

IEEE-SA PatCom Drafting Committee output - Comments

Document **ByLaws** Sub/Item **6.0** P **1** L **10** # **3**
 Commenter Geoff Thompson Affiliation Nortel

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

RE SB Bylaws, clause 6 We have been including the phrase "shall request this assurance without coercion" for a very long time. I wish I knew what it meant and I believe that our constituency does too. It seems to me that every time we further dictate terms for making it through our acceptance filter we are becoming more coercive.

[Wikipedia: Coercion is the practice of compelling a person to involuntarily behave in a certain way...]

[Amer Heritage: Coerce: 1. To force to act or think in a certain way by use of pressure, threats, or intimidation; compel. 2. To dominate, restrain, or control forcibly: coerced the strikers into compliance.]

SuggestedRemedy

Have some explanation in an FAQ somewhere of what we really mean by this and why this extraordinary language appears here and nowhere else in IEEE P&P. Any explanation should be consistent with ANSI policy.

Response Response Status **C**

REJECT.

This language is an improvement over "This assurance shall be provided without coercion." which it had been pointed out was unclear if it meant that the letter had to be obtained with coercion or that the content of the letter should not contain any coercive requirements.

It is now clear that the lack of coercion applied to the making of the request.

Document **ByLaws** Sub/Item **6.0** P **1** L **11** # **165**
 Commenter Susan Hoyler Affiliation Qualcomm

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

Change 'request this assurance without coercion' to read 'request such a Letter of Assurance without coercion'.

SuggestedRemedy

Response Response Status **C**

ACCEPT IN PRINCIPLE.

We have change 'letter of assurance' to 'Letter of Assurance', a defined term, in the previous sentence. It is this letter to which 'this assurance' refers.

Document **ByLaws** Sub/Item **6.0** P **1** L **11** # **166**
 Commenter Susan Hoyler Affiliation Qualcomm

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

Change 'If the patent holder or patent applicant provides an assurance, it should do so as soon as reasonably feasible' to read 'Owners of Essential Patent Claims shall be encouraged to submit Letters of Assurance in connection with such Essential Patent Claims as early as reasonably practicable'

SuggestedRemedy

Response Response Status **C**

REJECT.

Limiting the requirement to provide a LoA in a timely fashion to only 'Owners of Essential Patent Claims' is too narrow. We need to send LoA requests to, and be able to get LoAs from, people who might not think they have essential patent claims. The text 'shall be encourage' requires active behavior on the part of the IEEE. We have however already added text in the last paragraph of the Bylaws detailing what the IEEE expects of participants.

Document **ByLaws** Sub/Item **6.0** P **1** L **11** # **164**
 Commenter Susan Hoyler Affiliation Qualcomm

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

Change 'letter of assurance' to 'Letter of Assurance'.

SuggestedRemedy

Response Response Status **C**

ACCEPT.

Performing this change globally where appropriate.

Document **ByLaws** Sub/Item **6.0** P **1** L **12** # **131**
 Commenter Mike Sirtori Affiliation Intel

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

'no later than the approval of the standard'. Approval by who, TG, RevCom, SA Board?

SuggestedRemedy

Response Response Status **C**

ACCEPT.

This text will be change to read 'prior to the Standards Board's approval'.

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 **1** L **12** # **130**
 Commenter Mike Sirtori Affiliation Intel
 Comment Type **S** Comment Status **A**
 What are the implications of this clause. If the assurance is not provided for a known EPC, the standard may not be approved.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 In this case a standard may or may not approved. See also text below: 'An asserted Essential Patent Claim for which an assurance cannot be obtained shall be referred to the Patent Committee for resolution.'

Document **ByLaws** Sub/Item **6.0** P **1** L **12** # **167**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **R**
 Change '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' to read to read 'in the standards development process, and in all events, no later than the approval of the standard'.
 SuggestedRemedy

Response Response Status **C**
 REJECT.
 Not perceived as an improvement in the text.

Document **ByLaws** Sub/Item **6.0** P **1** L **13** # **168**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **A**
 Change 'or reaffirmation when a patent or patent application becomes known after initial approval' to read 'or reaffirmation of the standard when an Essential Patent Claim becomes known'.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Change to read 'when a potential Essential Patent Claim becomes known'.

Document **ByLaws** Sub/Item **6.0** P **1** L **13** # **56**
 Commenter Chuck Adams Affiliation IBM
 Comment Type **S** Comment Status **R**
 Change 'For the standard to include a known Patent Claim' to read 'For the standard to acknowledge a declared Essential Patent Claim'
 SuggestedRemedy

Response Response Status **C**
 REJECT.
 Standards do not acknowledge essential patent claims, in fact it is specifically disclaimed in the frontmatter of the standard.

Document **ByLaws** Sub/Item **6.0** P **1** L **13** # **63**
 Commenter Jeffery Fromm Affiliation HP
 Comment Type **S** Comment Status **A**
 Change the text ".. No later than .." to read '.. prior to ..'.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT.

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Document **ByLaws** Sub/Item **6.0** P **1** L **13** # **4**
 Commenter Geoff Thompson Affiliation Nortel
 Comment Type **S** Comment Status **A** Future work

RE SB Bylaws, clause 6
 Regarding "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).

I don't understand what this means.

When is "becomes known"?
 When the patent is filed?
 When the patent is issued?
 When the applicant is notified that the patent is issued by the PTO?

This is a "shall". How much time does the submitter have to get around to submitting the LoA after the alarm goes off?

SuggestedRemedy

But this is outside the charter of the drafting so this should be backed out and considered at another time.

Response Response Status **C**
 ACCEPT.

We will do nothing and record it in this database as a 'Future Work' item.

Document **ByLaws** Sub/Item **6.0** P **1** L **15** # **154**
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **A**

Change 'approval of the standard).' to read 'approval of the standard) by the IEEE Standards Board.'.

SuggestedRemedy

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

See comment #131.

