

6. Patents

IEEE standards may include the known use of Essential Patent Claims but only if the IEEE receives assurance from the patent holder or patent applicant on the IEEE Standards Board approved letter of assurance form. The IEEE shall request this assurance without coercion. If the patent holder or patent applicant provides an assurance, it should do so as soon as reasonably feasible in the standards development process. For the standard to include a known Essential Patent Claim, this assurance shall be provided no later than the approval of the standard (or reaffirmation when a patent or patent application becomes known after initial approval of the standard). An Essential Patent Claim for which an assurance cannot be obtained shall be referred to the Patent Committee for resolution.

This assurance shall be either:

- a) A general disclaimer to the effect that the patentee will not enforce any of its present or future Essential Patent Claims against any person or entity creating, using, selling, offering to sell, importing, distributing or implementing a compliant implementation of the standard; or
- b) A statement that a license for such implementation will be made available without compensation or under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination. The patent holder or applicant is encouraged to provide a not-to-exceed rate commitment and a sample license agreement with its assurance.

This assurance shall apply to the patent holder or patent applicant's Affiliates except those explicitly excluded.

If, after providing a letter of assurance to the IEEE, a person becomes aware of Patent Claims that may become Essential Patent Claims but are not covered by an existing letter of assurance, then such person shall submit a letter of assurance covering such Patent Claims.

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

The IEEE is not responsible for identifying Essential Patent Claims for which a license may be required to create a compliant implementation of an IEEE standard or for conducting inquiries into the legal validity or scope of those patents that are brought to its attention.

In order for IEEE's patent policy to function effectively, IEEE expects that persons participating in the standards development process will complete a letter of assurance for any Patent Claims that may become Essential Patent Claims owned or controlled by such persons and inform the IEEE of any such Patent Claims held by others.

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Deleted: patent(s) whose use would be required to implement either mandatory or optional portions of the proposed IEEE standard

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DEFINITIONS FOR BYLAWS

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

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

“*Essential Patent Claim*” shall mean any patent claim and/or patent application the use of which is essential to create a compliant implementation of either mandatory or optional portions of the [Proposed] IEEE Standard when, at the time of the [Proposed] IEEE Standard’s approval, there is no commercially and technically feasible non-infringing alternative. Essential Patent Claims do not include any claims other than those set forth above even if contained in the same patent as Essential Patent Claims.

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

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

6.3 Patents

The patent policy is set forth in clause 6 of the IEEE-SA Standards Board Bylaws and is incorporated herein by reference.

Deleted: clause 6

Letters of assurance are to be e-mailed (preferred), faxed, or mailed to the IEEE Standards Association (to the attention of the PatCom Administrator). The PatCom Administrator shall record both the date on which the IEEE receives and the date the IEEE accepts the letter of assurance. Completed letters of assurance are accepted by the PatCom Administrator or by PatCom upon referral from the PatCom Administrator.

Deleted: Patent holders or patent applicants shall submit letters of assurance to the IEEE Standards Department (to the attention of the PatCom Administrator). The patent holder or applicant should provide this assurance as soon as reasonably feasible in the standards development process. This assurance shall be provided no later than the time of IEEE-SA Standards Board review of the standard for approval.¶

¶ In the event that a patent or patent application may apply to a standard and a letter of assurance cannot be obtained, the working group shall refer this matter to the PatCom Administrator.¶

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An Essential Patent Claim for which an assurance cannot be obtained shall be referred to the Patent Committee for resolution.

Unless the letter of assurance is received from an individual within the issuing organization who has clear authority for intellectual property and legal matters, the IEEE Standards Association (PatCom Administrator) shall send a certified letter, return receipt requested, to the General Counsel of the issuing organization to confirm receipt of the letter of assurance and to ensure that the letter of assurance is factually correct and was submitted by an appropriate individual within the issuing organization. No response to this letter, other than the return receipt, is required.

Upon request, the IEEE will make available copies of any letter of assurance and its attachments. Letters received after December 31 2006 shall be posted on the IEEE-SA website.

Deleted: The IEEE will make public the contact information about the patent holder or patent applicant that is provided in the letter of assurance.¶

6.3.1 Public notice

The following notice shall appear when the IEEE receives assurance from a known patent holder or patent applicant prior to the time of publication that a license will be made available to all applicants either without compensation or under reasonable rates, terms, and conditions that are demonstrably free of any unfair discrimination.

