

IEEE-SA PatCom 12th September 2006 - Comments

Document **Bylaws** Sub/Item P **2** L **22** # **117**

Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **E** Comment Status **X**

this line states "IEEE shall request licensing assurance"

everywhere else the term "assurance or "LOA" is used. I think it is understood by the definitions of the LOA as well as the LOA itself that the assurance is for licensing, and "licensing" is not needed here as a modifier.

SuggestedRemedy

recommend removing "licensing" form line 22 to have consistent terminology throughout policy.

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item P **2** L **3945** # **151**

Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **S** Comment Status **X**

Note that the clauses here in the policy (a) and (b) appear in the LOA. However, the LOA includes additional wording "on a worldwide basis" and "to an unrestricted number of applicants"

LOA and policy should be made consistent. In those phrases that appear in the LOA are essential, then include in the bylaws

SuggestedRemedy

If the phrases in LOA are part of the policy, then include in the Bylaws.

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item P **2** L **912** # **145**

Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **S** Comment Status **X**

QUALCOMM respectfully submits that its comments were improperly rejected based upon an inaccurate understanding of the concept of an "encumbrance" as it applies to real property.

(the following explanation will be sent to the PatCom and PatCom list via email since it has footnotes which cannot be properly captured in this tool)

Qualcomm believes it would be desirable to replace the term "encumbrance" with a different term, and suggests the use of "third-party interest." It appears the intent of the IEEE proposal's "statement of encumbrances" is that any submitter should list the third party interests to which an essential patent claim is subject. However, the term "encumbrance," which is derived from the law of real property, is not well-suited to accomplish this purpose. This term is limited by legal definition to interests that diminish the value of the property in question, and also carries the baggage of 200 years of case law interpreting the term. Thus, the use of "encumbrance" will unduly narrow the set of interests that submitters are required to report, and may also lead to ambiguities as to which third-party interests need to be reported.

Detailed Discussion: The term "encumbrance" is used primarily in the context of real property. A contract to transfer real property may include a covenant that the property is free of encumbrances, and the question is often litigated as to what constitutes an "encumbrance" within the meaning of that covenant. In the context of this real-property-related question, a definition of encumbrances was first announced nearly 200 years ago by the Massachusetts Supreme Court, which, in the case of Prescott v. Trueman, defined an "encumbrance" as every right to, or interest in, the land granted, to the diminution of the value of the land, but consistent with the passing of the fee of it by the conveyance, must be deemed in law an encumbrance. [Prescott v. Trueman, 4 Mass. 627, 629 (1808) (emphasis added)]

Over the last two centuries, courts in numerous cases and in a wide variety of jurisdictions have adopted the Prescott definition, [Copeland v. McAdory, 13 So. 545, 546 (Ala. 1892); Huyck v. Andrews, 20 N.E. 581, 582 (N.Y. 1889); Demars v. Koehler, 41 A. 720, 721 (N.J. Ct. Err. & App. 1898); Berger v. Weinstein, 63 Pa. Super. 153, 157 (1916); Alamogordo Improvement Co. v. Prendergast, 91 P.2d 428, 433 (N.M. 1939); Hebb v. Severson, 201 P.2d 156, 160 (Wash. 1948); Tahoe Nat'l Bank v. Phillips, 480 P.2d 320, 328 (Cal. 1971); Corning Bank v. Bank of Rector, 576 S.W.2d 949, 953 (Ark. 1979); Leach v. Gunnarson, 619 P.2d 263, 268 (Or. 1980); Alliance Towers, Ltd. v. Stark County Bd. of Revision, 523 N.E.2d 826, 831 n.5 (Ohio 1988); Feit v. Donahue, 826 P.2d 407, 410 (Colo. Ct. App. 1992); Bear Fritz Land Co. v. Kachemak Bay Title Agency, 920 P.2d 759, 762 (Alaska 1996); Create 21 Chuo v. Southwest Slopes, 918 P.2d 1168, 1181 (Haw. Ct. App. 1996).] which states an interest is only an encumbrance if it (1) diminishes the value of the property, and (2) permits ownership of the property to be transferred.

In the 1875 Connecticut case of Kelsey v. Remer [43 Conn. 129, 1875 Conn.LEXIS 18 (1875), the defendant noted the wide-acceptance of the Prescott definition, but then

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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observed that this definition [Id., 1875 Conn.LEXIS 18, 10-11] leads to the question, "what does diminish the value of the land," and noted that there is disagreement as to whether certain types of interests constitute encumbrances in the sense of actually diminishing value. [Id., 1875 Conn.LEXIS 18, 11.]

This disagreement has, in fact, been the subject of much litigation in modern times. For example, the generally stated rule is that easements constitute encumbrances, but that zoning restrictions do not. [Magraw v. Dillow, 671 A.2d 485, 490 n.12 (Md. 1996).] However, even these general principles have exceptions. For example, in Feit v. Donahue, [826 P.2d 407 (Colo. Ct. App. 1992).] a Colorado appellate court observed that zoning restrictions are sometimes found to be encumbrances, and sometimes not, often depending on the jurisdiction and on the particular zoning issue involved. [Id. at 410] Also, the Idaho Supreme Court observed in Campagna v. Parker [779 P.2d 409 (Idaho 1989).] that an easement can be an encumbrance because certain easements add to, rather than detract from, the value of the land. [Id. at 413-14.] In particular, the court noted that an easement for a public roadway that passes through the land is not an encumbrance if it adds value by providing access that is essential for use of the land, but that the same roadway could be an encumbrance if it does not add a value (e.g., if there is already another access to the property). (In Campagna, the court determined that the easement in question was an encumbrance because there was a separate access to the property.) Thus, even the ostensibly settled rules on whether zoning restrictions and easements are encumbrances have complexities that make these issues fact sensitive, and thus make it difficult to determine whether a particular interest is, or is not, an encumbrance.

The easement and zoning cases are instructive as to how the term "encumbrance" may apply to patent rights - both because they demonstrate that the term "encumbrance" is fraught with baggage in its traditional real-property context, and also because they demonstrate that an attempt to apply this term to patent rights will introduce confusion. For example, a license to a patent may, in some cases, be considered analogous to an easement in real property, in the sense that the license represents a non-owner's right to use the patent owner's intellectual property - just as an easement represents a non-owner's right to use the land. And certain restrictions on the rights of ownership in a patent (e.g., compulsory license, implied license, antitrust laws, etc.), may be considered analogous to zoning restrictions, since they represent government-imposed restrictions on the use of the owner's intellectual property. However, it is unclear how the principles concerning easements and zoning would analogize to third-party rights in a patent. The easement cases demonstrate that - in attempting to determine whether a patent is "encumbered" by a particular license - one may have to determine the nature of the license and determine whether it adds or detracts from the value of the patent. For example, including a patent as part of a standard may appear to transfer some of the owner's rights in the patent to another party, but that transfer may actually enhance the value of the patent by encouraging others to practice and license the technology in the patent. It is unclear whether a standards organization's rights in the patent should be treated as an encumbrance or not.

The zoning cases demonstrate a similar point: Given that the patent owner's use of a patent is subject to rules concerning compulsory license, implied license, and antitrust, it is unclear at what point the potential for a compulsory or implied license, or the possibility of an antitrust issue, creates an "encumbrance" on the patent.

SuggestedRemedy

Qualcomm believes it would be desirable to replace the term "encumbrance" with a different term, and suggests the use of "third-party interest."

Proposed Response

Response Status **O**

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Commenter Bassuk, Lawrence

Affiliation Texas Instruments

Comment Type **S**

Comment Status **X**

Under (b), TI will not be able in all cases to require our assignee or transferee to do anything.

SuggestedRemedy

TI can ask an assignee or transferee to so act.

Proposed Response

Response Status **O**

<i>Document</i>	Bylaws	<i>Sub/Item</i>	<i>P</i>	3	<i>L</i>	15	<i>#</i>	118
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Commenter Hoyler, Susan

Affiliation Qualcomm

Comment Type **E**

Comment Status **X**

(b) to require your assignee or transferee...

change your to its

As agreed in July comments to make you into Submitter. Submitter can be either individual or organization.

SuggestedRemedy

change "your" to "its"

Proposed Response

Response Status **O**

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 **Bylaws** Sub/Item P **3** L **15** # **38**
 Commenter Marasco, Amy Affiliation Microsoft
 Comment Type **E** Comment Status **X**
 Most of the language in this paragraph speaks in the third person as to the Submitter. In this line, it switches to the second person in terms of using "your".
 SuggestedRemedy
 Change "your" to "the Submitter's"
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item P **3** L **23** # **144**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **S** Comment Status **X**
 In Drafting Group's attempt to address comments that it is optional to attach terms to LOA, language was inserted which imposes limitations. Namely, "any of the following" (i), (ii), (iii) implies that it must be one of the three. We had assumed submitter can attach anything to LOA, including all conditions of license and there should not be limitations.
 In addition, the LOA seems to indicate that the optional attachments are only (i) and (ii). Need to make congruent.
 SuggestedRemedy
 Change text to "may provide its licensing terms and conditions with its assurance, including without limitation in such form as (i), (ii), (iii)."
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item P **3** L **26** # **159**
 Commenter Bassuk, Lawrence Affiliation Texas Instruments
 Comment Type **S** Comment Status **X**
 The present language says that the individual has personal knowledge of the Essential Patent Claims. What if that person knows of the claims, but does not know that they are essential patent claims to any standard?
 SuggestedRemedy
 ...have personal knowledge that certain patent claims owned or controlled by the Submitter are potential Essential Patent Claims related to a [Proposed] IEEE standard ...
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item P **3** L **29** # **157**
 Commenter Bassuk, Lawrence Affiliation Texas Instruments
 Comment Type **S** Comment Status **X**
 under (a) past participants may be no longer employed by TI and beyond TI's ability to ask that person.
 SuggestedRemedy
 Limit (a) to employees of Submitter
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item P **3** L **30** # **42**
 Commenter Marasco, Amy Affiliation Microsoft
 Comment Type **S** Comment Status **X**
 This relates to updating a LoA based on the knowledge of certain sub-sets of individuals at the Submitter's company. We understand if the knowledge is of the past or present participants in the process. But I am having a hard time trying to figure out who "other individuals from ... the Submitter who are involved in the technology of the [Proposed] IEEE Standard" might be. I also think that I am not sure who the "members of the Submitter's intellectual property management department" might be. If it our IP group, then arguably I would have to give 200+ people a copy of the standard to see if they have personal knowledge of any potential Essential Patent Claims. This seems very overbroad to me. Couldn't it be limited to the participants and then anyone who had an active role in ascertaining whether there were any Essential Patent Claims when the original LoA was formulated?
 SuggestedRemedy
 "deemed to be aware if any one of the following individuals have personal knowledge of additional potential Essential Patent Claims... (a) past or present participants in the development of the [Proposed] IEEE Standard or (b) any individual who have a substantive role in the preparation of the original LoA."
 Proposed Response Response Status **O**