Document **ByLaws** Sub/Item **6.0** P **1** L **16** # **169**
 Commenter Susan Hoyer Affiliation Qualcomm
 Comment Type **S** Comment Status **R**

Change 'An Essential Patent Claim for which an assurance cannot be obtained shall be referred to the Patent Committee for resolution.' to read 'Where a Letter of Assurance is not submitted as encouraged by this Clause 6, the Patent Committee shall advise the relevant IEEE standards developing working group of such a development and request that the standards developing working group obtain a consensus regarding how to proceed in connection with the standard development activity.'

Rather than refer to PatCom, it seems that the working group would be the group that best understands the work around and could develop a consensus.

SuggestedRemedy

Response Response Status **C**
 REJECT.

These are some of the options that PatCom may choose to use in this situation but there are many others available to it and we don't want to limit its options.

Document **ByLaws** Sub/Item **6.0** P **1** L **16** # **118**
 Commenter Chuck Adams Affiliation IBM
 Comment Type **S** Comment Status **A**

Change 'An Essential Patent Claim for which an assurance cannot be obtained shall be referred to the Patent Committee for resolution.' to read 'A potential Essential Patent Claim for which an assurance cannot be obtained shall be referred to the Patent Committee for resolution.'

This wording assumes the IEEE is aware of actual or declared essentiality. Patent holder has final say on stating essentiality.

SuggestedRemedy

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

Change 'A potential Essential Patent Claim' to read 'An asserted Essential Patent Claim'.

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Document **ByLaws** Sub/Item **6.0** P 1 L 18 # 170
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **R**
 Change 'This assurance shall be either:' to read 'The Letter of Assurance as described in clause 6 shall be either:'
 SuggestedRemedy

Response Response Status **C**
 REJECT.

As we have defined what an assurance is in the first paragraph we don't need to repeat "Letter of Assurance" over and over again. Calling out Clause 6 here would be a circular reference as this is Clause 6.

Document **ByLaws** Sub/Item **6.0** P 1 L 21 # 5
 Commenter Geoff Thompson Affiliation Nortel
 Comment Type **S** Comment Status **R**
 SB Bylaws, clause 6, sub a) 2nd change I can't see that this text is in satisfaction of any of the approved motions of March. Adding other changes that "seem like a good idea" just confuse this cumbersome and contentious process even further.

SuggestedRemedy
 Back this change out and put it in the pot of things to be considered in the future, with appropriate prioritization.

Response Response Status **C**
 REJECT.

In the course of reviewing the LOA options under D.1, the drafting committee became aware of this hole in the non-assert option and believes it should be fixed.

Document **ByLaws** Sub/Item **6.0** P 1 L 21 # 132
 Commenter Mike Sirtori Affiliation Intel
 Comment Type **S** Comment Status **A**
 Change 'or entity creating, using' to read 'or entity making, using'.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT.

Document **ByLaws** Sub/Item **6.0** P 1 L 21 # 133
 Commenter Mike Sirtori Affiliation Intel
 Comment Type **S** Comment Status **A**
 Change 'or entity creating, using' to read 'or entity making, using'.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT.

Duplicate of comment #132.

Document **ByLaws** Sub/Item **6.0** P 1 L 21 # 64
 Commenter Jeffery Fromm Affiliation HP
 Comment Type **S** Comment Status **R**
 Change 'entity creating, using, selling, offering to sell, importing, distributing or implementing a compliant implementation of the standard; or' to read 'practicing such Claims for the purpose of complying with the standard; or'

SuggestedRemedy

Response Response Status **C**
 REJECT.

Since there isn't a license, this option is just a disclaimer, the drafting committee believes it needs to fully cover all the potential application of the product using such claims. We are not sure that for example, importing a product with the patented technology, would be covered by 'practicing such Claims for the purpose of complying with the standard'.

Document **ByLaws** Sub/Item **6.0** P 1 L 21 # 171
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **A**
 Change 'or entity creating' to read 'or entity making'.
 ETSI, and other US SDOS use the term make
 SuggestedRemedy

Response Response Status **C**
 ACCEPT.
 See comment #132.

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 **1** L **25** # **172**

Commenter Susan Hoyler

Affiliation Qualcomm

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

Change 'made available without compensation or under' to read 'made available under'.

Add the text 'with or without compensation. It shall be permissible, and it is encouraged, for owners of Essential Patent Claims voluntarily to make known to prospective licensees any license terms the owners of the Essential Patent Claims believe appropriate. In no circumstance, however, shall any license terms be discussed or negotiated as part of the standards development activity of the IEEE.' to the end of this paragraph.

SuggestedRemedy

Response Response Status **C**

REJECT.

Consistent with ANSI essential requirements. The text related to sample licensing terms and conditions has been changed to read 'The patent holder or applicant may provide with its assurance a not-to-exceed rate commitment and either a sample license agreement or material licensing terms.'

Conduct of meetings is covered by SASB Operations Manual subclause 5.3.8. Which is queued for discussion at PatCom.

Document **ByLaws** Sub/Item **6.0** P **1** L **25** # **119**

Commenter Chuck Adams

Affiliation IBM

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

Change 'b) A statement that a license for such implementation will' to read 'b) A statement that a non-exclusive license for a compliant implementation will'.

SuggestedRemedy

Response Response Status **C**

REJECT.

A 'non-exclusive license' is redundant as it already stated that the license has to be offered to everybody.

Document **ByLaws** Sub/Item **6.0** P **1** L **25** # **155**

Commenter Amy Marasco

Affiliation Microsoft

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

Change 'such implementation will be made' to read 'such implementation of the standard will be made'.

SuggestedRemedy

Response Response Status **C**

ACCEPT.

Document **ByLaws** Sub/Item **6.0** P **1** L **26** # **156**

Commenter Amy Marasco

Affiliation Microsoft

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

Change 'reasonable rates, with reasonable' to read 'reasonable rates, together with other reasonable'.