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 not be responsible for identifying Essential Patent Claims for which a license may be required to create a compliant implementation of an IEEE standard or for conducting inquiries into the legal validity or scope of those patents that are brought to its attention. A patent holder or patent applicant has filed a statement of assurance that it will grant licenses under these rights without compensation or under reasonable rates and nondiscriminatory, reasonable terms and conditions to applicants desiring to obtain such licenses. The IEEE makes no representation as to the reasonableness of rates, terms, and conditions of the license agreements offered by patent holders or patent applicants. Further information may be obtained from the IEEE Standards Association.

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If the IEEE has not received letters of assurance prior to the time of publication, the following notice shall appear:

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 not be responsible for identifying Essential Patent Claims for which a license may be required to create a compliant implementation of an IEEE standard or for conducting inquiries into the legal validity or scope of those patents that are brought to its attention.

Deleted: patents or patent applications

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6.3.2 Call for patents

The chair or the chair's delegate of an IEEE standards-developing working group or the chair of an IEEE standards sponsor shall be responsible for informing the members of the working group that if any individual believes that a patent or patent application might be essential to the implementation of the standard, that fact should be made known to the entire working group and duly recorded in the minutes of the working group meeting. This request shall occur at every standards-developing meeting.

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The chair or the chair's delegate shall ask each holder of (or applicant for) a Patent Claim that might become an Essential Patent Claim to complete and submit a letter of assurance in accordance with Clause 6 of the *IEEE-SA Standards Board Bylaws*.

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6.3.3 Withdrawn standards

All active IEEE standards are subject to periodic review for reaffirmation, revision, stabilization, or withdrawal every five years. Thus, any standard that incorporates patented technology may at some point in time be withdrawn. Clause 6 of the *IEEE-SA Standards Board Bylaws* contains policies concerning the period of validity for any assurance received from a party regarding an Essential Patent Claim.

Deleted:) or a statement that the potential essential patent holder is not aware of any patents or patent applications that it owns that would be infringed by a compliant implementation of the standard.¶

¶ Patent letters of assurance or non-awareness statements from potential essential patent holders shall be submitted to the [PatCom Administrator](#)

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Deleted: claiming a patent, issued or under application

6.3.4 Multiple Letters of Assurance and Blanket Letters of Assurance

A Submitter may provide the IEEE with a Blanket Letter of Assurance which covers all Essential Patent Claims the Submitter may currently or in the future hold or control. A Submitter may submit separate letters of assurance providing separate assurances for different Patent Claims that might become Essential Patent Claims.

Deleted: **6.3.4 Disclaimer**¶

¶ The IEEE is not 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.¶

Over time, a Submitter may also provide multiple assurances for a given Patent Claim by submitting multiple letters of assurance for such claim. For Essential Patent Claims, each such letter of assurance shall be binding on the Submitter. Each potential licensee may choose to invoke the terms of any applicable letter of assurance accepted by the IEEE, with one exception: If a Submitter has signed and submitted a letter of assurance specifically identifying a Patent Claim before signing and submitting a Blanket Letter of Assurance, the Blanket Letter of Assurance cannot be invoked as to the specified Patent Claim. (The Submitter, however, may submit a separate specific letter of assurance offering the Blanket Letter of Assurance terms for the specified Patent Claim.) The intention of this paragraph is to permit the Submitter to offer

alternative terms to those that it has previously offered, but to permit the potential licensee to choose from among the offered sets of terms the set that it considers more favorable.

If, after submitting a Blanket Letter of Assurance, a Submitter acquires a Patent Claim or an entity that holds a Patent Claim, the Submitter's Blanket Letter of Assurance shall apply to such acquired Patent Claims unless the acquired entity or the holder of the acquired Patent Claim has submitted a letter of assurance before the acquisition. Any Blanket Letter of Assurance submitted by the acquired entity or the holder of the acquired Patent Claim before the acquisition shall continue to apply to acquired Patent Claims covered by such letter (but not to the acquirer's Patent Claims). Letters of assurance covering specified Patent Claims shall continue to apply specified Patent Claims, whether acquired in the acquisition or held by the acquirer before the acquisition, as provided in this Patent Policy and this Operations Manual. Nothing in this paragraph shall prevent an acquiring party from asking a seller of an acquired Patent Claim or acquired entity to submit additional letters of assurance before closing of the acquisition.

