

IEEE-SA Standards Board Ballot of proposed Patent Policy Changes - Comments

Document **Bylaws** Sub/Item **6.1** P 1 L 7 # 17

Commenter Parsons, Glenn

Affiliation Nortel

Comment Type **S** Comment Status **D**

"Accepted Letter of Assurance" IEEE-SA is charged with determining if an LOA is "complete in all material respects" to accept it. Rejecting or delaying assurances that are voluntarily given from patent holder is not in IEEE standards interests.

SuggestedRemedy

The IEEE-SA PatCom Administrator may want to flag if an LOA is not "complete in form" (not details) when it is received in the online record, but completeness "in all material respects" should not be required for acceptance of an assurance.

Proposed Response Response Status **W**

PROPOSED REJECT.

If an LOA is materially incomplete, it may not be considered binding or it may be missing information necessary for an implementer to seek a license. It is impossible to describe every way an LOA might be incomplete so it was determined leaving it to the judgement of the PatCom Administrator is the best compromise.

Document **Bylaws** Sub/Item **6.1** P 1 L 36 # 26

Commenter Don Wright

Affiliation

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

"nor" is incorrect.

SuggestedRemedy

Change "nor" to "or"

Proposed Response Response Status **W**

PROPOSED ACCEPT.

(Editorial)

Document **Bylaws** Sub/Item **6.1** P 2 L 2 # 19

Commenter Parsons, Glenn

Affiliation Nortel

Comment Type **S** Comment Status **D**

""Reasonable and Good Faith"" Inquiry -- I am concerned about this new process of affirmatively asking current and past participants (pretty much everyone), generally who cannot be aware of their employer's whole patent portfolio, to make an assurance of non-awareness of IPR when submitted for their company.

Companies with larger portfolios are unlikely to give such assurance without unreasonable patent searches because each of its participants cannot know its true to state they're not aware of potential Essential IPR or determine legal essentiality. The scope of non-awareness of patents that might be or become essential is also too broad. A participant may disclose potential Essential IPR but any assurance itself only applies to Essential IPR. If a participant personally knows of IPR but it may not be essential, can it make an assurance that it is not aware of IPR that might be or become essential? IEEE is not in a position to set the standard in which a participant is to comply or to create consequences if the diligence is not , and is setting up participants to make misleading statements and to find loopholes.

The text in the current LOA form is sufficient to provide the submitter the non-awareness assurance option and the Bylaws can simply reference that the assurance for Essential IPR can be either: a) non-enforcement disclaimer, b) licensing assurance or c) non-awareness of Essential IPR. It is up to the submitter to choose provide the option of non-awareness of Essential IPR (not potential Essential IPR), and if it does, the individual or the company submitter should simply be held to that assurance statement (with or without verifying as the submitter deems fit to make it).

SuggestedRemedy

Delete this text and definition.

Proposed Response Response Status **W**

PROPOSED REJECT.

This was well debated text which carefully constrained the responsibility of the submitter to a small set of people to ask about their personal knowledge of potentially essential patent claims before submitting an LOA which disclaimed the existence of any potentially essential patent claims. To specifically address the comment, a participant should not make an assurance that it is not aware of IPR that might be or become essential if it is personally unsure of the essentiality of the IPR. To be safe, the participant should err on the side of assuring.

Without this, a patent holder could simply empower an individual with absolutely no knowledge to any held patents to sign all LOAs and disclaim personal knowledge of any potentially essential patent claims.

Closing this hole was considered an improvement to the usefulness, reliability, and accuracy of LOAs.

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 **6.2** P 2 L 23 # 15
 Commenter Parsons, Glenn Affiliation Nortel

Comment Type **S** Comment Status **D**

Ownership of the patent policy within IEEE is fundamentally unclear. PatCom is not expressly designated with the authority to recommend proposed modifications to IEEE Bylaws. Clause 7 of the Bylaws should make clear IEEE-SA Board is responsible for IEEE-SA Patent Policy and its application in practice. Also, more specifically, the Bylaws use IEEE and IEEE-SA interchangeably when referring to the patent policy. This should be unambiguous.

SuggestedRemedy

It is the IEEE-SA patent policy. Update the bylaws as necessary.

Proposed Response Response Status **W**

PROPOSED REJECT.

Clause 7 of the bylaws is not a part of this project. Please refer your comment to ProCom.