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 **Bylaws** Sub/Item P **3** L **33** # **160**
 Commenter Bassuk, Lawrence Affiliation Texas Instruments
 Comment Type **S** Comment Status **X**
 Section (d) appears to intrude upon a legal advisor's prerogative to advise his client.
 SuggestedRemedy
 Remove, the earlier sections are more than broad enough to encompass the necessary persons.
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item P **3** L **45** # **149**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **S** Comment Status **X**
 "Copies of an Accepted LOA may be provided to the working group, but shall not be discussed, at any standards working group meeting."
 The current placement of this important piece of the policy seems to be linked to (b) of the Assurance. It would seem that it merits its own stand alone paragraph since it is not only LOAs with optional attachments but any Accepted LOA. I think it is important that no LOA be discussed at a standards meeting.
 In addition, it is confusing as to whom the actor would be providing the LOA. Will the PatCom administrator provide? WG Chair? the LOA submitter? WG Participant?
 And for what purpose, since the policy states "Shall not be discussed".
 What does provided mean? Made as a contribution? Provided for information? A reference made to the web site? Why does this need to be stated when the Ops Manual notes that LOAs received will be posted on the IEEE-SA Website--and any person has access to the web?
 I think the key point is that it is permissible for copies of any Accepted LOA to be referenced at any standards working group meeting; however, under no circumstances the contents of the LOA (including its attachments) (see also comment about definition of Accepted LOA) shall not be discussed at the standards working group meeting.
 SuggestedRemedy
 Make separate paragraph after line 3.
 At a standards working group meeting, it is permissible for references to be made to Accepted Letter of LOAs posted at the IEEE-SA website; however, the Accepted LOAs shall not be discussed at any standards working group meeting.
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item P **3** L **2526** # **150**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **S** Comment Status **X**
 "Stating its position regarding enforcement or licensing"
 This is an overstatement of what the LOA offers. The LOA does not address enforcement. (see previous comment on definition of LOA)
 Change to "stating its position regarding licensing of such Patent Claims"
 This wording be congruent with the title of Subpart D of the LOA (position regarding licensing of ...claims)
 "For the purposes of this commitment"
 should this be assurance? For consistency, the policy should use same terminology throughout
 SuggestedRemedy
 Change to "stating its position regarding licensing of such Patent Claims"
 Change "commitment" to "assurance"
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.0** P **1** L **10** # **13**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **X**
 I think a comma is required after "with." Otherwise, it reads right into "the Submitter" without consideration of the other modifying clauses. I had to read this sentence several times to parse it, so it needs help.
 SuggestedRemedy
 Add the comma
 Proposed Response Response Status **O**

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Document **Bylaws** Sub/Item **6.0** P **1** L **31** # **81**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **E** Comment Status **X**
 Actually subclause 6.1
 The "is" in the red text doesn't match the changed tense of the rest of the definition.
 SuggestedRemedy
 Change "is" to "was" in the red text to match the changed tense of the rest of the definition.
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.0** P **2** L **2** # **14**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **X**
 There is a lot of use of [Proposed] IEEE Standard, which I think is very confusing.
 SuggestedRemedy
 replace with "the proposed or existing IEEE Standard"
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.0** P **2** L **7** # **15**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **X**
 There is a lot of use of [Proposed] IEEE Standard, which I think is very confusing.
 SuggestedRemedy
 replace with "the proposed or existing IEEE Standard"
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.0** P **2** L **28** # **16**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **X**
 "might be or become" is a vague
 SuggestedRemedy
 change to "might be or might become"
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.0** P **3** L **4** # **88**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **X**
 The submitter should be notified here that any T&C so submitted shall be considered to be binding to be binding for the full term of the assurance and that the IEEE will maintain records in support of that.
 SuggestedRemedy
 Add the following text at the end of item b:
 "Any proposed or sample T&C submitted with an LoA will become part of the permanent file for that LoA."
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.0** P **3** L **4** # **87**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **X**
 The following text:
 "Copies of an Accepted LOA may be provided to the working group, but shall not be discussed, at any standards working group meeting."
 is unnecessary and a specific invitation to violation. It invites the use of the standards forum to advertise a particular companies licensing terms. Permitting this material to be handed out in a standards meeting is no different than allowing a product pricing sheet to be handed out in the meeting.
 SuggestedRemedy
 Change the the text by replacing:
 "Copies of an Accepted LOA may be provided to the working group, but shall not be discussed, at any standards working group meeting."
 With:
 "Copies of an Accepted LOA shall no be provided to nor discussed in the working group. It is acceptable to announce to the WG that an LoA has been accepted and to provide the URL of the LoA's entry in IEEE-SA RECORDS OF IEEE STANDARDS-RELATED PATENTS."
 Proposed Response Response Status **O**

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 **Bylaws** Sub/Item **6.0** P **3** L **18** # **89**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **X**
 The new text allows submitters to develop generalized boilerplate that will exclude all affiliates. I believe they will do so and it will become general practice, thus negating the effectivity of this text.
 The allowance of general exclusionary text defeats the purpose of this requirement in support of the process called out in OpsMan 6.3 pg1 line 18
SuggestedRemedy
 Restore the text to its previous form which requires specific enumeration of the excluded entities.
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.0** P **3** L **25** # **85**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **X**
 Deemed or impute knowledge of potential Essential IPR on an organization doesn't seem to be the right formulation. There either is personal knowledge of Essential IPR or there isn't. Awareness should be stated as a definition and a standard of disclosure, but not a deemed circumstance imposed on members that triggers a mandatory obligation to submit a LOA with a licensing position. The goal should be to encourage compliance and actual provision of continual LOAs to assist the process and reflect a reasonable balance rather than set broad set of circumstances which deem awareness and set up members to have automatically breached the subsequent LOA obligation in those circumstances.
 Sub (b) also goes too far and is overly onerous to expect and alter practices of members with a large employee base and numerous standards. The best members can do to manage standards policies is to provide guidance to participants in the standard and its details, not numerous employees that may be remotely involved in the related technology. If a single employee not involved in the standard does not bring it up through inadvertence or unawareness of standards policies, is the member deemed to have breached with potential serious consequences on the line? That can't be right. Same goes for sub (c) unless that person also qualifies under(a) participating in the standard.
 The policy also needs to be very clear on its face there is no unreasonable requirement or implication to carry out patent searches, which is the explicit norm.
SuggestedRemedy
 Line 25 - delete "the Submitter is deemed to be aware if any one of the individuals" and replace with "awareness means that any of the following individuals employed by or affiliated with the Submitter have actual,"
 Line 30 - delete "past or present"
 Line 30 - Delete sub (b) and (c)
 Line 33 - Add "In no case is the Submitter required to carry out searches or investigations of its patent portfolio to have awareness or become aware".
 Proposed Response Response Status **O**

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 **Bylaws** Sub/Item **6.0** P **3** L **28** # **18**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **X**
 There is a lot of use of [Proposed] IEEE Standard, which I think is very confusing.
 See also lines 30 and 32. I'm tired of typing new comments! :-)
 SuggestedRemedy
 replace with "a proposed or existing IEEE Standard"
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.0** P **3** L **33** # **90**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **X**
 A submitter's intellectual property management department could duck this requirement (inadvertantly or otherwise) by tossing their portfolio to a outside firm to mine for revenue.
 SuggestedRemedy
 Add the following text at the end:
 "or any agent therof."
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.0** P **3** L **39** # **19**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **X**
 you need to add the word "for" before "determining" and after" "or"
 SuggestedRemedy
 as above
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.0** P **3** L **43** # **86**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **X**
 There seems to be come discrepency as patent disclosure is and has always been optional in the LOA, but the policy suggests a mandatory requirement to inform IEEE of potential Essential Patent Claims. Mandatory disclosure policies can provide a disincentive to participate in the WGs or membership if they put more onerous burdens on some with active membership.
 SuggestedRemedy
 Replace "shall inform" with "encouraged to use reasonable efforts to"
 After "informed of" add the "existence of"
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.0** P **3** L **44** # **20**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **X**
 insert "that are" after "and" and before "not"
 SuggestedRemedy
 as above
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.0** P **3** L **89** # **17**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **X**
 This is a very hard sentence to parse.
 SuggestedRemedy
 Delete the commas after "Claims" and "Assurance"
 Proposed Response Response Status **O**

IEEE-SA PatCom 12th September 2006 - Comments

Document **Bylaws** Sub/Item **6.0** P **3** L **1516** # **27**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **S** Comment Status **X**
 Second person is flat unacceptable in the Bylaws.

And I'm really having trouble understanding what is meant in b). You require someone in b) to require assignees and transferees to follow the provisions of b)? This seems circular to me.

