

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.

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.

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.

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.

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.

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.

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*.

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.

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.

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]**