SuggestedRemedy

Response Response Status **C**

REJECT.

This change is unnecessary as it doesn't change the actual meaning.

Document **ByLaws** Sub/Item **6.0** P **1** L **27** # **120**

Commenter Chuck Adams

Affiliation IBM

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

Change 'to provide a not-to-exceed commitment and a sample license agreement with its assurance.' to read 'to provide a not-to-exceed royalty rate or fee (exclusive of other licensing arrangements a potential licensee and licensor may engage) commitment and a sample license agreement (or key licensing terms associated with its license offer) with its assurance.'

SuggestedRemedy

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Accept adding 'a compliant implementation' and the option of providing either 'a sample license agreement or material licensing terms.'

Reject change to 'royalty rate or fee' as 'rate' includes royalty rate or fee. Also reject adding '(exclusive of. . .)' as pre-existing agreements should cover this.

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 **1** L **27** # **6**
Commenter Geoff Thompson Affiliation Nortel
Comment Type **S** Comment Status **A**
RE SB Bylaws, clause 6, sub b) This change is NOT in line with what was agreed upon, moved at the meeting and reported to the Standards Board. The word used in both motions (ref agenda items 6.3.5 & 6.3.7) was "allow". The use of the word "encouraged" is not in line with that.
SuggestedRemedy
Change "encouraged" to "may". Change to the language from the motion, i.e. "The LoA form shall allow for the inclusion of a sample license. Providing such sample license shall be optional."
Response Response Status **C**
ACCEPT.
Change 'The patent holder or applicant is encouraged to provide a sample license agreement with its assurance.' to read 'The patent holder or applicant may provide with its assurance a sample license agreement.'

Document **ByLaws** Sub/Item **6.0** P **1** L **27** # **51**
Commenter Gil Ohana Affiliation Cisco
Comment Type **S** Comment Status **A**
Two comments on the additional sentence "The patent holder or applicant is encouraged to provide a not-to-exceed rate commitment and a sample license agreement with its assurance."
First, I can understand the preference for a "sample license agreement" but am concerned that this might be too limiting. A company with a complex licensing program might have a variety of forms tailored for different applications, different geographies, different licensee business models, etc. Maybe replace with "and a sample license agreement or a statement of material licensing terms."
Second, should there be a clear statement that terms offered are binding on the patent holder and enforceable by any implementer?
SuggestedRemedy
See comment.
Response Response Status **C**
ACCEPT IN PRINCIPLE.
[1] Accept - Change 'sample license agreement' to read 'sample license agreement or material licensing terms'
[2] Reject - Adding this to the Bylaws is not necessary - this is covered in the commitment made in the signature block of the LoA.

Document **ByLaws** Sub/Item **6.0** P **1** L **28** # **157**
Commenter Amy Marasco Affiliation Microsoft
Comment Type **S** Comment Status **A**
Change 'encouraged to provide' to read 'encouraged, but is not required, to provide'.
SuggestedRemedy
Response Response Status **C**
ACCEPT IN PRINCIPLE.
Text has been change from 'encouraged' to may'. See comment #6.
Document **ByLaws** Sub/Item **6.0** P **1** L **28** # **34**
Commenter David Ringle Affiliation IEEE-SA
Comment Type **S** Comment Status **A**
Somehow we morphed from allowing submission of not-to-exceed rates and/or sample licenses to now 'encouraging' such submissions. Why?
SuggestedRemedy

Response Response Status **C**
ACCEPT.
This text has been changed to may submit. See comment #6.
<Start Don Wright>
The drafting committee believed this was the intent and serves the interest of the public better. In any case it is still a should not a shall.
<End Don Wright>

Document **ByLaws** Sub/Item **6.0** P **1** L **29** # **158**
Commenter Amy Marasco Affiliation Microsoft
Comment Type **S** Comment Status **A**
Change 'license agreement with its' to read 'license agreement (or additional licensing information) with its'.
SuggestedRemedy
Response Response Status **C**
ACCEPT IN PRINCIPLE.
Added the option to provide 'Material licensing terms'. See comment #120.

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Document **ByLaws** Sub/Item **6.0** P **1** L **30** # **159**

Commenter Amy Marasco Affiliation Microsoft

Comment Type **S** Comment Status **R** Future Work

Note: We would be uncomfortable with any language encouraging the disclosure of licensing terms at IEEE without seeing and reaching a consensus on the language that addresses what the technical committees can do and say with regard to that information, particularly any prohibition on the discussion of licensing terms. This arguably should be consistent with the current guidance that is provided at technical committee meetings.

SuggestedRemedy

Response Response Status **C**

REJECT.

Text has been change from 'encouraged' to may'. See comment #6.

In regards to changes to the operations manual subclauses related to what the technical committees can do and say this is beyond any reasonable interpretation of the mandate that the motions have provided us at this time. This however will be added to the agenda of the upcoming PatCom meeting and is recorded in this database as a 'Future Work' item.

Document **ByLaws** Sub/Item **6.0** P **1** L **31** # **121**

Commenter Chuck Adams Affiliation IBM

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

Change 'except those explicitly excluded.' to read 'except those explicitly excluded. (It is recognized that a reasonable term and condition that may be embodied in a patent license is a requirement of reciprocity on essential claims from all licensee affiliates.) Known essential claims, held by affiliates, should be declared, even if not offered for licensing.'

SuggestedRemedy

Response Response Status **C**

REJECT.

Knowledge of affiliates patents cannot be impuned to the parent or sibling. We can requests an LOA from excluded affiliates.

Adding '(It is recognized that a reasonable term and condition that may be embodied in a patent license is a requirement of reciprocity on essential claims from all licensee affiliates.) ' is adding a definition of RAND and the committee voted against including a definition of RAND.