SuggestedRemedy
 Replace "your" in line 15

Honestly, I'm not sure how to fix the rest of it.

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.1** P **1** L **6** # **68**
 Commenter Willingmyre, George Affiliation GTW Associates
 Comment Type **S** Comment Status **X**
 I foresee IEEE unnecessarily limiting flexibility by requiring IEEE-SA to only post LOAs that IEEE-SA have "determine is complete in all material respects" It is inevitable that IEEE will receive an LOA(s) whose contents merit sharing publicly but which for some reason (substantive or otherwise) is not "complete" Further by using these words, IEEE exposes itself to liability by having made any determination at all about the contents of an LOA. Better that the IEEE-SA serve primarily as a communication channel than as a gate keeper

SuggestedRemedy
 change to "has received and posted"

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.1** P **2** L **6** # **34**
 Commenter Ling, Hung Affiliation Lucent Technologies, Inc
 Comment Type **S** Comment Status **X**
 "...the submitter using reasonable efforts to contact individuals who the submitters believes are most likely to have knowledge about the technology covered by ...IEEE Standard or knowledge of possible Essential Patent Claims."

Q1. I assume we are not talking about any individual in the world?
 Q2. Even if the "individuals" are limited to those employed by the Submitter, the description seems to mean the entire research, development and manufacturing community involved with products related to the technology. Such inquiry exceeds "reasonable".

SuggestedRemedy
 Delete second sentence.

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.1** P **2** L **7** # **69**
 Commenter Willingmyre, George Affiliation GTW Associates
 Comment Type **S** Comment Status **X**
 First time I have seen the description of "Reasonable and Good Faith Effort" Why not add here that RGFE does not mean duty to conduct a patent search as contained in lines 40 43 of the page 1 LOA?

SuggestedRemedy
 RGFE does not necessarily give rise to duty to conduct a patent search

Proposed Response Response Status **O**

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 **Bylaws** Sub/Item **6.1** P **2** L **27** # **33**
 Commenter Ling, Hung Affiliation Lucent Technologies, Inc

Comment Type **S** Comment Status **X**

At the June meeting, we had substantial discussion that a Submitter (who may own or control an Essential Patent Claim) may not have the ability to license due to prior encumbrances. And the ability to license is the basis underlying a Letter of Assurance. I believe there was agreement to replace "may own or control" by "may have the ability to license". This change was accurately reflected in section F of the LoA, where "an Affiliate has the ability to license" replaces "may be owned or controlled by an Affiliate", and in the Op Manual.

SuggestedRemedy

Replace "may own, control" by "may have the ability to license".

Same change needed on line 9 (page 3), line 22/23 (page 3), line 27/28 (page 3).

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.1** P **2** L **37** # **53**
 Commenter Townsend, Rick Affiliation PatCom / Lucent Technologie

Comment Type **E** Comment Status **X**

It is not clear what the antecedent of 'This' is.

SuggestedRemedy

Change 'This assurance' to 'An LoA'.

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.2** P **2** L **31** # **54**
 Commenter Townsend, Rick Affiliation PatCom / Lucent Technologie

Comment Type **E** Comment Status **X**

The 'if' clause is misplaced.

SuggestedRemedy

Move the 'if' clause to the beginning of the sentence.

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.2** P **2** L **32** # **52**
 Commenter Townsend, Rick Affiliation PatCom / Lucent Technologie

Comment Type **S** Comment Status **X**

Putting the subjective judgment of whether there is a Patent Claim in the hands of any of the IEEE committees leaves the IEEE in the target area for a lawsuit. How is PatCom or any other committee equipped to make a decision? If we ask for an LoA and don't get one, we just don't get it - we will have followed our process.

SuggestedRemedy

Delete the sentence beginning with, 'An asserted Essential Patent Claim for which . . .'
 A better alternative would be to leave the decision up to the working group. With a formal assertion that there may be a potential Claim against the standard, the group could ask for a formal withdrawal of the standard if already approved or a change in direction if not yet approved - perhaps with a higher than normal threshold.

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.2** P **2** L **35** # **70**
 Commenter Willingmyre, George Affiliation GTW Associates

Comment Type **S** Comment Status **X**

It is well that the policy provide (as is does w/r to referring matters to the Patent Committee for Resolution) for a means to address possible non compliance with the policy. However this role for the Patent committee comes very close to the role of making some judgement about a patent claim. An interpretive record of the deliberative process for giving this role to the patent committee and how this role of the patent committee might be carried out deserves to be created and retained

SuggestedRemedy

The thoughts of the patent committee about its "resolution" role and any legal consideration of the resolution role of the patent committee should be created and retained

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.2** P **3** L **4** # **2**
 Commenter Ringle, Dave Affiliation IEEE Standards

Comment Type **S** Comment Status **X**

'may be provided' - Who determines this? Is it Sponsor/WG discretion? Participant right?
 {Just curious}

SuggestedRemedy

none

Proposed Response Response Status **O**

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 **6.2** P **3** L **8** # **36**
 Commenter Ling, Hung Affiliation Lucent Technologies, Inc
 Comment Type **E** Comment Status **X**
 The term "assign" or "assignment" has been used in various places. Introducing the term "sell" is unnecessary.
 SuggestedRemedy
 replace "sell" by "assign".
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.2** P **3** L **14** # **55**
 Commenter Townsend, Rick Affiliation PatCom / Lucent Technologie
 Comment Type **S** Comment Status **X**
 I thought we agreed only to notify any assignees of the existence of LOAs and not to bind or require further action. As I recall the discussion the legal folks in the room did not believe we could do that.
 SuggestedRemedy
 Delete the text in part (a) beginning with 'either ' ' and change part (b) to be a request by changing the text 'and bind' to 'to' and deleting text starting with 'to provide such notice . . '
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.2** P **3** L **15** # **35**
 Commenter Ling, Hung Affiliation Lucent Technologies, Inc
 Comment Type **S** Comment Status **X**
 Regarding (b) to require assignees to similarly provide such notice, is there such corporate experience that some companies are willing to share? IEEE should not develop a policy change without taking into account how the real world works.
 SuggestedRemedy
 Delete (b).
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.2** P **3** L **21** # **73**
 Commenter Willingmyre, George Affiliation GTW Associates
 Comment Type **S** Comment Status **X**
 The text chosen to describe the obligation of a submitter of an LOA to submit future LOAs is a strong disincentive for submitters of LOAs in the first place. The text here is shown as a "shall" obligation while the companion text in the LOA is a "agrees to" should have parallel construction
 It would be great improvement to change this to a "should" obligation or at least give some leeway to a first time submitter. Suppose for example the first time submitter submits an LOA under LOA condition D2 he is unaware of any patent claims, now by submitting he obliges himself for future action. If that case applied to GTW and GTW had no patent claims, I might prefer to ignore requests for submitting an LOA in preference to committing myself to future actions
 SuggestedRemedy
 Change the wording from a mandatory "shall" to an encouragement "should" and be sure the text is parallel in LOA
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.2** P **3** L **26** # **56**
 Commenter Townsend, Rick Affiliation PatCom / Lucent Technologie
 Comment Type **S** Comment Status **X**
 The statement of who might know about whether a Claim could exist relative to a standard does not have the reasonableness shown in the 'Reasonable and Good Faith' definition. Part (d) might be a widely dispersed organization. Asking to poll all of them is not reasonable and wasteful of resources.
 SuggestedRemedy
 Drop parts (a), (b), and (d). Add 'The Submitter should (a) make a Reasonable and Good Faith effort to identify and contact individuals per the definition in 6.1 and (b) [put the current text from (c)].
 Proposed Response Response Status **O**

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 **6.2** P **3** L **42** # **74**

Commenter Willingmyre, George Affiliation GTW Associates

Comment Type **S** Comment Status **X**

This is one of the most important sentences in the IEEE patent policy. This is the mandatory "shall" obligation on "participants" to inform the IEEE of potential essential patent claims.

Not clear to me how this mandatory requirement translates to the LOA page 2 line 16 text that makes the disclosure optional.

Do not fully understand also whether this sentence requiring information of potential essential patent claims applies to situation where a blanket LOA has been submitted. Is it clear that a participant whose employer might have an essential claim the participant knows about must disclose this information when the employer of the participant has submitted a blanket LOA?

Because this sentence is so important, it is also important to be very clear to whom the requirement applies. The terms "individuals participating in" and "participant" seem to be describing the same entity. If yes, then add "(participant)" just after the terms "individuals participating in the standards development process" to make this clear.

Is "participant" defined anywhere? Is "participant" anyone who ever attended an IEEE meeting or spoke at an IEEE meeting or was on a mailing list for an IEEE working group or just what does the word participant mean

SuggestedRemedy

Clarify for me and for future readers how this mandatory requirement applies across the board to "participants" Explain somewhere what is a participant

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.2** P **3** L **43** # **37**

Commenter Ling, Hung Affiliation Lucent Technologies, Inc

Comment Type **S** Comment Status **X**

Obligating a participant to inform IEEE of other party's patents could create liability for the participant and its employer.

SuggestedRemedy

Replace "shall" with "are encouraged to".

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.2** P **3** L **4246** # **3**

Commenter Ringle, Dave Affiliation IEEE Standards

Comment Type **S** Comment Status **X**

Is this now imposing a duty to disclose? If not, I don't understand the intent of the text. If so, perhaps we could state it more plainly. I am also having difficulty integrating this text with the Call for Patents section in the OpMan [6.3.2].

