is not correct. We intend and believe that LOA may, at the patent holders option, apply at the claim level. Please explain why you believe this is not correct.

Document **OpsMan** Sub/Item **6.3.4** P **3** L **5** # **8**

Commenter Sirtori, Michael

Affiliation Intel

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

Why do we need the exception? Why not simply end the sentence after "IEEE" and let the licensee choose which LOA it wants to invoke?

SuggestedRemedy

Add period after IEEE and delete the rest of that sentence and the following parenthetical.

Response Response Status **C**

REJECT.

The licensee should not be able to choose more favorable blanket LoA terms if there was a preexisting specific LoA with less favorable terms.

Document **OpsMan** Sub/Item **6.3.4** P **3** L **6** # **103**

Commenter Lang, Dan

Affiliation Cisco Systems, Inc.

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

This is too confusing. A submitter should simply be able to indicate that a Blanket Letter of Assurance doesn't apply to specific patent claims covered by previous LoAs.

SuggestedRemedy

Delete after "exception:" until the end of the paragraph and replace with "A Submitter may also specify that a Blanket Letter of Assurance does not pertain to specific Patent Claims covered by previous Letters of Assurance."

Response Response Status **C**

REJECT.

It would overcomplicate the LoA to have include and exclude terms within the form. This can be achieved more straightforwardly by submitting multiple LoA.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

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Document **OpsMan** Sub/Item **6.3.4** P **3** L **15** # **86**

Commenter Thompson, Geoff

Affiliation Nortel

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

The acquired patent has to be within the scope of the Blanket LOA previously given.

This can't apply to any acquired entity. It should be within the same bounds as Affiliate is defined.

This also needs refinement as firms acquire patents or patent rights, not claims.

SuggestedRemedy

Line 15 - after "entity", add "that is an Affiliate"

Line 15 - after "controls", delete "a Patent Claim," and add "a patent or patent application having Essential Patent Claims that is within the scope of the Submitter's previous Blanket of Assurance,"

Line 17 - "after "acquired" add patent or patent applications" and delete "Patent Claims"

Line 18 - after "acquired", add "patent or patent applications" and delete "Patent Claims"

Line 19 - add "also" after "shall";

Line, 19, 20, 21, 23 - delete "Patent Claims" and replace with "patents or patent applications"

Line 20- 21 "Letters...Operations Manual" is redundant and unnecessary detail.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

[1] Change two instances of '.. a Patent Claim ..' to '.. an Essential Patent Claim ..'

[2] Change eight instances '.. Patent Claims ..' to '.. Essential Patent Claims ..'.

[3] Change '.. or an entity that owns or controls ..' to read '.. or a controlling interest in an entity that owns or controls ..'.

It is possible for an entity to acquire a patent claim or patent claims.

Document **OpsMan** Sub/Item **6.3.4** P **3** L **16** # **3**

Commenter Sirtori, Michael

Affiliation Intel

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

Applies in line 16 and line 18. Minor clarification needed to distinguish "holder of the acquired Patent Claim" from "prior holder of the acquired Patent Claim".

SuggestedRemedy

Change "holder" to "prior holder" in two places.

Response Response Status **C**

ACCEPT.

Document **OpsMan** Sub/Item **6.3.5** P **3** L **30** # **87**

Commenter Thompson, Geoff

Affiliation Nortel

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

IEEE interpretation of an LOA is not binding as courts have jurisdiction over private contracting terms and representations. The suggestion is to keep this clear so IEEE SA working groups understand existing LOAs may not apply to future IEEE work on the standard except perhaps in limited circumstances where the standard is unchanged.

IEEE should not be interpreting the LOA or the scope a Submitter has specified in an LOA, but only generally describe the identification of the scope specified by the LOA in Section C of the LOA for the purposes of assisting processes of handling LOA requests by WGs or IEEE SA. Examples are also dangerous for IEEE to specify as a matter of WG operations in the OM and would perhaps be better served in education guidelines to WG chairs.

LOAs should not be made to fit IEEE's specialized processes for developing, merging and revising its standards, when LOAs are made from the view of the time they're made on information IPR is determined as may be or become essential with adoption in the standard. The patent holder cannot foresee IEEE's future use or application of the standard or the technology specified in the standard document identified in the LOA. WGs should be very careful when re-using existing standards documents. It is simpler process to request an LOA than end up wrong later without an LOA.