Document **ByLaws** Sub/Item **6.0** P **1** L **31** # **173**

Commenter Susan Hoyler Affiliation Qualcomm

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

Change 'This assurance shall apply to the patent holder or patent applicant's Affiliates except those explicitly excluded.' to read 'Letters of Assurance shall apply to the submitting owner of Essential Patent Claims and its Affiliates, except as may be otherwise specified by the submitting owner of the Essential Patent Claim.'

SuggestedRemedy

Response Response Status **C**

ACCEPT IN PRINCIPLE.

'This assurance shall apply to the Submitter and its Affiliates except those explicitly excluded.'

Also change on line 28 ' The patent holder or applicant may provide ' to read ' The Submitter may provide '.

Document **ByLaws** Sub/Item **6.0** P **1** L **34** # **174**

Commenter Susan Hoyler Affiliation Qualcomm

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

Change '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.' to read 'If, after providing a Letter of Assurance to the IEEE, a person becomes aware of Patent Claims in connection with the same standard for which a Letter of Assurance had been submitted, but which are not covered by the existing Letter of Assurance, then the procedures described above shall apply to the additional Essential Patent Claim(s).'

SuggestedRemedy

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Change 'that may become Essential Patent Claims' to read 'that may become Essential Patent Claims for the same IEEE Standard'

Didn't accept the change to 'the procedures above' apply because we want the more definitive 'shall'.

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 **1** L **34** # **65**

Commenter Jeffery Fromm

Affiliation HP

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

Change 'a person becomes' to read 'a submitter becomes'.

SuggestedRemedy

Response Response Status **C**

ACCEPT.

Document **ByLaws** Sub/Item **6.0** P **1** L **34** # **134**

Commenter Mike Sirtori

Affiliation Intel

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

Change 'the IEEE, a person becomes' to read 'the IEEE, the submitter becomes'.

Change 'then such person shall submit' to read 'then the submitter shall submit'.

SuggestedRemedy

Response Response Status **C**

ACCEPT.

Document **ByLaws** Sub/Item **6.0** P **1** L **35** # **66**

Commenter Jeffery Fromm

Affiliation HP

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

Change 'such person shall' to read 'such submitter shall'.

SuggestedRemedy

Response Response Status **C**

ACCEPT.

Document **ByLaws** Sub/Item **6.0** P **1** L **35** # **122**

Commenter Chuck Adams

Affiliation IBM

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

Change 'shall submit a letter of assurance covering such Patent Claims.' to read 'shall request an authorized representative of their organization to submit a letter of assurance covering such Patent Claims. (The IEEE Standards Association recognizes that organizations reserve essentiality determination to their IP attorneys and an individual involved in the standards development process is unable to provide a statement of essentiality.)'.

SuggestedRemedy

Response Response Status **C**

REJECT.

Two paragraphs down already states 'The IEEE is not responsible for . . . conducting inquiries into the legal validity or scope of those patents that are brought to its attention.'.

Document **ByLaws** Sub/Item **6.0** P **1** L **35** # **7**

Commenter Geoff Thompson

Affiliation Nortel

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

RE SB Bylaws, clause 6, paragraph starting "If after..."

The use of the wording "shall submit" sounds like it is in direct conflict with "shall request this assurance without coercion".

SuggestedRemedy

Change text to: "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 is requested to submit a letter of assurance covering such Patent Claims." However, this item is out of scope of the charter of the group. In any case, it should be in the LoA, not in policy.

Response Response Status **C**

REJECT.

It is not coercion because this 'shall' only applies after an LoA has been submitted agreeing to inform the IEEE if the submitter subsequently becomes aware of a potential essential patent.

This is being done based on the motion under agenda item 6.3.6 of the March 2006 PatCom meeting.

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 **1** L **36** # **52**
 Commenter Gil Ohana Affiliation Cisco
 Comment Type **S** Comment Status **R**
 I suggest including a time element here, for example "then, promptly upon becoming aware of such Patent Claims, such person shall submit"
 SuggestedRemedy
 See comment.
 Response Response Status **C**
 REJECT.
 It is stated that LoAs have to be submitted before the standard is adopted and we already encourage early submission.

Document **ByLaws** Sub/Item **6.0** P **1** L **37** # **123**
 Commenter Chuck Adams Affiliation IBM
 Comment Type **S** Comment Status **R**
 Change 'once submitted, and accepted, and shall apply' to read 'once submitted, accepted, and acknowledged and shall apply'.
 SuggestedRemedy
 Response Response Status **C**
 REJECT.
 'acknowledged' is when the LOA is posted on the web.

Document **ByLaws** Sub/Item **6.0** P **1** L **38** # **67**
 Commenter Jeffery Fromm Affiliation HP
 Comment Type **S** Comment Status **R**
 Add the text:
 'An assurance referencing a standard, amendment, corrigenda, or revision will remain in force for the application of the referenced essential Patent Claim(s) to the technology of the standard, or of the amendment or corrigenda after being merged into the standard, and for subsequent revision of the referenced or merged standard.
 SuggestedRemedy
 Response Response Status **C**
 REJECT.
 Covered in Operations Manual.

Document **ByLaws** Sub/Item **6.0** P **1** L **38** # **175**
 Commenter Susan Hoyer Affiliation Qualcomm
 Comment Type **S** Comment Status **R** Future Work
 Change '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.' to read 'A Letter of Assurance shall be irrevocable once submitted and accepted and shall remain in effect at a minimum, from the date of the standard's approval to the date of the standard's withdrawal. For these purposes acceptance of a Letter of Assurance shall mean xxxxx.'
 Need to elaborate what acceptance means.
 SuggestedRemedy

Response Response Status **C**
 REJECT.
 Beyond the reasonable scope of current approved motions. This does need fixed however and is recorded in this database as a 'Future Work' item.