The remainder of this comment is not specific as to the changes being requested. If there are places where IEEE is being used and it is erroneous, we can consider these changes in a future editorial revision.

Document **Bylaws** Sub/Item **6.2** P 2 L 36 # 18
 Commenter Parsons, Glenn Affiliation Nortel

Comment Type **S** Comment Status **D**

""An asserted potential Essential Patent Claim."" is too open-ended. This could allow anyone to say a patent holder has a potential Essential IPR which has been asserted and if the holder does not supply an assurance, then that silence is referred to PatCom. There is no clear open process what IEEE-SA does with refusals to license or lack of an LOA which may be a legitimate response in itself or simply insufficient time to respond. Material issues that may prevent adoption without an assurance for known use of Essential IPR should be raised and handled at the Board level. Pushing patent issues down to the Committee or Working Group level (that the Board already struggles to resolve with counsel) will only create needless complicated distractions. This is not efficient, is ripe for opportunities to stall a standard from progressing and does not ensure fair and impartial resolution on patent matters.

SuggestedRemedy

Delete this sentence.

Proposed Response Response Status **W**

PROPOSED REJECT.

This text is functionally equivalent to text in the existing patent policy.

The "remedy" to the IEEE-SA not receiving an assurance letter for a particular standard is left to the patent committee to consider and then make a recommendation to the Standards Board. We involved the patent committee in the first instance for efficiency not to complicate or slow down the process. The patent committee can help pull together the information that the Standards Board will need to evaluate the issue and help identify the issues that need to be considered by the Standards Board. Further, it is impossible to identify all possible situations where there are issues with LOAs, so allowing for human intervention, discussion and decision making properly provides a path to solve these problems.

Document **Bylaws** Sub/Item **6.2** P 2 L 43 # 27
 Commenter Don Wright Affiliation

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

"patentee" is obsolete

SuggestedRemedy

Change patentee to Submitter

Proposed Response Response Status **W**

PROPOSED ACCEPT.

(Editorial)

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 **6.2** P 3 L 9 # 9
 Commenter Guenin, Joanna Affiliation Motorola

Comment Type **S** Comment Status **D**

There was strong agreement within the IEEE Patcom that in view of antitrust concerns, negotiation and/or discussions of commercial terms are strictly prohibited in the technical working groups. To remove any ambiguity on what the term ""discussion"" means, I propose to modify the sentence by adding ""referenced or"" to the text, to clearly draw the line and stop any references that may lead to discussions.

SuggestedRemedy

Add the text ""referenced or"" to thwart the need to debate what ""discussion"" means and whether or not the antitrust line has been crossed. The sentence will now read:

Copies of an Accepted LOA may be provided to the working group, but shall not be referenced or discussed at any standards working group meeting.

Proposed Response Response Status **W**

PROPOSED REJECT.

Adding the words "reference to" to the text would negate the intent of allowing the distribution of accepted LOAs. That was not the intent of PatCom. Since we allow the distribution of LOAs, prohibiting referencing would prohibit someone from stating in a meeting, "My LOA has been accepted and here are copies of it." That is clearly a "reference" and clearly allowable based on the intent of the language in the bylaws. In addition, this particular topic will be highlighted in our request to the DoJ for a business review letter and the DoJ will presumably make clear its enforcement intentions as to the policy (including this provision).

Document **Bylaws** Sub/Item **6.2** P 3 L 11 # 5
 Commenter Townsend, Rick Affiliation PatCom / Lucent Technologies

Comment Type **S** Comment Status **D**

The following sentence is still very worrisome to me.
 ""Copies of an Accepted LOA may be provided to the working group, but shall not be discussed, at any standards working group meeting.""

I strongly believe that standards meetings should be limited solely to a technical exchange of information although on what basis people make their decisions is entirely up to them. Passing around LOAs with T&Cs is advertising the view that the IEEE believes business issues should be an open aspect of decisions and that it is appropriate to make those decisions with a simplistic, short term view when those decisions are, in reality, much more complicated than that.

While the words say that the LoA shall not be discussed, my years of standards activities lead me to believe it will be discussed. It opens a Pandora's box.

Note that the LoA will have maximum fees, percentages, whatever, whereas a license structure can be much more complex and may have terms of a totally different nature from what is portrayed on an LoA. How is someone in the room who is not competent in his/her company's business matters supposed to interpret such an LoA? Such a situation puts companies with a strong separation of technical and business activities at a severe disadvantage.