SuggestedRemedy

none

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **6.2 b)** P **3** L **3** # **71**

Commenter Willingmyre, George Affiliation GTW Associates

Comment Type **S** Comment Status **X**

There is no need to detail the specific items a submitter may provide in an LOA. There could be helpful information a submitter may wish to provide that is not one of the three options listed. Also important to match this to LOA text

SuggestedRemedy

Make the three items illustrative only or better leave more open ended what the submitter may choose to include. Also sure to match this with LOA text

Proposed Response Response Status **O**

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 **6.2.b)** P **3** L **4** # **72**

Commenter Willingmyre, George Affiliation GTW Associates

Comment Type **S** Comment Status **X**

Lines 4 and 5 convey a different thought and message than the previous text in b) There are two messages first about the distribution and second about the instruction not to discuss these LOAs. These two messages should bcome out to the left margin as two separate messages. Why Copies "may" and why just to "the working group". Is it the submitter who "may" provde the LOAs or is it IEEE? Are there not possibly many working groups or committee who might find an LOA relevant? Needs clarification

SuggestedRemedy

First sentence: An LOA shall be promptly posted publicly to an IEEE web site. IEEE shall take steps to alert all interested parties of the availability of newly posted LOAs

Second separate sentence: The contents of an LOA are not a proper topic for discussion at an IEEE standards working group or (continue what other IEEE committees should not discuss an LOA?)

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **All** P **1** L **42** # **41**

Commenter Marasco, Amy Affiliation Microsoft

Comment Type **S** Comment Status **X**

When it says "includes, but is not limited to", it seems to suggest that you must do what is called out in the following examples, but that it is not limited to that - you must do more as well. I do not think that this is what was intended. From your response to past comments, it seems as if you were providing an example of what would satisfy this requirement. (This issue appears twice in this definition of a "reasonable and good faith inquiry".)

As a separate issue in the same section, if the Submitter did not have a participant, shouldn't the Submitter contact those who are likely to have knowledge of the technology covered by the Standard and (as opposed to "or") knowledge of possible Essential Patent Claims? Otherwise this could be very burdensome, in that companies will have to essentially give copies of the standard to their patent attorneys and ask them to conduct a patent search in order to be able to give a definitive response. If this is not what is required, then I suggest that the language at the end of this definition should be clarified to that effect.

SuggestedRemedy

"Reasonable and Good Faith Inquiry means that, as an example, a Submitter should use reasonable efforts to identify and contact those individuals who are from, employed by or otherwise represent the Submitter and who are known to the Submitter to be current or past participants in the development process of the [Proposed] IEEE Standard identified in a Letter of Assurance.... If the Submitter did not or does not have any participants, then a Reasonable and Good Faith Inquiry means, that, as an example, a Submitter should use reasonable efforts to contact individuals who the Submitter believes are most likely to have knowledge about the technology covered by the [Proposed] IEEE Standard and knowledge of possible Essential Patent Claims.

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **BlanketLoA** P **1** L **17** # **50**

Commenter Townsend, Rick Affiliation PatCom / Lucent Technologie

Comment Type **S** Comment Status **X**

The use of 'all Essential Patent Claims' is overly broad. 'All' means all and is not restricted in any way.

SuggestedRemedy

Add 'that apply to a specific standard and' after 'Patent Claims'.

Proposed Response Response Status **O**

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 **Other** P **1** L **42** # **58**

Commenter Sirtori, Michael Affiliation Intel

Comment Type **S** Comment Status **X**

Regarding Definition of Reasonable and Good Faith Inquiry:

The committee has devoted much detail and effort to this definition, but I believe no one will check the LOA box D2. I will be happy to be proved wrong, but if I was a company that received a "cold call" request for an LOA from IEEE, I would submit no LOA at all rather than check box D2 and subject myself to this definition.

SuggestedRemedy

I think the entire concept of Reasonable and Good Faith Inquiry needs reconsideration.

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **Other** P **2** L **3** # **51**

Commenter Townsend, Rick Affiliation PatCom / Lucent Technologie

Comment Type **S** Comment Status **X**

Making a reasonable effort to find people who are most likely to have knowledge about the technology asks for a very broad, comprehensive search. It is also a search could be very time consuming in a large corporation with a diverse organizational structure.

SuggestedRemedy

Drop (or greatly alter) the sentence starting at the end of line 3 - 'If the Submitter does not have any participants . . .'

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **Other** P **2** L **39** # **59**

Commenter Sirtori, Michael Affiliation Intel

Comment Type **S** Comment Status **X**

In other parts of the documents, we have used the more accurate "own, control or have the ability to license" instead of the term "any of its present or future Essential Patent Claims" that we have used here.

SuggestedRemedy

Suggest we use consistent drafting and change "any of its present or future Essential Patent Claims" to "any present or future Essential Patent Claims that it owns, controls or has the ability to license".

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **Other** P **3** L **15** # **57**

Commenter Sirtori, Michael Affiliation Intel

Comment Type **E** Comment Status **X**

Editorial changes.

SuggestedRemedy

Change "require your assignee or transferee" to "require its assignee or transferee".

Also add a period at end of sentence.

Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **Other** P **3** L **27** # **60**

Commenter Sirtori, Michael Affiliation Intel

Comment Type **S** Comment Status **X**

First, as a drafting matter, we should probably say "one or more" instead of "one".

Second, stating that an individual must know of an Essential Patent Claim does not address the relevant knowledge issue. There will always be someone at a company who merely "knows" of a claim (for example, a patent counsel in charge of the application). It is an entirely different matter to know not merely "of" a claim, but to know of the claim's relevance as an Essential Patent Claim. We should make a drafting clarification so that an individual must not only know of the existence of the additional Essential Patent Claim, but must also know of the [proposed] standard, and know (or at least believe) that the claim is essential. All those elements must be present in the same person.

SuggestedRemedy

Revise to say "one or more of the following individuals" instead of "one of the following individuals".

Revise to say "has personal knowledge of an additional Patent Claim owned or controlled by the Submitter that such individual believes is likely to be an Essential Patent Claim to the [Proposed] IEEE Standard and not alreadyà" instead of "have personal knowledge of additional potential Essential Patent Claims, owned or controlled by the Submitter, related to a [Proposed] IEEE Standard and not alreadyà".

Proposed Response Response Status **O**

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 **Other** P **3** L **43** # **61**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **S** Comment Status **X**
 A participant must "inform the IEEE" of any Essential Patent Claims. Would we like to be more specific about who they should inform? Should they inform the Secretary? The PatCom Administrator? The chair of the Working Group? Should that detailed level of information go in the Ops Manual instead?
 SuggestedRemedy
 Change "shall inform the IEEE" to "shall inform the PatCom Administrator".
 Proposed Response Response Status **O**

Document **Bylaws** Sub/Item **Other** P **3** L **45** # **62**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **S** Comment Status **X**
 What does the phrase "owned or controlled by the participants or othersà" add? It seems to me that the phrase pretty much covers the universe of possibilities. (Either the claim is owned by the participant or an other.) Since the phrase covers the universe of possibilities, it doesn't seem to add any value. If we delete the last part of the sentence (from "owned" to the end), we get the same result.
 SuggestedRemedy
 Add a period after "an existing Letter of Assurance" and delete the rest of the sentence.
 Proposed Response Response Status **O**

Document **Defs** Sub/Item P **1** L **35** # **134**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **E** Comment Status **X**
 replace "mean a letter stating" with "mean a document stating"
 Capitalize S of submitter
 SuggestedRemedy
 Proposed Response Response Status **O**

Document **Defs** Sub/Item P **1** L **37** # **116**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **E** Comment Status **X**
 currently states "submitted in a form acceptable to the IEEE"
 SuggestedRemedy
 Change to make parallel with section 6.2, lines 23-24
 "submitted on the LOA form aproved by the IEEE Standards Board."
 Proposed Response Response Status **O**

Document **Defs** Sub/Item P **1** L **4243** # **143**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **S** Comment Status **X**
 It appears that in response to various comments asking for clarification of what is "reasonable and good faith inquiry" entailed in the text of the draft LOA that the drafting group responded in three ways:
 Drafting group indicated that the intent of the Definition
 --"includes, but not limited to" in Definition, other ways are possible
 --intent is to have definition as "safe harbor"
 --IEEE will not opine or judge about which method is sufficient
 The Definition as written imposes unreasonable obligation, is overbroad and a burdensome imposition on a participant. In addition, while the IEEE may not opine or judge about sufficiency, the standard imposed will likely lead to increased disputes within the IEEE process and in litigation. The expectation of the drafting group that this "would require one individual to review the standard and based on that identify who is most likely to have knowledge" (as indicated in response to Comment #33, July 2006) is not a reasonable one.
 SuggestedRemedy
 Revisit the issue of balancing "no patent search required" with the expectation that the participants are encouraged to exercise a reasonable and good faith inquiry. Strive to define in a manner which puts a reasonable obligation on the participant.
 Proposed Response Response Status **O**

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 **Defs**
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Document Defs Sub/Item EssentialClaim P 1 L 2730 # 115

Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type E Comment Status X

Changed "is" to "was"; Drafting Group responded to Intel comment #4 and said intent was "stability through life of Standard"

In trying to correct the scenario raised by changing "is" to "was", the drafting group created another negative scenario. Namely, what happens if standard approved, and a participant discovers Essential Patent Claim subsequently? With this definition, no action required.

Intent was to avoid scenario raised by Intel but new language defeats purpose and creates confusion

SuggestedRemedy

recommend reverting to "is".

Proposed Response Response Status O

Document Defs Sub/Item Other P 1 L 18 # 119

Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type E Comment Status X

make definition and Subpart E of LOA Lines 37-39 match.

suggest changing def to match language in subpart E.2 of LOA. Ensures consistency and puts the timing phrases together (currently/future)

"Submitter may currently or in the future have the ability to license at the time of submitting the Leter or Assurance."

SuggestedRemedy

"Submitter may currently or in the future have the ability to license at the time of submitting the Leter or Assurance."

Proposed Response Response Status O

Document Defs Sub/Item Other P 1 L 56 # 148

Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type S Comment Status X

In the definition of Accepted LOA, it does not mention the optional attachments being deemed accepted. Will ALL attachments (regardless of content) be accepted? Would there be a case where the LOA would be accepted but not the optional attachment?