Document **ByLaws** Sub/Item **6.0** P **1** L **40** # **8**
 Commenter Geoff Thompson Affiliation Nortel
 Comment Type **S** Comment Status **R**
 RE SB Bylaws, clause 6, last 2 paragraphs I can't see that this text is in satisfaction of any of the approved motions of March. Adding other changes that "seem like a good idea" just confuse this cumbersome and contentious process even further.
 SuggestedRemedy
 Back these changes out and put it in the pot of things to be considered in the future, with appropriate prioritization. Alternatively, they could be presented individually as new business proposals at the June meeting by any member of the committee.
 Response Response Status **C**
 REJECT.
 In the course of reviewing the documents in relation to motion 6.3.1 it was believed this should be moved to the policy document to be consistent with the ANSI patent policy specified in the ANSI essential requirements.

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Document **ByLaws** Sub/Item **6.0** P **1** L **41** # **176**
 Commenter Susan Hoyler Affiliation Qualcomm

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

Change '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' to read 'The IEEE is not responsible for identifying Essential Patent Claims or for conducting inquiries into the legal validity or scope of any Patent Claims'.

SuggestedRemedy

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Need to keep 'for which a license may be required' as some Essential Patent Claims don't require licenses.

Change to read 'The IEEE is 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 Patent Claims.'

Document **ByLaws** Sub/Item **6.0** P **1** L **44** # **135**
 Commenter Mike Sirtori Affiliation Intel

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

Change 'that persons participating' to read 'that each individual participating'.

SuggestedRemedy

Response Response Status **C**

REJECT.

We need to use persons as we have corporate as well as individual participation in standards development and persons included individuals and corporations.

Document **ByLaws** Sub/Item **6.0** P **1** L **44** # **33**
 Commenter David Ringle Affiliation IEEE-SA

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

If we are going to have 'shall' statements in regards to what participants shall do, we may need to have more information included in participant registration (sign-up) forms. I seriously doubt that just by having some wording [buried] in the Bylaws or Operations Manual, we will get participants to participate the way we would like.

SuggestedRemedy

Response Response Status **C**

ACCEPT IN PRINCIPLE.

'Person' has been changed to 'submitter' in two places.

<Start Don Wright>

I don't necessarily disagree with you but that's for a step potentially further down the road.

<End Don Wright>

<Start David Ringle>

My bad. I was tired when I did my initial review. I see that the last paragraph of new section G on the LoA Form has the shall submit new LoA if becomes aware of potential essential claims language. I was concerned that the Bylaws language would basically mean nothing to the submitter of an LoA and that we needed such language on the LoA Form, too. That has been done. Thanks. But,.... Why is there always a 'but'? Anyway, but... I still think that the language in the Bylaws reads a bit awkwardly. It states that if a person becomes aware of potential essential patents, that that person should submit an LoA. What if the person who becomes aware is not the patent holder? I think that the language needs to be changed to better reflect its intent [See also last paragraph of new Bylaws text]. So, I would suggest changing 'person' to 'patent holder' in that paragraph in the new Bylaws text ['If, after providing....'].<End David Ringle>

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Document **ByLaws** Sub/Item **6.0** P **1** L **45** # **124**
 Commenter Chuck Adams Affiliation IBM
 Comment Type **S** Comment Status **A**
 Change 'development process will complete a' to read 'development process will request responsible individuals within their respective organizations to complete a'.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Add the text 'including the entity such person represents.' to the end of this paragraph.

Document **ByLaws** Sub/Item **6.0** P **1** L **45** # **137**
 Commenter Mike Sirtori Affiliation Intel
 Comment Type **S** Comment Status **A**
 Change 'will complete a letter' to read 'will either submit or cause to be submitted a letter'.
 [Note - handwritten text on scan difficult to read]
 SuggestedRemedy

Response Response Status **C**
 ACCEPT.

Document **ByLaws** Sub/Item **6.0** P **1** L **45** # **136**
 Commenter Mike Sirtori Affiliation Intel
 Comment Type **S** Comment Status **A**
 Change 'for any Patent Claims' to read 'for any know Patent Claims'.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT.

Document **ByLaws** Sub/Item **6.0** P **1** L **45** # **180**
 Commenter Susan Hoyer Affiliation Qualcomm
 Comment Type **S** Comment Status **R**
 Change the text 'In order for IEEE's patent policy to function effectively, IEEE expects that persons participating' to read 'To further the intent of the IEEE's patent policy, any person participating'.
 SuggestedRemedy

Response Response Status **C**
 REJECT.
 The drafting committee doesn't believe 'To further the intent of the IEEE's patent policy' is not sufficiently strong.

Document **ByLaws** Sub/Item **6.0** P **1** L **45** # **179**
 Commenter Susan Hoyer Affiliation Qualcomm
 Comment Type **S** Comment Status **R**
 Change 'process will complete a letter of assurance for any Patent Claims' to read 'process is encouraged to identify any Patent Claims'.
 SuggestedRemedy

Response Response Status **C**
 REJECT.
 We want assurance not to encourage disclosure.

Document **ByLaws** Sub/Item **6.0** P **1** L **46** # **138**
 Commenter Mike Sirtori Affiliation Intel
 Comment Type **S** Comment Status **A**
 Change 'by such persons and' to read 'by such individual or its employer and'.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Will change 'held by others.' found at the end of the paragraph to read 'held by others including the entity such person represents.'. See comment #68.

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Document **ByLaws** Sub/Item **6.0** P **1** L **46** # **125**

Commenter Chuck Adams

Affiliation IBM

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

Change 'or controlled by such persons and inform the IEEE of any such Patent Claims held by others.' to read 'or controlled by such persons and/or organizations and inform the IEEE of any relevant technology held by others.'

Employees of one organization cannot comment on the essentiality of claims held by another organization. The employee can only state that another organization may have related technology.

SuggestedRemedy

Response Response Status **C**

REJECT.

We already say 'may become Essential Patent Claims'. We don't require anyone to definitively assert essentiality. In addition people can comment on anything they want.

Document **ByLaws** Sub/Item **6.0** P **1** L **46** # **68**

Commenter Jeffery Fromm

Affiliation HP

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

Change 'such persons and' to read 'such persons or the entity they represent'.