Making URLs available allows anyone who wishes to obtain the desired information without placing it openly in the middle of a technical discussion.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

There was healthy debate within PatCom on this issue. Given the wording of the "Compliance with Laws" section of the Ops Man, it is clear that discussions are not permitted. In addition, this particular topic will be highlighted in our request to the DoJ for a business review letter and the DoJ will presumably make clear its enforcement intentions as to the policy (including this provision).

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Document **Bylaws** Sub/Item **6.2** P 3 L 11 # 16
 Commenter Parsons, Glenn Affiliation Nortel

Comment Type **S** Comment Status **D**

The recommendation to allow ex ante assurances of rates/fees and circulation of LOAs was decided by a PatCom vote of 3-2, as I recall. I have reservations with this change as I do not believe this is representative of views or acceptance of IEEE SA participant stakeholders. I have seen no substantive rationale or purported improvement to process indicated. Providing LOAs only serves to induce Working Groups into considering the content of terms of LOAs which they're not prohibited to discuss and ultimately will tease engineers into more risky territory in discussions. There is no reason to provide copies of terms that cannot be discussed.

SuggestedRemedy

Replace Clause 6.2, page 3, Lines 11-12

""Copies of an Accepted LOA may be provided to the working group, but shall not be discussed, at any standards working group meeting.""

With

""There shall not be discussion of any LOA by the working group.""

Also, the Operations Manual and Guide to Understanding Patent Issues must further be updated to indicate that there can be no discussion of any LOA terms by the Working Group, though the Working Group may be reminded of the IEEE-SA online record of LOAs at a standards group meeting and that on-file LOAs are available to the public from the PatCom Administrator on request.

Proposed Response Response Status **W**

PROPOSED REJECT.

The 3-2 vote was whether to draft the language. Once the language was drafted, PatCom unanimously agreed to recommend a policy with this text in it.

Having patent holders disclose their most restrictive licensing terms in advance could help avoid having more onerous terms than would have been appropriate prior to the standard's adoption in order to avoid the expense and delay of developing a new standard around a different technology by preserving the benefits of competition between alternative technologies that exist during the standard-setting process.

Providing copies of LOA helps to insure transparency by providing information useful in decision making to all individuals including those lacking internet access.

Document **Bylaws** Sub/Item **6.2** P 3 L 20 # 10
 Commenter Guenin, Joanna Affiliation Motorola

Comment Type **S** Comment Status **D**

This comment is to ensure consistency between the Bylaws and the LOA and has the same rationale and recommendations as comment No. 3 for the LOA.

I understand and support the general intent of (a). However, the language proposed in (b) and (c) places unnecessary and unacceptable encumbrances on participating members.

I would therefore propose that (b) and (c) be modified, or as an alternative, delete (b) and (c).

SuggestedRemedy

Modify (b) and (c) as follows, or delete (b) and (c) altogether.

(b) to make a reasonable effort to require its assignee or transferee to agree to similarly provide such notice, and (c) to subsequent assignees or transferees to agree to provide such notice as described in (a) and (b).

Proposed Response Response Status **W**

PROPOSED ACCEPT IN PRINCIPLE.

See response to comment 21.

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, page, line

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Document **Bylaws** Sub/Item **6.2** P 3 L 20 # 21
 Commenter Parsons, Glenn Affiliation Nortel

Comment Type **S** Comment Status **D**

Bylaws Clause 6.2, (page 3, Line 20) and LOA, Patent Transfer restrictions: Requiring a patent holder LOA submitter to get an obligation from a patent buyer to carry notice of the LOA requirements to downstream buyers is not realistic and probably not reasonable. It is not within the submitter's control. If this is really necessary to protect the users of IEEE standards, it would be more appropriate to transfer the obligation to each subsequent buyer. I think this is covered if we just remove the last part of this paragraph.

SuggestedRemedy

Delete the downstream notice obligations under subclause (c) from the Bylaws and LOA.

Proposed Response Response Status **W**

PROPOSED ACCEPT IN PRINCIPLE.

Change text to read as follows:

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

Similar change will be made to the LOA.

Document **Bylaws** Sub/Item **6.2** P 3 L 22 # 1
 Commenter Olsen, T W Affiliation Siemens Power T&D, Inc.

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

"... to require itsyour assignee or transferee..." is incorrect.

SuggestedRemedy

Change ""itsyour"" to ""its"".