Assuming the intent is for the Submitter at its sole option to provide with its assurance, licensing terms and conditions in any form. Then it should be made clear that the IEEE PatCom will not screen attachments in any manner and that it will be deemed part of an accepted LOA.

SuggestedRemedy

Assuming the intent is for the Submitter at its sole option to provide with its assurance, licensing terms and conditions in any form. Then it should be made clear that the IEEE PatCom will not screen attachments in any manner and that it will be deemed part of an accepted LOA.

Proposed Response Response Status O

Document Defs Sub/Item Other P 1 L 3537 # 146

Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type S Comment Status X

the words "ownership, enforcement or" have been added to the Definition of Letter of Assurance.

I don't understand how the LOA addresses "ownership and enforcement" as distinct from "licensing." "Enforcement" is particularly not appropriate because (i) the LoA doesn't say anything about that, and (ii) it may suggest that by submitting an LoA a patent owner is giving up its rights to enforce its patent in some way other than by committing to engage in good faith license negotiations. If that is the intent of adding the words, it would be entirely inappropriate and not recommend for the PatCom. If that is not the intent, then these words should be removed.

SuggestedRemedy

Remove "ownership, enforcement or" in definition.

Also remove from by-laws, p.3 , line 25 and LOA, p.3, line 20.

Proposed Response Response Status O

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 **Global** Sub/Item P L # **26**

Commenter Nielsen, Mary Lynne Affiliation IEEE

Comment Type **E** Comment Status **X**

My "many years of being an editor" hat is coming on here.

There is a frightening amount of overcapitalization in these clauses, which dramatically reduces their readability. There is often a sense that Capitalization Offers Great Meaning and Weight to a Word or Term, when it really doesn't. Especially if there is A Lot of Capitalization, it reaches the point where is Has No Meaning at All and just Makes Things Hard to Read.

This is particularly unnecessary because you have added subclause 6.1, with its definitions of words and phrases. Those definitions apply when the word or phrase is used, so the capitalization becomes moot.

Also, by doing this, you run a risk for the rest of our documentation. Could someone argue that, by capitalizing here and not capitalizing somewhere else, that the definition didn't apply to that "somewhere else"? Ouch. I don't even want to have to go down that road.

Keep in mind also that documents like the Companion are meant to be readable and approachable, and couldn't begin to use this level of capitalization. As it stands right now, these clauses in the Bylaws and Ops Man are very hard to read and parse. The overcapitalization compounds the matter.

Please, please, please--don't leave this in. I think showing the capitalization in the definitions clause itself is sufficient.

SuggestedRemedy

Exorcise the Demons of OverCapitalization from the Documents At Hand!

Proposed Response Response Status **O**

Document **Global** Sub/Item P L # **1**

Commenter Ringle, Dave Affiliation IEEE Standards

Comment Type **S** Comment Status **X**

The redline-Bylaws do not seem to be using the existing Bylaws text (See <http://standards.ieee.org/guides/bylaws/sect6-7.html#6>) as the baseline. Instead of having to chain backwards through a few iterations of changes, can the drafting team produce a redline version against the current Bylaws? This is the text that will ultimately need to be reviewed by PatCom and the SASB. Thanks. [Same for OpMan and LoA Form.]

SuggestedRemedy

Please produce redline versions of all 3 documents against the current approved versions.

Proposed Response Response Status **O**

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 **Global** Sub/Item P L # **10**

Commenter Ringle, Dave Affiliation IEEE Standards

Comment Type **S** Comment Status **X**

- Without a determination of essentiality, patent letters of assurance have little to no substantive value.
- The current IEEE-SA assurance policy arose from the ANSI/IEEE requirement to ensure that a published standard that does indeed contain patented technology essential to a compliant implementation of the standard ensure that such technology be available to implementers. Thus, the rationale for having a RAND assurance letter in-house prior to publication. However, this need for protection [against a patent hold-up; for a viable standard, etc.] only makes sense if it has been determined that there are indeed essential patents that apply to the standard. Without such a determination, there is really no need to spuriously request/receive/review patent letters of assurance.
- At present, the only patents that can truly be deemed by IEEE-SA to be essential to a standard's implementation are those that are cited as necessary in the normative text of a standard.
- Listing multiple patent letters of assurance on the IEEE-SA web listing may confuse prospective implementers, as no determination has been made as to which ones truly apply.

SuggestedRemedy

none

Proposed Response Response Status **O**

Document **Global** Sub/Item P L # **8**

Commenter Ringle, Dave Affiliation IEEE Standards

Comment Type **S** Comment Status **X**

I still do not favor going down to the level of patent claims instead of patent or patent application. In the LoA Form, E.1 allows the patent holder to specify those claims that it believes are essential for which it is willing to license under RAND. If the patent holder states that it will license patent X, claims 1,2, and 3 under RAND, but it turns out that claim 4 is also essential, then what? It does not appear from the submitted LoA that the patent holder has stated that claim 4 will be offered under RAND. This just seems like it could cause more harm than good. I would not be opposed to allowing the patent holder to state those claims that it believed to be relevant, as long as the full patent was covered by the LoA and the patent holder was only obligated to license the essential claims.

SuggestedRemedy

Revert back to being concerned with essential patents that contain essential patent claims.

Proposed Response Response Status **O**

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Document **Global** Sub/Item P L # 9
 Commenter Ringle, Dave Affiliation IEEE Standards
 Comment Type **S** Comment Status **X**
 I hope that our disclaimer language is strong enough to protect us from litigation. I am still concerned that any LoA that PatCom accepts that has rate caps or sample licenses could be viewed as imbuing that information with 'reasonable' status {from a PatCom point of view as viewed by an observer} by the mere fact of acceptance of the LoA.
 SuggestedRemedy
 Have legal counsel re-review the disclaimer language in light of above comment.
 Proposed Response Response Status **O**

Document **Global** Sub/Item **All** P **0** L **0** # 67
 Commenter Willingmyre, George Affiliation GTW Associates
 Comment Type **S** Comment Status **X**
 The comment resolution report at http://grouper.ieee.org/groups/pp-dialog/drafting-committee/20060818/PatCom%20_comments_18_aug_v2.pdf contains helpful insight to the deliberations and intentions of the patent committee selecting specific wording in the bylaws; ops manual; and LOA. Take for one example the Patcom discussion on page 13 of 31 w/r to Marasco comment on LOA:
 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.
 This and other text explaining the reasoning of the patcom is relevant information that should be captured and retained for future reference by parties who will read and strive to understand the words without the benefit of the proximity to the process that we who are commenting have.
 I see this as a "factual" record and not a part of the policy evolution process requiring its own approval as a policy or procedural reference
 SuggestedRemedy
 Proposed Response Response Status **O**

Document **LoA** Sub/Item P L **39** # 127
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **E** Comment Status **X**
 Box E.2, line 3, Recommend inserting "box" in front of D.1 .
 This provides consistent terminology since the Note for Subpart E indicates box D.1
 SuggestedRemedy
 insert "box" in front of D.1; however
 Proposed Response Response Status **O**

Document **LoA** Sub/Item P **1** L **9** # 152
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **S** Comment Status **X**
 "No license is implied by submission of this Letter of Assurance" is an important point highlighted at the start of the LOA. Recommend that this point be included in definition of LOA.
 after last sentence in LOA definition, continue with:
 Submission of an LOA does not imply a license by the Submitter.
 SuggestedRemedy
 Expand definition of LOA to include concept of "no license implied"
 Proposed Response Response Status **O**

Document **LoA** Sub/Item P **3** L **12** # 162
 Commenter Bassuk, Lawrence Affiliation Texas Instruments
 Comment Type **S** Comment Status **X**
 Same comments on TI not being able in all cases to require an assignee to act.
 SuggestedRemedy
 delete (b)
 Proposed Response Response Status **O**

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Document **LoA** Sub/Item **A** P **1** L **1722** # **120**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **E** Comment Status **X**
 Are all pieces of contact information required? (I do not consider URL crucial information)
 If all pieces required, then indicate so in directions.
 What happens if submitter does not complete URL? will it be rejected?
 SuggestedRemedy
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **B** P **1** L **24** # **45**
 Commenter Townsend, Rick Affiliation PatCom / Lucent Technologie
 Comment Type **E** Comment Status **X**
 Delete the word 'continuing' as superfluous. It's immaterial whether the accuracy is
 continuing. It's either accurate or its not.
 SuggestedRemedy
 Delete 'continuing'.
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **D** P L # **7**
 Commenter Ringle, Dave Affiliation IEEE Standards
 Comment Type **S** Comment Status **X**
 Disclaimer Note in Section D - [The IEEE takes no position with respect to the validity or
 essentiality of Patent Claims or the reasonableness of rates, terms, and conditions of any
 license agreements offered by the Submitter.] That particular Note could be beefed up a bit
 by stating that not only do we disclaim the actual license agreements, but we also disclaim
 the reasonableness of such information furnished on or in conjunction with the LoA.
 SuggestedRemedy
 add more language along the lines noted above
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **D** P L # **5**
 Commenter Ringle, Dave Affiliation IEEE Standards
 Comment Type **E** Comment Status **X**
 We have too much re-use of letters. We have D.1.D, for example. Perhaps, under D.1, we
 could use lowercase a through d?
 SuggestedRemedy
 change lettering to lowercase.
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **D** P **1** L **38** # **122**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **E** Comment Status **X**
 Subpart D
 (check box 1 or box 2)
 -make consistent with directions for Subpart E
 (Check box 1 or box 2 below)
 SuggestedRemedy
 (Check box 1 or box 2 below)
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **D** P **1** L **42** # **123**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **E** Comment Status **X**
 Rates, terms, and conditions of any license agreements offered by the Submitter.
 1)remove comma after terms. Throughout policy, "terms and conditions" is used. If
 comma is intended, then also make consistent in by-laws
 SuggestedRemedy
 Proposed Response Response Status **O**

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 **44** # **28**
 Commenter Ling, Hung Affiliation Lucent Technologies, Inc

Comment Type **S** Comment Status **X**

At the June meeting, we had substantial discussion that a Submitter (who may own or control an Essential Patent Claim) may not have the ability to license due to prior encumbrances. And the ability to license is the basis underlying a Letter of Assurance. I believe there was agreement to replace "may own or control" by "may have the ability to license". This change was accurately reflected in section F where "an Affiliate has the ability to license" replaces "may be owned or controlled by an Affiliate".