6.3.5 Applicability of Letters of Assurance to Amendments, Corrigenda, or Revisions

A Letter of Assurance referencing an Amendment, Corrigenda, or Revision will remain in force for the application of the Essential Patent Claim(s) to the technology of the Amendment and Corrigenda after being merged into the IEEE Standard and for subsequent Revisions of the Standard. Use of the same Essential Patent Claim(s) for new fundamental applications in a future Amendment, Corrigenda or Revision of the IEEE Standard will require a new Letter of Assurance.

For example, the re-use of collision detection in the IEEE Standard 802.3 does not require a new Letter of Assurance because its re-use by various amendments to IEEE Standard 802.3 is not a new fundamental application. In contrast, the re-use of an IEEE Standard 802.3 physical layer device for IEEE Standard 1394 would require a new Letter of Assurance because its re-use is a new fundamental application. [Note to Draft: Seeking better example; suggestions welcome]

LETTER OF ASSURANCE FOR ESSENTIAL PATENT CLAIMS

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Please return via mail, Secretary, IEEE-SA Standards Board Patent Committee
e-mail (.pdf), or FAX to: Institute of Electrical and Electronics Engineers, Inc.
445 Hoes Lane
Piscataway, NJ 08854 USA
FAX (+1 732-875-0524) e-mail: patcom@ieee.org

No license is implied by submission of this Letter of Assurance

A. SUBMITTER:

Deleted: PATENT HOLDER

Legal Name: ("Submitter")

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B. SUBMITTER'S CONTACT FOR LICENSE APPLICATION:

Deleted: PATENT HOLDER

Name & Department: _____
Address: _____
Telephone: _____ Fax: _____ E-mail: _____
URL: _____

Note: The IEEE does not review and does not endorse the contents nor confirm the continuing accuracy or consistency of any web sites listed above.

Deleted: The IEEE takes no position with respect to the reasonableness of rates, terms, and conditions of the license agreements offered by patent holders or patent applicants. To that end, t

C. IEEE STANDARD or PROPOSED IEEE STANDARD:

Number: _____
Title: _____

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D. SUBMITTER'S POSITION REGARDING LICENSING ESSENTIAL PATENT RIGHTS:

Deleted: PATENT HOLDER

In accordance with Clause 6 of the IEEE-SA Standards Board Bylaws, the Submitter hereby declares the following (check box 1 or box 2):

Deleted: Patent Holder

Note: The IEEE takes no position with respect to the reasonableness of rates, terms, and conditions of any license agreements offered by the Submitter.

Deleted: that its licensing position with respect to any patent(s) and/or patent application(s) that it may hold or control, the use of which would be essential to create a compliant implementation of either mandatory or optional portions of the [Proposed] IEEE Standard identified above, is as follows (check one box only)

☐ 1. The Submitter MAY own or control Patent Claims that might become Essential Patent Claims. With respect to any Patent Claim that becomes an Essential Patent Claim, the Submitter's licensing position is as follows (check A, B, C, or D and any applicable subordinate boxes):

☐ A. The Submitter will grant a license without compensation to an unrestricted number of applicants on a worldwide, non-discriminatory basis with reasonable terms and conditions to comply with the [Proposed] IEEE Standard.

☐ A sample of such a license that is substantially similar to what the Submitter would issue is attached (optional).

☐ B. The Submitter will grant a license under reasonable rates to an unrestricted number of applicants on a worldwide, non-discriminatory basis with reasonable terms and conditions to comply with the [Proposed] IEEE Standard.

These reasonable rates will not exceed (e.g. percent of product price, flat fee, per unit) (optional):

☐ A sample of such a license that is substantially similar to what the Submitter would issue is attached (optional).

☐ C. The Submitter without conditions will not enforce any of its present or future Essential Patent Claims against any person or entity creating, using, selling, offering to sell, importing, distributing or implementing a compliant implementation of the [Proposed] IEEE Standard.

☐ D. The Submitter is unwilling to grant licenses according to the provisions of either A or B above or to agree that it will not enforce any of its Essential Patent Claims as described in C above.