Proposed Response Response Status **W**

PROPOSED ACCEPT.

See response to #12

Document **Bylaws** Sub/Item **6.2** P 3 L 22 # 3
 Commenter Townsend, Rick Affiliation PatCom / Lucent Technologies

Comment Type **S** Comment Status **D**

From our PatCom discussions, I believe b) and c) are intended to be part of a single action in which the holder of a patent right is asked to do two things. In fact, the meaning of c) does not stand well by itself and seems to require the original Submitter to bind all subsequent assignees.

SuggestedRemedy

Change line 22 to read ""(b) to require its assignee or transferee to (i) agree to similarly provide such notice and (ii) bind subsequent assignees or transferees to agree to provide such notice as described in (a) and (b).""

Proposed Response Response Status **W**

PROPOSED ACCEPT IN PRINCIPLE.

See response to comment #21

Document **Bylaws** Sub/Item **6.2** P 3 L 22 # 4
 Commenter Townsend, Rick Affiliation PatCom / Lucent Technologies

Comment Type **S** Comment Status **D**

Part a) of the sentence is fine, but part b) certainly has the potential for increasing the difficulty in the negotiation process for the company trying to sell a patent's rights. It's another hurdle to overcome in a hardnosed business negotiation and it puts IEEE in a position of dictating business practices to its members.

SuggestedRemedy

Change from ""require"" to ""request"" in b).

Proposed Response Response Status **W**

PROPOSED ACCEPT IN PRINCIPLE.

See response to comment #21

Document **ByLaws** Sub/Item **6.2** P 3 L 22 # 12
 Commenter Thaden, Malcolm Affiliation

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

Typo in (b) "itsyour".

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED ACCEPT.

(editorial -- make change for BoG versions of the documents)

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, page, line

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Document **Bylaws** Sub/Item **6.2** P 3 L 27 # 20

Commenter Parsons, Glenn

Affiliation Nortel

Comment Type **S** Comment Status **D**

Bylaws Clause 6.2 (page 3, Line 27-38) and LOA, Duty to provide LOA: This text proposes a duty on patent holder submitters that voluntarily provide an LOA to an IEEE standard to submit subsequent assurances for additional potential essential patent claims that participants or the signatory to the LOA become aware of after the initial LOA. This appears to be in direct conflict with the fundamental tenet that IEEE ""shall request this assurance without coercion"".

SuggestedRemedy

Delete this subsequent duty from Clause 6.2 and the LOA form.

Proposed Response Response Status **W**

PROPOSED REJECT.

By signing a previous LOA, the submitter agrees to this requirement. Requiring a person to follow through on a commitment that one makes in an assurance is not coercion especially since providing an LOA is completely the choice of the patent holder.

It was the consensus of the PatCom participants that since this is based on PERSONAL knowledge of the specific people identified that this was an achievable requirement.

Document **ByLaws** Sub/Item **6.2** P 3 L 42 # 13

Commenter Thaden, Malcolm

Affiliation

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

"...shall apply, at a minimum, ...". Nice words, but what mechanism is there for having an accepted LOA apply once the standard is withdrawn? There is nothing in the Op Manual, since it sends you back here to find out about the life of the LOA.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

An LOA no longer applies once a standard is withdrawn. This is the same today and it unaffected by this policy change. The policy says minimum because a patent holder commits to honor the LOA at least until the standard is withdrawn but it could choose to honor it longer.

Document **Bylaws** Sub/Item **6.2** P 3 L 46 # 28

Commenter Don Wright

Affiliation

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

submitter should be capitalized

SuggestedRemedy

Change to Submitter

Proposed Response Response Status **W**

PROPOSED ACCEPT.

(Editorial)

Document **Bylaws** Sub/Item **6.2** P 4 L 11 # 2

Commenter Townsend, Rick

Affiliation PatCom / Lucent Technologies

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

SuggestedRemedy

To be consistent with previous usages and so as not to imply the need for a patent search, add ""of which they are personally aware and"" following Essential Patent Claims in line 11.

Proposed Response Response Status **W**

PROPOSED ACCEPT IN PRINCIPLE.

"of which they are personally aware" already follows "Essential Patent Claims" in the referenced section; however, we propose to add a "such" before "potential Essential Patent Claims" in (b) to make it abundantly clear that personal awareness is also necessary here as well.