On line 44 (page 1), the change was apparently made in the July 7 version but the words "may own, control or" were re-inserted in the August 18 version. This later change moves the text back to the original issue I raised.

SuggestedRemedy

Replace "may own, control" by "may have the ability to license".

The same should be done in line 10 (page 2), lines 9 and 18 (page 3).

Proposed Response Response Status **O**

Document **LoA** Sub/Item **D** P **1** L **46** # **121**
 Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **E** Comment Status **X**

(Check A, b, c or D)
 believe that it should be emphasized that Submitter is required to check one of the subordinate boxes if checking box 1.

SuggestedRemedy

(Must check A, B, C or D and any applicable subordinate boxes):

Proposed Response Response Status **O**

Document **LoA** Sub/Item **D** P **1** L **49** # **29**
 Commenter Ling, Hung Affiliation Lucent Technologies, Inc

Comment Type **E** Comment Status **X**

There is agreement that a LoA applies only to a standard/project identified by its number in Section C, whether the Submitter chooses to list any patent (claims) or identify the LoA as a blanket one.

The words "to implement the [proposed] IEEE Standard] at line 49 and line 54 provide the clarity that it is the intent of such a LoA. It does not cost anything to put those extra words in there, unless there is some negatives in doing so.

SuggestedRemedy

Re-insert "to implement the [Proposed] IEEE Standard in line 49 and line 54.

Proposed Response Response Status **O**

Document **LoA** Sub/Item **D** P **1** L **49** # **91**
 Commenter Thompson, Geoff Affiliation Nortel

Comment Type **S** Comment Status **X**

I fear that in deleting the text "to implement the proposed standard" here we may have over achieved. We have opened the door for licensees to try to force licencing which includes but is not limited to that required "to implement the proposed standard".

We have relegated that restriction from the specified to something that is buried in the "reasonable terms and conditions".

SuggestedRemedy

Restore the text here.

Proposed Response Response Status **O**

Document **LoA** Sub/Item **D** P **1** L **4042** # **142**
 Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **S** Comment Status **X**

The note stating "no duty to conduct a patent search" is a very important point that should also be reflected in the bylaws.

SuggestedRemedy

Also include in by-laws.

Proposed Response Response Status **O**

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 **4853** # **112**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **S** Comment Status **X**
 current phrasing in box A and B do not match policy. make construction parallel in A and B and have words match policy in Section 6.2)

SuggestedRemedy

A.The Submitter will grant a license for a compliant implementation of the standard designated in part C above without compensation to an unrestricted number of applicants on a worldwide basis, with reasonable terms and conditions, that are demonstrably free of unfair discrimination.

B.The Submitter will grant a license for a compliant implementation of the standard designated in part C above under reasonable rates to an unrestricted number of applicants on a worldwide basis, with reasonable terms and conditions, that are demonstrably free of unfair discrimination.

Proposed Response Response Status **O**

Document **LoA** Sub/Item **D** P **1** L **5051** # **153**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **S** Comment Status **X**
 Subordinate box for optional attachments for both A and B should be generic lines 50-51 and lines 55-58
 (Optional) à match language in policy such as
 "Attached is additional information regarding licensing fees, terms and conditions"

Have same generic language for optional attachments for both A and B. This allows the reader of the LOA to look at the attachments but not highlight some attachments more important than others. In addition, it does not put the PatCom administrator in the position to discern what type of attachment should be attached. The policy already provides examples.

SuggestedRemedy

Attached is additional information regarding licensing fees, terms and conditions

Have this under Box D.1.A and Box D.1.B

Proposed Response Response Status **O**

Document **LoA** Sub/Item **D** P **2** L **3** # **147**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **S** Comment Status **X**
 Reads: The Submitter without conditions will not enforce any of its...
 bylaws (page 2, line 39) clause a) does not include "without conditions"
 Need to make consistent.
SuggestedRemedy

Proposed Response Response Status **O**

Document **LoA** Sub/Item **D** P **2** L **9** # **63**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **S** Comment Status **X**
 As noted in comment to the definition of "Reasonable and Good Faith Inquiry", if I was advising a company that received a cold call request from IEEE for an LOA, I would advise that they submit no LOA at all before I would advise they check box D2 and subject themselves to this definition.

SuggestedRemedy

I would suggest PatCom reconsider the utility of this entire checkbox.

Proposed Response Response Status **O**

Document **LoA** Sub/Item **D** P **2** L **9** # **154**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **S** Comment Status **X**
 By including "After a Reasonable and Good Faith Inquiry," at the opening of box D.2, it appears that the Submitter has a greater duty than the Submitter who checks box D.1.
SuggestedRemedy
 clarify if the definition of Reasonabe and Good Faith Inquiry only applies to those who check box D.2 or if the intent if for both those who check box D.1 and D.2. And if meant for both, then rephrase so there is parallel construction between D.1 and D.2 and also include in bylaws

Proposed Response Response Status **O**

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 **D1B** P **1** L **55** # **75**
 Commenter Willingmyre, George Affiliation GTW Associates
 Comment Type **S** Comment Status **X**
 Whatever box or boxes appear here should tie directly to the parallel text in Bylaws 6.2b. Comment on 6.2b was to make the 3 options possible along with other options not presently forseen. My preference is for an open ended "optional" box that provides illustrative examples of what might be provided but does not unduly constrain the possibilities to submit other relevant information
 SuggestedRemedy
 Make a single "optional" box and give examples of what might be provided here
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **E** P **2** L **12** # **76**
 Commenter Willingmyre, George Affiliation GTW Associates
 Comment Type **S** Comment Status **X**
 Does this text forcose the possibility for an LOA only to "disclose" a possible essential patent claim without providing a position on a position regarding licensing? There could arise such a situation and I do not see how it could be accomodated with present LOA.
 I dont understand the langague in line 16 "may but is not required to identify" compared to the mandatory text in lines 42 page 3 of the bylaws requiring participants to inform or casue the IEEE to be infomred of any potential essential patent claims
 SuggestedRemedy
 Tie this more closely to requirement on participants in Bylaws
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **E** P **2** L **14** # **124**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **E** Comment Status **X**
 Note could be literally read since it says "only if box D.1 above is checked."
 it is also expected that a subordinate box would be checked with box D.1.
 Change to: Complete this section only if box D.1 and applicable subordinate boxes are checked.
 SuggestedRemedy
 Complete this section only if box D.1 and applicable subordinate boxes are checked.
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **E** P **2** L **14** # **46**
 Commenter Townsend, Rick Affiliation PatCom / Lucent Technologie
 Comment Type **E** Comment Status **X**
 I've tripped over the designation 'box D.1' several times.
 This also occurs in line 39.
 SuggestedRemedy
 Change 'box D.1' to 'box 1 in Part D'.
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **E** P **2** L **19** # **31**
 Commenter Ling, Hung Affiliation Lucent Technologies, Inc
 Comment Type **E** Comment Status **X**
 for clarity
 SuggestedRemedy
 Insert "identified" after "the Patent Claims"
 Proposed Response Response Status **O**

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Document **LoA** Sub/Item **E** P **2** L **21** # **11**
 Commenter Topp, Claire Affiliation Dorsey & Whitney LLP

Comment Type **S** Comment Status **X**

I finally heard back from Devan (actually from one of my other patent colleagues) that we need to keep the phrase "supported by the disclosure" so we'll have to put it back in when we have the opportunity -- her reasoning is as follows:

First, "disclosure" is the term of art used to describe all subject matter presented in a patent or patent application. Therefore, this word is appropriate in this context.

Second, it is important to keep "supported by the disclosure" in the agreement because this will prevent entities from sidestepping the agreement when they want to enforce patent claims that are based upon a patent/application disclosure existing at the time of executing the agreement but that were not presented to the Patent Office until after the execution of the agreement. To provide some background, it is common practice for a patent applicant to file a disclosure that covers a number of claimable inventions, but to only actually claim some of the claimable inventions in the original application. The applicant then submits claims to the other claimable inventions later on (for example in continuation or continuation-in-part applications). Also, during the application process, the scope of the claims may change. Therefore, claims pending in a patent application at the time the LOA is executed may not have the same scope as the claims that actually issue in the patent. Therefore, we need the "supported by the disclosure" language to cover the variation in claims and claim scope that routinely takes place in the course of obtaining patent protection and that could occur after the execution date of the LOA.

SuggestedRemedy

Change the text 'all Essential Patent Claims in the patent or patent applications listed below.' to read 'all Essential Patent Claims supported by the disclosure in the patent or patent applications listed below.'.

Proposed Response Response Status **O**

Document **LoA** Sub/Item **E** P **2** L **37** # **47**
 Commenter Townsend, Rick Affiliation PatCom / Lucent Technologies

Comment Type **E** Comment Status **X**

One could infer that the Blanket Letter of Assurance (BLA) applies only to the standard noted in Part C but it would certainly add clarification if explicit text were appended. Additionally, in the next sentence, "all Essential Patents Claims that the Submitter may currently or in the future have . . ." seems explicit in its use of 'all'. Better to be explicit in the restriction only of the standard noted in Part C. Rather than forcing the Submitter to find and read 6.3.5 of the OpMan, we can add to the clarity by being explicit with a few words.