SuggestedRemedy

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Change the text 'held by others.' found at the end of the paragraph to read 'held by others including the entity such person represents.'

Document **ByLaws** Sub/Item **6.0** P **1** L **46** # **178**

Commenter Susan Hoyler

Affiliation Qualcomm

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

Change 'may become Essential Patent Claims owned' to read 'may be Essential Patent Claims, whether or not owned'.

SuggestedRemedy

Response Response Status **C**

REJECT.

We don't want LOAs from a person who doesn't own the Essential Patent Claim.

Document **ByLaws** Sub/Item **6.0** P **1** L **47** # **139**

Commenter Mike Sirtori

Affiliation Intel

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

Change 'Patent Claims held by others' to read 'Patent Claims'.

SuggestedRemedy

Response Response Status **C**

REJECT.

We expect a person to inform the IEEE if they know of patents claims held by others.

Document **ByLaws** Sub/Item **6.0** P **1** L **47** # **177**

Commenter Susan Hoyler

Affiliation Qualcomm

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

Change 'such Patent Claims held by others.' to read 'such Patent Claims.'.

SuggestedRemedy

Response Response Status **C**

REJECT.

We expect a person to inform the IEEE if they know of patents claims held by others.

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 **1** L **8** # **2**

Commenter Geoff Thompson Affiliation Nortel

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

RE SB Bylaws, clause 6 (text in satisfaction of March agenda item/motion 6.3.1)
I am opposed to moving the policy from "essential patents" to "essential patent claims". This effectively could mean that a "submitter" could submit an LoA (with or without sample T&C) for each "essential claim" and then game the system on a piece-by-piece basis. The system is in bad enough shape already when preyed upon by the [name lookup failure] without being handed this tool to weigh the system down by a factor of n. I think this is a really bad idea that will be abused and come back to bite us.

SuggestedRemedy

Revert text to essential patents and change the term being defined in the definitions to "Essential Patent". [An essential patent is a patent that has one or more claims that are essential to create a compliant implementation of mandatory or optional...]

Response Response Status **C**

REJECT.

As noted in the comment, motion 6.3.1 required this change. In additions the ANSI patent policy specified in the ANSI essential requirements has recently been changed from Essential Patents to Essential Patent Claims.

Document **ByLaws** Sub/Item **6.0** P **1** L **8** # **101**

Commenter Chuck Adams Affiliation IBM

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

Change to read:

IEEE standards may include the known (as confirmed by the claim owner) 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 acknowledge a declared 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 potential Essential Patent Claim for which an assurance cannot be obtained shall be referred to the Patent Committee for resolution. (This wording assumes the IEEE is aware of actual or declared essentiality. Patent holder has final say on stating essentiality.)

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 non-exclusive license for a compliant 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 royalty rate or fee(exclusive of other licensing arrangements a potential licensee and licensor may engage) commitment and a sample license agreement (or key licensing terms associated with its license offer) with its assurance.

This assurance shall apply to the patent holder or patent applicant's Affiliates except those explicitly excluded. (It is recognized that a reasonable term and condition that may be embodied in a patent license is a requirement of reciprocity on essential claims from all licensee affiliates.) Known essential claims, held by affiliates, should be declared , even if not offered for licensing.

If, after providing a letter of assurance to the IEEE, a person, representing an organization, 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 request an authorized representataive of their organization to submit a letter of assurance covering such Patent Claims. (The IEEE Standards Association recognizes that organizations reserve essentiality determination to their IP attorneys and an individual involved in the standards development

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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process is unable to provide a statement of essentiality.)

The assurance is irrevocable once submitted, accepted, and acknowledged 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 request responsible individuals within their respective organizations to complete a letter of assurance for any Patent Claims that may become Essential Patent Claims owned or controlled by such persons and/or organizations and inform the IEEE of any relevant technology held by others. (Employees of one organization cannot comment on the essentiality of claims held by another organization. The employee can only state that another organization may have related technology.)

SuggestedRemedy

Response *Response Status* **C**

ACCEPT IN PRINCIPLE.

Reject - Know use is current wording and a disclaimer of determination of essential patent claims is covered later in the Bylaws.

Reject - Standards do not acknowledge declared essential patents.

AIP - Change 'An potential Essential Patent Claim' to 'An asserted Essential Patent Claim'.

Reject - A 'non-exclusive license' is redundant as it already stated that the license has to be offered to everybody.

Accept - Add 'a compliant implementation'.

Reject - 'royalty rate or fee' is the same as 'rate'.

Reject - (exclusive of other licensing arrangements a potential licensee and licensor may engage)

Reject - (It is recognized that a reasonable term and condition that may be embodied in a patent license is a requirement of reciprocity on essential claims from all licensee affiliates.)
. The committee voted against including a definition of RAND.

Reject - 'Known essential claims, held by affiliates, should be declared , even if not offered for licensing.' This is going beyond what is resonable for a coopration. If a affiliate is

recorded as excluded the IEEE can send a letter requestng a LoA.

Reject - 'request an authorized representataive of their organization to' changed to 'submitter'.

Reject - 'Acknowledged' is part of accepted, when it shows up on the web.

<i>Document</i> ByLaws	<i>Sub/Item</i> 6.0	<i>P</i> 1	<i>L</i> 8	<i>#</i> 32
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Commenter David Ringle

Affiliation IEEE-SA

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

The Bylaws wording causes me some grief. I do not favor language that states 'essential patent claims' along with there being some sort of known essentiality and a remand to PatCom to address non-receipt of a suitable LoA. Who is making the determination of essentiality?

SuggestedRemedy

Response *Response Status* **C**

REJECT.

See below:

<Start Don Wright>

I do not see the effective difference between the current wording "essential patents and patent applications" versus the defined term "Essential Patent Claims."