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 **Global** Sub/Item **All** P L # **22**
 Commenter Parsons, Glenn Affiliation Nortel

Comment Type **S** Comment Status **D**

Participants need to be guided by clear and certain patent policy and procedures if it has any chance of success. The proposal is to move to a new policy, which is much more detailed, but participants are going to be expected to understand and comply. I fear that a complicated policy would result in more litigation, not less. Changing policy is an expensive, time consuming process and participants need to fundamentally know and agree to basic rules and expectations to encourage wide compliance and continued participation in IEEE Standards development. It is also not clear that members are widely aware of the proposed changes or have considered their impacts. As a result, especially since these changes are designed to better serve the standards development community, I think that at least a wider IEEE member review should be conducted.

SuggestedRemedy

The new proposed policy is not clear and unambiguous for participants. At a minimum, IEEE-SA should indicate to all IEEE Working Groups that a patent policy reworking is underway, highlight the change proposals, what they mean and potential impacts on participants and IEEE process. Sufficient time should be allowed for comments from wider member review and to ensure wide understanding of the proposed policy.

Proposed Response Response Status **W**

PROPOSED REJECT.

It will be a challenging, but not unachievable task for PatCom to develop the supporting material for this new policy.

The PP-Dialog website was created and publicized to allow for the broadest possible input and comments.

Document **LoA** Sub/Item **C** P 1 L 27 # **6**
 Commenter Guenin, Joanna Affiliation Motorola

Comment Type **S** Comment Status **D**

I understand and support the position that minor edits and revisions should not require the submittal of a new LOA. However, a new LOA should be required for any change that results in a new PAR or an expansion and/or change of Scope during the development phase of a standard.

The proposed change to extend the commitment of the LOA to include future amendments, corrigendas and revisions is problematic because the process by which the project scope is amended and changed within the IEEE is still ambiguous and fluid. The proposed language in 6.3.5 of the Ops Manual is vague and subject to plethoric interpretations and does not serve to solve the problem of "'scope creep'".

This means that a patent holder may be providing an assurance that has no limits or boundaries. This is unacceptable and therefore the original language should be maintained.

SuggestedRemedy

I therefore recommend that the proposed revisions to reference 6.3.5 be rejected and the existing language in C be maintained.

Proposed Response Response Status **W**

PROPOSED REJECT.

This text was discussed multiple times and it was the unanimous opinion of PatCom that the text currently in Ops Man 6.3.5 properly balances the interaction of LOAs, PARs, Revisions, Amendments, etc. with the interests of patent holders.

IEEE-SA Standards Board Ballot of proposed Patent Policy Changes - Comments

Document **LoA** Sub/Item **D.1.b** P 1 L 51 # 7

Commenter Guenin, Joanna

Affiliation Motorola

Comment Type **S** Comment Status **D**

IEEE Patcom has taken the position that it is in the best interest of its members to revise the IEEE IPR policy to allow for the voluntary disclosure of terms. However, an unintended consequence of the disclosure of terms and the adoption of the technology would be an implied endorsement that IEEE and its members agreed that the commercial terms disclosed meet the RAND commitment. This assumption could have detrimental effect on the standards industry as a whole and have unintended legal ramifications during the course of litigation. Therefore the appropriate disclaimer should be drafted and included in the LOA and as necessary, in the IEEE Bylaws and Operations Manual.

SuggestedRemedy

The recommendation is to include the appropriate disclaimer in the LOA. A recommendation for the disclaimer is as follows:

IEEE acknowledges that a licensor's voluntary disclosure of licensing terms does not explicitly or implicitly represent IEEE or its Members' interpretation of RAND. Therefore, during the drafting phase and/or upon the publication of an IEEE standard, IEEE takes no position and is not responsible for determining whether the licensing terms disclosed are fair, reasonable and non discriminatory.

The option to disclose voluntary licensing terms shall not be interpreted as creating any obligation for any Member to disclose the licensing terms related to any of its IPR, and it is agreed by all Members that the lack of disclosure by a Member of its licensing terms shall not create any implication under IEEE. Specifically, declaration of RAND licensing for Essential Patent Claims without public disclosed specific terms and conditions, are deemed sufficient under IEEE when selecting technologies for IEEE standards and technical specifications during development.

Proposed Response Response Status **W**

PROPOSED REJECT.