The definition in the Bylaws has the same problem.

SuggestedRemedy

Add 'to any Claims pertaining to the standard noted in Part C' following 'BLA'.
 Also add 'pertaining to the standard noted in Part C' following 'Claims'.

Also make the change in the Bylaws definition of BLA.

Proposed Response Response Status **O**

Document **LoA** Sub/Item **E** P **2** L **37** # **30**
 Commenter Ling, Hung Affiliation Lucent Technologies, Inc

Comment Type **E** Comment Status **X**

There is agreement that a LoA applies only to a standard/project identified by its number in Section C, whether the Submitter chooses to list any patent (claims) or identify the LoA as a blanket one.

By itself, the paragraph starting on line 37 could be mis-read to mean a Blanket Letter of Assurance for all Essential Patent Claims applicable to any standard.

SuggestedRemedy

Insert "for the specific IEEE Standard/Project identified in Section C of this LoA" after "... a Blanket Letter of Assurance". This is done in Op. Manual p.2 line 40.

Proposed Response Response Status **O**

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 **E** P **2** L **1921** # **125**
 Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **E** Comment Status **X**

When checked, this Letter of Assurance only applies to Patent Claims below that are or become Essential Patent Claims. (If no Patent Claim is identified below, then this Letter of Assurance applies to all Essential Patent Claims in the patent or patent applications listed below.)

insert "listed" between Patent Claims and below to make consistent with subsequent sentence

Does not list docket number in parenthetical

SuggestedRemedy

When checked, this Letter of Assurance only applies to Patent Claims listed below that are or become Essential Patent Claims. (If no Patent Claim is identified below, then this Letter of Assurance applies to all Essential Patent Claims in the patent, patent application, or docket listed below.)

Proposed Response Response Status **O**

Document **LoA** Sub/Item **E** P **2** L **2325** # **126**
 Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **E** Comment Status **X**

Recommend spelling out optional in Subpart E. (not a space problem so spell it out)

SuggestedRemedy

change (opt.) to (optional)

Proposed Response Response Status **O**

Document **LoA** Sub/Item **F** P **2** L **59** # **130**
 Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **E** Comment Status **X**

italicize instructions to match instructions listed in Subpart E.

SuggestedRemedy

Proposed Response Response Status **O**

Document **LOA** Sub/Item **F** P **2** L **4447** # **128**
 Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **E** Comment Status **X**

Consistent terminology needed.

Line 45, change statements to "positions"; (matches title of Subpart D)

Line 46, change "terms of this letter" to "terms of this assurance"

Line 47, change "commitments" to "representations and commitments" (matches line 10, page 3 of bylaws)

SuggestedRemedy

see above

Proposed Response Response Status **O**

Document **LoA** Sub/Item **F** P **2** L **5253** # **129**
 Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **E** Comment Status **X**

Address, Need more lines.

Do you want mailing address of submitter? Or do you want main address for organization?

Lots of different addresses. What is the purpose of the address line here versus the one listed in contact information?

SuggestedRemedy

Proposed Response Response Status **O**

Document **LoA** Sub/Item **G** P **3** L **4** # **131**
 Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **E** Comment Status **X**

Is it intentional to use "you" here? Previous comments in July suggested to not use.

SuggestedRemedy

Proposed Response Response Status **O**

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 **12** # **48**
 Commenter Townsend, Rick Affiliation PatCom / Lucent Technologie
 Comment Type **S** Comment Status **X**
 I thought we agreed last time to simply notify any assignees that there might be LoAs attached to any Patent Claims acquired by the assignee. While the LoA is an encumbrance, I do not recall that the notification had risen to that level. I recall the conversation revolving around the legal view that we could not bind assignees.
 SuggestedRemedy
 In part (a),'delete 'either through a Statement of Encombrance or by binding' and reword part (b) to read 'to request each assignee to so notify any subsequent assignees or transferees'.
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **G** P **3** L **13** # **83**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **E** Comment Status **X**
 Text is in the wrong person.
 SuggestedRemedy
 Change:
 "(b) to require your assignee or..."
 To:
 "(b) to require their assignee or..."
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **G** P **3** L **13** # **133**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **E** Comment Status **X**
 change "your assignee" to "its assignee"; see also same comment with regard to policy
 SuggestedRemedy
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **G** P **3** L **13** # **32**
 Commenter Ling, Hung Affiliation Lucent Technologies, Inc
 Comment Type **S** Comment Status **X**
 Regarding (b) to require assignees to similarly provide such notice, is there such corporate experience that some companies are willing to share? IEEE should not develop a policy change without taking into account how the real world works.
 SuggestedRemedy
 Delete (b)
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **G** P **3** L **17** # **77**
 Commenter Willingmyre, George Affiliation GTW Associates
 Comment Type **S** Comment Status **X**
 This text about future obligations must map closely to the bylaws text. The bylaws text uses term "Shall" while the text here uses "agrees to" The text in the bylaws and in the LOA should covey a "should" obligation
 SuggestedRemedy
 be sure the words "agrees to" convey what the patent committee means and that there is some record of the patent committee deliberation of choosing these words that conveys a "should" obligation rather than a "shall" obligation
 Proposed Response Response Status **O**

Document **LoA** Sub/Item **G** P **3** L **32** # **84**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **E** Comment Status **X**
 Text is excessively and unnecessarily specific.
 SuggestedRemedy
 Change to include acceptance by staff:
 "...upon acceptance by the IEEE-SA Standards Board Patent Committee."
 To:
 "...upon acceptance by the IEEE-SA."
 Proposed Response Response Status **O**

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Document **LoA** Sub/Item **G** P **3** L **1721** # **6**
 Commenter Ringle, Dave Affiliation IEEE Standards
 Comment Type **S** Comment Status **X**
 I am trying to determine when this would come into play. Certainly not for a blanket assurance. Please help me understand why this is important. Thanks.
 SuggestedRemedy
 none
 Proposed Response Response Status **O**

Document **LOA** Sub/Item **G** P **3** L **510** # **132**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **E** Comment Status **X**
 "letter" used (3 instances)
 Use "assurance" to match policy or "Letter of Assurance" to match tone of other paragraphs in this part G.
 SuggestedRemedy
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item P **1** L **30** # **43**
 Commenter Marasco, Amy Affiliation Microsoft
 Comment Type **S** Comment Status **X**
 It says that only those letters received after 31 December 2006 will be posted on the website. Is there a reason why all of them would not be posted (regardless of when they were submitted)? It could be confusing if, for a given IEEE standard, only a subset of LoAs were posted due to the timing of their receipt by IEEE. People may believe that all of them were posted.
 SuggestedRemedy
 Change it to say that all LoAs will be posted regardless of when they were submitted.
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item P **1** L **32** # **39**
 Commenter Marasco, Amy Affiliation Microsoft
 Comment Type **E** Comment Status **X**
 Rather than refer to a "known" patent holder, maybe it should refer to a "claimed" patent holder (especially because IEEE does not verify essentiality, etc.)
 SuggestedRemedy
 Change "known" to "claimed"
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item P **2** L **28** # **40**
 Commenter Marasco, Amy Affiliation Microsoft
 Comment Type **E** Comment Status **X**
 It would be very helpful if you could clarify whether all participants in the technical committee will be asked to submit a LoA, or just (a) those who have self-declared that they have a possible essential patent claims or (b) those who have been identified by others as likely having a possible essential patent claim.
 SuggestedRemedy
 If the correct interpretation is the latter, then no change is needed. If the correct interpretation is the former, then this needs clarification.
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item P **3** L **16** # **161**
 Commenter Bassuk, Lawrence Affiliation Texas Instruments
 Comment Type **S** Comment Status **X**
 This paragraph appears to control the right to do business and the freedom of contract of TI, which TI cannot agree to.
 SuggestedRemedy
 Delete this paragraph. Any blanket assurance may have this effect without this explicit statement that may ne mis-interpreted in court.
 Proposed Response Response Status **O**

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 **OpsMan**
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Document **OpsMan** Sub/Item P **3** L **40** # **44**
 Commenter Marasco, Amy Affiliation Microsoft
 Comment Type **S** Comment Status **X**
 Here is says that Working Groups shall initiate a request for a new LoA. Is this consistent with page 2 line 28 where it is up to the chair to ask people to complete a LoA?
 SuggestedRemedy
 I would be happy to suggest a remedy once I better understand the intent of who is supposed to do what with regard to requesting LoAs.
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3** P **1** L **16** # **78**
 Commenter Willingmyre, George Affiliation GTW Associates
 Comment Type **S** Comment Status **X**
 change the term "accepts" to the clause "publically posts"
 SuggestedRemedy
 publiclly posts
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3** P **1** L **2122** # **12**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **S** Comment Status **X**
 The introductory clause--how do we know this? Who is judging whether the name/title on the LoA comes from someone who has authority? They might have authority in the company, but their title might not reflect that? We have to double-check that every time?
 SuggestedRemedy
 You might want to reword this to suggest that unless the signator's title shows authority for IPR matters, rather then referring to the individual him- or herself.
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3** P **1** L **2930** # **111**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **S** Comment Status **X**
 "Upon request" is vague. Do you want written requests? Oral requests? To whom? WG chair? PatCom Administrator?
 "Any" letter of Assurance, do you mean all accepted Letter of Assurances? What about LOAs that were deemed incomplete, rejected?
 Current Ops Manual states:
 The IEEE will make public the contact information about the patent holder or patent applicant that is provided in the letter of assurance.
 Would recommend same spirit of openness of posting Accepted LOAs.
 SuggestedRemedy
 The IEEE will make public the Accepted Letters of Assurances and post on the IEEE-SA website all accepted LOAs and attachments received after 31 December 2006. Upon written request (including email) to the PatCom Administrator, copies of LOAs which do not appear posted on the IEEE-SA website (prior to 31 December 2006) will be made available.
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.1** P **1** L **34** # **135**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **E** Comment Status **X**
 Change reasonable rates, with reasonable terms, and conditions
 To
 reasonable rates, with reasonable terms and conditions...
 matches bylaws page 2, line 45
 SuggestedRemedy
 Proposed Response Response Status **O**