What happens today if we can't get a letter of assurance from a company identified as potentially having an essential patent? It is dealt with by the PatCom administrator and PatCom as per the current wording in the Ops Man. The drafting committee believes this is really policy and as such should be in the bylaws. I see no effective change. Who make the determination of essentiality? The same as today... no change.
<End Don Wright>

<Start David Ringle>

My issue is not with 'essential patent' vs 'essential patent claim'. Yes, I do have an issue with changing the phrasing, as I have discussed with you when ANSI put forth similar changes, but that is not what I was attempting to discuss here.

I think that my concern will be minimized if the word 'potential' is added to the last sentence of the 1st paragraph of new Bylaws text prior to 'Essential'.
<End David Ringle>

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 **1** L **8** # **117**
 Commenter Chuck Adams Affiliation IBM
 Comment Type **S** Comment Status **R**
 Change 'may include the known use of Essential Patent' to read '(as confirmed by the claim owner)'.
 SuggestedRemedy

Response Response Status **C**
 REJECT.

The text 'known use' is current wording. Disclaimer of determination of essential patent claims is covered later in the Bylaws.

Document **ByLaws** Sub/Item **6.0** P **1** L **8** # **152**
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **A**
 Change 'IEEE receives assurance from' to read 'IEEE receives licensing assurances from'.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT.

Document **ByLaws** Sub/Item **6.0** P **1** L **8** # **161**
 Commenter 2Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **R**
 Change 'IEEE standards may include' to read 'Subject to this Clause 6, IEEE standards may include'.
 SuggestedRemedy

Response Response Status **C**
 REJECT.

This is Clause 6 so is self referential.

Document **ByLaws** Sub/Item **6.0** P **1** L **8** # **162**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **A**
 Change 'but only if the IEEE receives assurance' to read 'provided the IEEE receives Assurance'.
 SuggestedRemedy

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

Will use 'provided' but wont capitalize assurance as it's not a defined term.

Document **ByLaws** Sub/Item **6.0** P **1** L **9** # **153**
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **A**
 Change 'IEEE Standards Board approved letter of assurance form' to read 'IEEE Standards Board approved Letter of Assurance form'.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT.

Document **ByLaws** Sub/Item **6.0** P **1** L **9** # **163**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **R**
 Change 'from the patent holder or patent applicant' to read 'from the owner of the Essential Patent Claim as described in this Clause 6'
 SuggestedRemedy

Response Response Status **C**
 REJECT.

Owner is the same as patent holder or patent applicant.

We want to received LoAs from non Essential Patent Claims owners as well - for example when we request an LoA and the submitter response is that they are not aware of an any patent claims that might become Essential Patent Claims. There may also have not been a determination of essentiality at this point.

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Document Defs Sub/Item P 1 L 6 # 129
 Commenter Mike Sirtori Affiliation Intel
 Comment Type S Comment Status A
 Change 'DEFINITIONS FOR BYLAWS' to read 'DEFINITIONS FOR BYLAWS AND OPS MANUAL'.
 SuggestedRemedy

Response Response Status C
 ACCEPT IN PRINCIPLE.

Operations manual includes Bylaws by reference. Will add a reference in Operations Manual to definitions provided in Bylaws.

Document Defs Sub/Item Affiliate P 1 L 10 # 46
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type S Comment Status R
 Change the text 'one or more intermediaries, controls, is controlled by' to read 'one or more intermediaries, is controlled by'.
 Change made because a subsidiary typically cannot control what its parent can or will do, or bind the parent. It is intended to avoid procedural delays and difficulties. If there is push back, the result will be that submitters will simply state that the LoA only applies to it and no Affiliate. That will undermine the intended purpose
 SuggestedRemedy

Response Response Status C
 REJECT.
 No change - the text currently match the ABA definition of Affiliate.

Document Defs Sub/Item Affiliate P 1 L 10 # 69
 Commenter Jeffery Fromm Affiliation HP
 Comment Type S Comment Status R
 Change 'an entity that' to read 'an entity (including any successors in interest) that'.
 SuggestedRemedy

Response Response Status C
 REJECT.

We decided it was only acceptable to require notice and not to bind successors. If we were going to bind successors this is too broad and this is not the place to do it.

Document Defs Sub/Item Affiliate P 1 L 11 # 90
 Commenter Chuck Adams Affiliation IBM
 Comment Type S Comment Status A
 note - in sync with ABA definition
 SuggestedRemedy

Response Response Status C
 ACCEPT.
 Thank you.

Document Defs Sub/Item Affiliate P 1 L 14 # 126
 Commenter Mike Sirtori Affiliation Intel
 Comment Type S Comment Status R
 Consider changing 'of more than fifty percent (50%)' to read 'of not less than fifty percent (50%)'.
 SuggestedRemedy

Response Response Status C
 REJECT.
 Not less than 50% includes 50% which would not provide control. In addition this text is a copy of the ABA text.

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 Sub/Item Affiliate P 1 L 5 # 29

Commenter Geoff Thompson Affiliation Nortel

Comment Type S Comment Status A

RE: Affiliate

I would expect that orienting our text around this definition and its incorporated definition of controlling at >50% will not give us much help with our problem. My suspicion is that there are quite a few entities whose behavior in a standards group is very heavily influenced by stakeholders with a less than 50% stake.

SuggestedRemedy

Throw this one open for discussion to the floor of the meeting.

Response Response Status C

ACCEPT.

Thanks you for your comment - no change suggested. Everything is open for discussion at the meeting.

Document Defs Sub/Item BlanketLoA P 1 L # 116

Commenter Chuck Adams Affiliation IBM

Comment Type S Comment Status R

Note, would we reject a LOA should a Submitter place a time limit for future filed applications, after which the BLOA would not apply? I do not support this, but I am not aware of our process here, given the alternative is specifically referencing currently known patent claims and not including future filed claims.

SuggestedRemedy

Response Response Status C

REJECT.

This cannot happen, assuming as proposed that LoA from is mandated, as there is no way to specify a time limit that a BLOA would not apply on the form.