Such disclaimer is already in the Bylaws. See page 4 lines 1-3 for the following text:

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

In addition, such disclaimer is already in the LOA in the "note" above 1 where it states, "Note: Nothing in this Letter of Assurance shall be interpreted as giving rise to a duty to conduct a patent search. 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."

Finally, we have already made it clear that providing such information is "voluntary" by

putting the term "Optional" before each opportunity to provide not to exceed rates or licensing terms.

Document **LoA** Sub/Item **G** P 3 L 35 # 8

Commenter Guenin, Joanna

Affiliation Motorola

Comment Type **S** Comment Status **D**

I understand and support the general intent of (a). However, the language proposed in (b) and (c) places unnecessary and unacceptable encumbrances on participating members.

I would therefore propose that (b) and (c) be modified, or as an alternative, delete (b) and (c).

The same change should be also made in the Bylaws.

SuggestedRemedy

Modify (b) and (c) as follows, or delete (b) and (c) altogether.

(b) to make a reasonable effort to require its assignee or transferee to agree to similarly provide such notice, and (c) to subsequent assignees or transferees to agree to provide such notice as described in (a) and (b).

Proposed Response Response Status **W**

PROPOSED ACCEPT IN PRINCIPLE.

See response to comment #21.

(Note: The language here in the LOA will mirror the corresponding text in the bylaws.)

Document **OpsMan** Sub/Item **6.3.2** P 2 L 28 # 29

Commenter Don Wright

Affiliation

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

"... for a Patent Claim..." is incorrect

SuggestedRemedy

Change "for" to "of"

Proposed Response Response Status **W**

PROPOSED ACCEPT.

(Editorial)

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, page, line

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IEEE-SA Standards Board Ballot of proposed Patent Policy Changes - Comments

Document **OpsMan** Sub/Item **6.3.5** P 3 L 27 # 11
 Commenter Guenin, Joanna Affiliation Motorola

Comment Type **S** Comment Status **D**

This comment is to ensure consistency between the Operations Manual and the LOA and has the same rationale and recommendations as comment No. 1 for the LOA.

I understand and support the position that minor edits and revisions should not require the submittal of a new LOA. However, a new LOA should be required for any change that results in a new PAR or an expansion and/or change of Scope during the development phase of a standard. The problem is the process by which the scope is amended and changed within the IEEE is still ambiguous and fluid. The proposed language ""(a) the application of the technology required by the amendment... has not changed from its previous usage"" is vague and subject to plethoric interpretations and does not solve the problem of ""scope creep"".

This means that a patent holder may be providing an assurance that has no limits or boundaries. This is unacceptable and therefore should be rejected.

SuggestedRemedy

I therefore recommend that the proposed revisions to add 6.3.5 be rejected.

Proposed Response Response Status **W**
 PROPOSED REJECT.

See response to comment #6

Document **OpsMan** Sub/Item **6.3.5** P 3 L 30 # 30
 Commenter Don Wright Affiliation

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

"Accepted" is missing

SuggestedRemedy

insert "Accepted" after the word "An"

Proposed Response Response Status **W**
 PROPOSED ACCEPT.

(Editorial)

Document **OpsMan** Sub/Item **6.3.5** P 3 L 35 # 31
 Commenter Don Wright Affiliation

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

"Accepted" is missing

SuggestedRemedy

insert "Accepted" after the words "the prior"

Proposed Response Response Status **W**

PROPOSED ACCEPT.

(Editorial)

Document **OpsMan** Sub/Item **6.3.5** P 3 L 38 # 23
 Commenter Parsons, Glenn Affiliation Nortel

Comment Type **S** Comment Status **D**

This is too much responsibility for the WG chair. The proposed understanding and practice is also wrought with potential for disputes over interpretation. IEEE also takes the risk that its interpretation is not correct and a Working Group will be found without an assurance it otherwise could have requested.

SuggestedRemedy

Move the last paragraph of 6.3.5 to a new section and reword as follows:

6.3.6 LOA Applicability to other Standards: LOAs are only applicable to the standard referenced in them. As a result, the Working Group Chair shall initiate an IEEE-SA request...

Proposed Response Response Status **W**
 PROPOSED REJECT.

I'm not sure how adding the text " LOAs are only applicable to the standard referenced in them. As a result, ..." solves the problem the commenter asserts, i.e., that this is too much responsibility for the WG chair.