☐ 2. After a reasonable and good faith inquiry, the Submitter is **NOT AWARE** of any Patent Claims that the Submitter may own or control that might become Essential Patent Claims. For these purposes, "a reasonable and good faith inquiry" means that the Submitter has contacted those individuals who are from, employed by or otherwise represent the Submitter and who are either (a) subject area experts for the [Proposed] IEEE Standard; or (b) are known to the Submitter to be current or past participants in the development process of the [Proposed] IEEE Standard, including, but not limited to, participation in a Sponsor-Ballot or Working Group.

Note: Nothing in this Letter of Assurance shall be interpreted as giving rise to a duty to conduct a patent search.

E. SCOPE OF ASSURANCE

The Submitter may, but is not required to, identify one or more of its Patent Claims that it believes might become Essential Patent Claims. (Check box 1 or box 2 below) Note: Complete this section only if box D.1 above is checked.

☐ 1. When checked, this Letter of Assurance only applies to the Patent Claims below that become Essential Patent Claims. (If no Patent Claim is identified below, then this Letter of Assurance applies to all claims supported by the disclosure in the patent or patent application.)

Patent/Application Number: _____

Title: _____

Claim: _____

Patent/Application Number: _____

Title: _____

Claim: _____

Patent/Application Number: _____

Title: _____

Claim: _____

Use additional pages, as necessary.

☐ 2. When checked, this is a Blanket Letter of Assurance. As such, all Essential Patent Claims that the Submitter may currently or in the future own or control shall be available under the terms as indicated above in D.2; however, a Blanket Assurance shall not supersede any pre-existing or simultaneously submitted assurance identifying a specific Patent Claim.

F. APPLICATION TO AFFILIATES

With respect to any Essential Patent Claims that may be owned or controlled by an Affiliate, the Submitter agrees that (i) the licensing statements described in D and E above apply to any Essential Patent Claims that may be owned or controlled by an Affiliate; and (ii) the terms of this letter are binding on each such Affiliate; provided, however, that such commitments shall not apply to Affiliates identified below:

Organization's Name _____ Organization's Name _____

Address _____ Address _____

Contact person _____ Contact person _____

For additional Affiliates, use additional pages as necessary.

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Deleted: [Note: Completion of the following section is optional. Nothing in this Letter of Assurance shall be interpreted as giving rise to a duty to conduct a patent search.]

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Deleted: Patent Holder owns or controls patent(s) and/or application(s) that it believes may be essential to create a compliant implementation of the [Proposed] IEEE Standard

Deleted: , please specify the following:

G. SIGNATURE:

By signing this letter, you represent that you have the authority to bind the Submitter and all Affiliates (other than those Affiliates excluded above) to the representations and commitments provided in this letter and acknowledge that users and implementers of the [Proposed] IEEE Standard identified above are relying upon and may enforce the terms of this letter. You agree not to sell or otherwise transfer any rights in any Essential Patent Claims that you hold or control in a manner that circumvents or negates any of the representations and commitments made in this letter.

OPTION A: You agree (a) to provide notice of the representations and commitments made in this letter either through a general disclaimer or specific reference to the terms of this letter to any assignee or transferee; and (b) to require your assignee or transferee to similarly provide notice and bind its assignee or transferee as described in (a) and (b)].

OPTION B: You agree (a) to bind your assignees and transferees to the representations and commitments made in this letter; and (b) to require your assignee or transferee to similarly bind its assignee or transferee as described in (a) and (b)].

If the Submitter becomes aware of Patent Claims not already covered by an existing Letter of Assurance that are owned or controlled by the Submitter that may become Essential Patent Claims, the Submitter agrees to submit a Letter of Assurance covering such Patent Claims.

Print name of authorized person: _____

Title of authorized person: _____

Signature of authorized person: _____ Date: _____

Note: This assurance applies from the date of the standard's approval to the date of the standard's withdrawal and is irrevocable upon acceptance by the IEEE-SA Standards Board Patent Committee.

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E. SIGNATURE:¶

The IEEE Patent Policy and the procedures used to execute that policy are documented in the IEEE-SA Standards Board Bylaws and the IEEE-SA Standards Board Operations Manual, available at <http://standards.ieee.org/resources/index.html#guides>. The terms and definitions set forth in the IEEE Patent Policy, Standards Board By-Laws and Standards Board Operations Manual in effect as of the date of this Letter of Assurance are incorporated herein.

Deleted: These documents must be read and understood before completing and submitting this form