SuggestedRemedy

Lines 30-33: Delete and replace with the following:

"A Letter of Assurance specifically referencing an amendment, corrigenda, or revision only applies to that amendment, corrigenda, or revision specified by the Submitter in the Letter of Assurance. Such Letter of Assurance can reasonably be considered by the Working Group to continue to apply to the resulting merged or consolidated IEEE Standard or subsequent revisions of such adopted IEEE Standard if the whole of the amendment, corrigenda, or revision document for which the Letter of Assurance is made is included, without modification, in the adopted IEEE Standard or adopted revision thereof, but only as long as the technology application required by the referenced amendment, corrigenda, or revision does not change and the same Essential Patent Claims covered by the Letter of Assurance remain Essential Patent Claims in the resulting adopted IEEE Standard or revision thereof.

Blanket Letter of Assurances should not be assumed to apply beyond the specified amendment, corrigenda, or revision referenced in the Letter of Assurance at the time the Submitter provides such Blanket Letter of Assurance.

Working Groups should seek new Letters of Assurances from the patent holder when re-using or including portions of or technologies specified by the existing IEEE Standard, amendment, corrigenda, or revision referenced in the Letter of Assurance in any other IEEE [Proposed] Standard, amendment, corrigenda, or revision. Similarly, Working Groups should initiate a request for a new Letter of Assurance from the known Submitter/patent holder when re-using portions of or technologies specified in the existing IEEE Standard, amendment, corrigenda, or revision referenced in a Letter of Assurance for or with any other application or scope."

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

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Response Response Status **C**

ACCEPT IN PRINCIPLE.

Subclause 6.3.5 will be changed to read:

A Letter of Assurance referencing an existing standard, amendment, corrigenda, or revision will remain in force for the application of the Essential Patent Claim(s) to the technology specified in another amendment, corrigenda, edition or revision of the same IEEE Standard but only if (a) the technology application required by the amendment, corrigenda, edition or revision of the same IEEE Standard has not changed and, (b) the same Essential Patent Claims covered by the prior Letter of Assurance remain Essential Patent Claims in the same IEEE Standard or revision thereof.

Working Groups shall initiate a request for a new Letter of Assurance from a known Submitter when re-using portions of or technologies specified in an existing [Proposed] IEEE Standard, amendment, corrigenda, or revision referenced in an Accepted Letter of Assurance in a different [Proposed] IEEE Standard with another application or scope.

Document **OpsMan** Sub/Item **6.3.5** P **3** L **33** # **9**

Commenter Sirtori, Michael Affiliation Intel

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

We need to clarify the types of amendments/revisions that impose further licensing obligations. We sort of get at the point with the phrase "is a new fundamental application" in the second paragraph of this section, but that is listed as an example and therefore is not sufficient. The operative language that needs to be clarified and narrowed is in the first paragraph.

SuggestedRemedy

At the end of line 33, add the following phrase: "solely to the extent necessary to achieve or maintain backwards compatibility, or to the extent that the amendment, corrigenda or revision does not add any new material functionality".

Response Response Status **C**

ACCEPT IN PRINCIPLE.

See new text in response to comment #87.

Document **OpsMan** Sub/Item **6.3.5** P **3** L **35** # **98**

Commenter Hoyler, Susan

Affiliation QUALCOMM

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

concept of "new fundamental application" is very vague. A definition would be better than an example. An example can be subject to too much interpretations Just as there is a definition for enabling technologies, it would tighten the policy to have a definition for "new fundamental application" Or if a definition is not developed, then do not use the word "application" and reword to be more succinct.

SuggestedRemedy

If no definition created, then change wording.

Use of the same Essential Patent Claim(s) for a new IEEE standard (which includes revisions) or a part thereof (amendments, corrigenda) will require a new Letter of Assurance for any patent claims where there is no commercially or technically feasible non infringing alternative to the claims used in creating a compliant implementation of either mandatory or optional portions of the new IEEE standard or a part thereof.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

See new text in response to comment #87.

Document **OpsMan** Sub/Item **Other** P **1** L **2** # **43**

Commenter Fromm, Jeff

Affiliation HP

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

The current text gives poor guidance and implies violations of antitrust laws where there would not be any. The newly inserted word "other" fosters this incorrect implication.

SuggestedRemedy

Replace everything in 5.3.8 after the first sentence with the following: "In particular, in the course if IEEE standards development, participants shall not engage in fixing prices, dividing markets, or other conduct that violates the antitrust laws. Apart from these antitrust concerns, any interest in dialogue regarding patent license terms or other intellectual property rights matters should be addressed by an intellectual property rights group composed of interested legal, technical and other resource individuals."

Response Response Status **C**

ACCEPT IN PRINCIPLE.

In response to comment #75 we will recommend ProCom consider the whole issue of Anti-Trust guidelines and compliance training.

TYPE: S/substantive E/editorial

COMMENT STATUS: D/dispatched A/accepted R/rejected RESPONSE STATUS: O/open W/written C/closed U/unsatisfied Z/withdrawn

SORT ORDER: Document, Subclause/Item, page, line

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Sub/Item **Other**

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