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 **6.3.1** P **1** L **40** # **113**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **S** Comment Status **X**
 change "statement of assurance" to "Letter of Assurance"
 matches the terminology used in bylaws
SuggestedRemedy
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.1** P **2** L **3** # **136**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **E** Comment Status **X**
 change "statement of assurance" to "assurance" or "Letter of Assurance"
 ensures consistent terminology
SuggestedRemedy
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.1** P **2** L **5** # **82**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **E** Comment Status **X**
 The IEEE is not responsible for conducting inquiries into the legal validity or scope of any Patents Claims,
SuggestedRemedy
 Change:
 "...those Patent Claims,"
 to:
 "... Patent Claims," (i.e. delete "those")
 Also, same change for line 18 below.
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.1** P **2** L **16** # **156**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **S** Comment Status **X**
 Current Ops Manual (2006) says:
 Attention is called to the possibility that implementation of this standard may require use of subject matter covered by patent rights. By publication of this standard, no position is taken with respect to the existence or validity of any patent rights in connection therewith. The IEEE SHALL (emphasis added) not be responsible for identifying patents or patent applications for which a license may be required to implement an IEEE standard or for conducting inquiries into the legal validity or scope of those patents that are brought to its attention.

Proposed language in redline Ops Manual in June comments said:
 The IEEE IS (emphasis added) not responsible for identifying Essential Patent Claims for which a license may be required or for conducting inquiries into the legal validity or scope of those Patents Claims. The IEEE will neither be a party to discussions of any licensing terms or conditions in an Accepted LOA, which are left to the parties involved, nor will the IEEE opine or judge whether proposed licensing terms or conditions in an Accepted LOA are reasonable or non-discriminatory.

Fromm, Comment #42 says it is going too far to say the IEEE will never be a party to discussion of license terms, there may be situations where reasonableness of terms is something about which the IEEE should have a better understanding.

Changing "shall" to "is" is a major change and not explained clearly in the comments. Shall

Furthermore, the deletion of the phrase "The IEEE will neither be a party to discussions of any licensing terms or conditions in an Accepted LOA, which are left to the parties involved, nor will the IEEE opine or judge whether proposed licensing terms or conditions in an Accepted LOA are reasonable or non-discriminatory." and replacing it "determining whether any licensing terms or conditions are reasonable and non-discriminatory" are substantially different and leaves the IEEE open to a variety of undesirable situations. In particular, the change from "any licensing terms or conditions in an Accepted LOA" to "determining whether any licensing terms or conditions are reasonable and non-discriminatory" is a substantial change which should be discussed in an open meeting.

SuggestedRemedy

Please provide more rationale for changing Shall to Is (p3, line 16)

Provide opportunity for discussion on what the IEEE should get involved in.

Fromm, Comment #42 says it is going too far to say the IEEE will never be a party to discussion of license terms, there may be situations where reasonableness of terms is something about which the IEEE should have a better understanding.

Revert to language in June redline.

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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Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.4** P **2** L **39** # **79**
 Commenter Willingmyre, George Affiliation GTW Associates
 Comment Type **S** Comment Status **X**
 Not clear to me if the bylaws requirement "individuals participating in the standards development process shall inform the IEEE" applies in the case where a submitter has made a blanket declaration under this section. Is the word "may" in line 42 consistent with the by laws intention or is the word "shall" required to be consistent with the by laws intention so that if a submitter is aware of a specific patent claim that specific patent claim is to be identified

SuggestedRemedy

clarify whether or not a blanket declaration must be followed by a specific declaration when participant knows of a specific essential patent claim.

Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.4** P **2** L **40** # **22**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **X**
 There is a lot of use of [Proposed] IEEE Standard, which I think is very confusing.

SuggestedRemedy

replace with "the specific proposed or existing IEEE Standard"

Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.4** P **2** L **41** # **21**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **X**
 "which" should be "that"

SuggestedRemedy

Please, please fix

Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.4** P **2** L **41** # **137**
 Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **E** Comment Status **X**
 add "Project" after IEEE Standard to make consistent

add "at the time of submitting the LOA" at the end of the first sentence to make consistent with bylaws.

SuggestedRemedy

line 40, IEEE Standard or Project.

line 42, have the ability to license at the time of submitting the LOA.

Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.4** P **3** L **1** # **155**
 Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **S** Comment Status **X**
 is the intent of "providing separate assurances" meant to be different licensing positions (LOA, subpart D)? If so, then suggest changing "assurances" to "licensing positions"

SuggestedRemedy

Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.4** P **3** L **1** # **23**
 Commenter Nielsen, Mary Lynne Affiliation IEEE

Comment Type **E** Comment Status **X**
 change "might be or become" to "might be or might become"

SuggestedRemedy

as given

Proposed Response Response Status **O**

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 **7** # **114**

Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **S** Comment Status **X**

Each potential licensee may choose to invoke the terms of any applicable LOA

change to are relying or will rely upon the terms of the applicable LOA
(to match subpart G of LOA)

SuggestedRemedy

Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.4** P **3** L **16** # **138**

Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **E** Comment Status **X**

If, after submitting a Blanket Letter of Assurance, a Submitter acquires...

to If, after providing a Blanket Letter of Assurance, the Submitter"

matches format of the bylaws (page 3, line 21)

SuggestedRemedy

Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.4** P **3** L **22** # **139**

Commenter Hoyler, Susan Affiliation Qualcomm

Comment Type **E** Comment Status **X**

change "letter" to assurance

SuggestedRemedy

Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.4** P **3** L **27** # **24**

Commenter Nielsen, Mary Lynne Affiliation IEEE

Comment Type **E** Comment Status **X**

add "an" before "acquired entity"

SuggestedRemedy

as given

Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.4** P **3** L **1620** # **4**

Commenter Ringle, Dave Affiliation IEEE Standards

Comment Type **S** Comment Status **X**

Can we impose this on patent holders? I know that it is on the LoA Form, but can we legally impose it? What if the patent holder had submitted an LoA for royalty-free - would it still be bound to offer a royalty-free blanket for newly-acquired essential patents? It just doesn't seem "reasonable" to me. Are we trying to shunt patent holders to use option E instead of a blanket assurance?

SuggestedRemedy

none

Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.5** P **3** L **30** # **65**

Commenter Sirtori, Michael Affiliation Intel

Comment Type **S** Comment Status **X**

This section about applicability of LOAs to amendments, corrigenda and revisions seems like a significant and major revision. It should probably be addressed in the Bylaws rather than the Ops Manual, because the Bylaws are less subject to future easy modification than is the Ops Manual.

SuggestedRemedy

Move this clause to the Bylaws.

Proposed Response Response Status **O**

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 **6.3.5** P **3** L **30** # **140**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **E** Comment Status **X**
 reword title to match the changes made to the LOA (response to July comments)
 title of Subpart C
 Applicability of Letters of Assurance to Projects (e.g. Amendments, Corrigenda, or Revisions)
 Note, Editions included in text p. 3 (line 34), so maybe should be included in title.
 SuggestedRemedy
 Applicability of Letters of Assurance to Projects (e.g. Amendments, Corrigenda, or Revisions)
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.5** P **3** L **32** # **80**
 Commenter Thompson, Geoff Affiliation Nortel
 Comment Type **S** Comment Status **X**
 Let's see if I understand this.
 If an LoA specifies a revision and/or amendment then this applies.
 What happens if a LoA does not specify a revision or amendment but rather just says (for example) "IEEE Std 802.3" (as opposed to "IEEE Std 802.3 - 2005")?
 What is the scope of the assurance then?
 My interpretation would be that it covers any use in any future revision.
 SuggestedRemedy
 Not sure as I am not sure of the desired intent.
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.5** P **3** L **34** # **141**
 Commenter Hoyler, Susan Affiliation Qualcomm
 Comment Type **E** Comment Status **X**
 Edition introduced as type of project in line 34. Recommend that edition also be listed in line 32 and line 42 to make entire section consistent
 SuggestedRemedy
 line 32: ...an existing standard, amendment, corrigenda, edition or revision
 line 42: amendment, corrigenda, edition or revision referenced
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.5** P **3** L **35** # **66**
 Commenter Sirtori, Michael Affiliation Intel
 Comment Type **S** Comment Status **X**
 I don't understand what the phrase "technology application à has not changed" means.
 SuggestedRemedy
 Change "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)à" to "(a) solely to the extent necessary to achieve or maintain backwards compatibility, or to the extent that the amendment, corrigenda, edition or revision does not add any new material technical functionality, and (b)à".
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.5** P **3** L **36** # **49**
 Commenter Townsend, Rick Affiliation PatCom / Lucent Technologie
 Comment Type **E** Comment Status **X**
 In part (a), 'technology application' and the ending 'has not changed' are ambiguous.
 SuggestedRemedy
 Change 'technolgy application' to 'application of technology.'
 Add 'from the previous version of the standard' after 'changed'.
 Proposed Response Response Status **O**

Document **OpsMan** Sub/Item **6.3.5** P **3** L **41** # **25**
 Commenter Nielsen, Mary Lynne Affiliation IEEE
 Comment Type **E** Comment Status **X**
 There is a lot of use of [Proposed] IEEE Standard, which I think is very confusing.
 It's also in line 43.
 SuggestedRemedy
 replace with "proposed or existing IEEE Standard"
 Proposed Response Response Status **O**

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

Commenter Sirtori, Michael Affiliation Intel

Comment Type **S** Comment Status **X**

Is there any estimate on when there will be a separate meeting to discuss and revise this section?

SuggestedRemedy

Will the ProCom be considering this next?

Proposed Response Response Status **O**