We agree that LOAs are only applicable to the standard referenced in them and think that is already implicit in the language. We certainly can expand on that notion in the materials to be developed for WG chairs if the policy is approved, but we don't think we need to add that language here in the Ops. Manual.

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**
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IEEE-SA Standards Board Ballot of proposed Patent Policy Changes - Comments

Document **OpsMan** Sub/Item **6.3.5** P **3** L **38** # **14**
 Commenter Thaden, Malcolm Affiliation

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

The second paragraph is awkward to me. Line 38 talks about getting a new LOA from a known Submitter, so the words in lines 40 and 41 "... referenced in an Accepted LOA..." are redundant and cause the sentence to be hard to read. I would suggest deleting those words. This is the paragraph addressing one of the problems that we have been discussing, so its intend should be very clear to the WG Chair. This paragraph states "... reusing portions of or technologies (in)..." Is this intended to also apply when the technology is incorporated only by "normative reference" of the standard? I can read it either way. (This is the subject of one of our AdHocs.) If it is meant to apply by reference, then it should say something to the effect "whether directly or by normative reference".

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

Some standards will have many 'known Submitters' so the text 'technologies specified in an existing [Proposed] IEEE Standard, amendment, corrigendum, edition, or revision' has to be followed by 'referenced in an Accepted Letter of Assurance' to indicate which of these 'known Submitters' a new LoA has to be requested from.

This subclause was crafted to cover the situation where there is a base standard being modified and added to by various amendments/corrigendum/revision projects and when technology was reused where, and where not, a new LoA was required.

The issue of where the use of a reference does, or doesn't, require seeking of an LoA wasn't part of this work and, as noted in the comment, is currently being addressed by an Ad Hoc.

Document **Other** Sub/Item P L # **24**
 Commenter Parsons, Glenn Affiliation Nortel

Comment Type **S** Comment Status **D**

SASB should not approve the policy without open input to and approval from the FTC/DOJ business review letter in advance of SASB approval. This is material information to the SA-Board decision and to all IEEE participants working in or joining IEEE standards groups to assess the level of risk IEEE and its participants may be taking on under the proposed changes.

SuggestedRemedy

Table approval until after Standards Board review of the FTC/DOJ letter.

Proposed Response Response Status **W**

PROPOSED REJECT.

The DoJ Business Review Letter process is not to be used for inquiries on purely hypothetical policies, and we did not wish to use IEEE-SA resources seeking a business review letter until the policy had made significant progress in the IEEE-SA approval process. Consequently, we chose not to seek the business review letter until after SASB approval. In the meantime, the DOJ has issued its business review letter in the VITA matter. The BoG may conclude that that letter provides sufficient guidance and vote on adoption of the policy on that basis or it may decide to make its approval contingent upon receipt of a supportive business review letter specific to the IEEE policy. In fact, including such a contingency has consistently been the position of the PatCom chair.

No change to any of the three documents is needed.

IEEE-SA Standards Board Ballot of proposed Patent Policy Changes - Comments

Document **Other** Sub/Item P L # 25
 Commenter Parsons, Glenn Affiliation Nortel

Comment Type **S** Comment Status **D**

It is unclear what assurance level we are attempting to adopt in practice, and if that level is reasonable for IEEE standards operations. We should be cautious and not set an impossible level (e.g., "free of unknown costs" or "all assurances have been requested/received for potential Essential IPR") to meet û but we must be clear that IEEE remains distanced from such responsibility. In addition, clear antitrust guidelines should be emphasized in the Working Group practice guide, and if other changes are being considered by IEEE to the current Understanding Patent Issues Guide to correspond with the proposed Policy, the Policy should not be approved without the guidelines as part of a full package for consideration.

SuggestedRemedy

Prepare a revision to the Patent Issues Guide and the WG slides based on the other proposed changes as part of this package for approval.

Proposed Response Response Status **W**

PROPOSED ACCEPT IN PRINCIPLE.

The SASB chair has already appointed an ad-hoc committee to develop an antitrust compliance policy that addresses appropriate communications and other behaviors in IEEE standards activities. The committee has developed a draft policy for the Ops Manual. There will most likely be other collateral literature, although whether it is best included in the Understanding Patent Issues Guide, or elsewhere, or both, is not yet determined. In addition, while we are waiting for a business review letter from the DOJ, it would be appropriate to develop the WG slides and other supportive documents to match the adopted policy. This development work is already on the December PatCom agenda.

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, page, line

Document **Other**
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