Document Defs Sub/Item BlanketLoA P 1 L 13 # 30

Commenter Geoff Thompson Affiliation Nortel

Comment Type S Comment Status R

RE: Blanket Letter of Assurance

I feel that this definition is too restrictive. I believe it would be highly useful to allow blankets of the form of "you can have access to all our patents except #5,nnn,nn0 and #5,nnn,nn3."

SuggestedRemedy

Loosen the text up to allow greater flexibility that the holders entire portfolio.

Response Response Status C

REJECT.

What is being requested is already proposed in the Ops Manual subclause 6.3.4 and on the LoA checkbox E.2. The changes allow a specific LoA, which could for be a unwilling to grant licenses (D.1), submitted before a Blanket LoA to still apply.

Document Defs Sub/Item BlanketLoA P 1 L 18 # 47

Commenter Susan Hoyler Affiliation Qualcomm

Comment Type S Comment Status A

Change to read:

"Blanket Letter of Assurance" shall mean a Letter of Assurance that applies to all Essential Patent Claims that a Submitter may own or control in connection with a specific IEEE standard at the time of submitting a Letter of Assurance in connection with that standard, or in the future in connection with a specific IEEE standard.

SuggestedRemedy

Response Response Status C

ACCEPT IN PRINCIPLE.

Stating that a Blanket LoA only applies to a 'specific IEEE standard' is covered by adding a new definition of Letter of Assurance. This definition will state that a LoA applies to 'a specifically referenced IEEE Standard'. See comment #89.

TYPE: S/substantive E/editorial

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

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Document Defs
Sub/Item BlanketLoA

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Document Defs Sub/Item BlanketLoA P 1 L 18 # 89
Commenter Chuck Adams Affiliation IBM

Comment Type S Comment Status A

Change to read:

"Blanket Letter of Assurance" shall mean a letter of licensing assurance that applies to all Essential Patent Claims that a Submitter may own, or control, and have the unencumbered ability to license at the time of submitting the Letter of Assurance or in the future, for a specifically reference [Proposed] IEEE standard.

SuggestedRemedy

Response Response Status C

ACCEPT IN PRINCIPLE.

Reject proposal for 'unencumbered ability to license' as this is covered by the term 'control'. Also reject time limit as there will be no way to provide a time limit for future applications assuming the LOA form is mandated.

Accept proposal to use 'specifically reference' and 'letter of licensing assurance' but this is implemented by add a new definition for Letter of Assurance that use these terms. This new definition reads:

"'Letter of Assurance' shall mean a letter of licensing assurance for a specific referenced IEEE Standard submitted in from acceptable to the IEEE.'

Document Defs Sub/Item EssentialClaim P 1 L 21 # 91
Commenter Chuck Adams Affiliation IBM

Comment Type S Comment Status A

Change to read:

"Essential Patent Claim" shall mean any patent claim and/or patent application claim, when issued, the use of which is necessary to create a compliant implementation of either mandatory, optional, or feature of the [Proposed] IEEE Standard, included in the normative sections 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.'

By this definition if there are two or more infringing alternatives, then both would be considered essential. Some groups would dispute this. We should be clear on the approach being taken.

SuggestedRemedy

Response Response Status C

ACCEPT IN PRINCIPLE.

Accept insertion of 'necessary'. Reject addition 'of feature'. For the case of 2 or more infringing alternatives the intent is that they both be considered essential.

Change to read:

"Essential Patent Claim" shall mean any Patent Claim the use of which is necessary to create a compliant implementation of either mandatory or optional portions of the normative clauses 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.'

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 Sub/Item EssentialClaim P 1 L 21 # 48
 Commenter Susan Hoyler Affiliation Qualcomm

Comment Type S Comment Status A

Change to read:

"Essential Patent Claim" shall mean any patent claim/and or claim in a published patent application when issued, that will be necessarily infringed as the result of compliant implementation of either mandatory or optional portions of a specific IEEE Standard. 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.'

Need to clarify that the IEEE policy would only include published apps and not unpublished apps.

SuggestedRemedy

Response Response Status C

ACCEPT IN PRINCIPLE.

Reject the change to 'any patent claim/and or claim in a published patent application when issued', is covered by the use of 'Patent Claim' (see definition). Reject the change to 'a specific IEEE Standard' as this seems less specific than the current text 'the [Proposed] IEEE standard'. Reject the deletion of the text 'there is no commercially and technically feasible non-infringing alternative' because the drafting committee believes this condition is necessary in defining essentiality.

See comment #91 for actual text.

Document Defs Sub/Item EssentialClaim P 1 L 21 # 115
 Commenter Amy Marasco Affiliation Microsoft

Comment Type S Comment Status A Action item

Change the text "Essential Patent Claim" shall mean any patent claim and/or patent application the use of' to read "Essential Patent Claim" shall mean any granted or pending Patent Claim the use of'.

SuggestedRemedy

Response Response Status C

ACCEPT IN PRINCIPLE.

Change the text 'any patent claim and/or patent application' to read 'any Patent Claim' to reference the defined term Patent Claim in the definitions that covers claims in both issues patents and patent applications.

Document Defs Sub/Item EssentialClaim P 1 L 21 # 100
 Commenter Mike Sirtori Affiliation Intel

Comment Type S Comment Status A

Change 'and/or patent application the use of which is' to read 'any claim of a published patent application which, if issued, would be'.

SuggestedRemedy

Response Response Status C

ACCEPT IN PRINCIPLE.

Deleting 'and/or patent application' and changing patent claim to Patent Claim which will include by reference the definition of Patent Claim provided below.

Document Defs Sub/Item EssentialClaim P 1 L 23 # 127
 Commenter Mike Sirtori Affiliation Intel

Comment Type S Comment Status A

Why is this analysis limited to the time the standard is approved ?

SuggestedRemedy

Response Response Status C

ACCEPT.

To keep the answer changing from month to month. In addition other methods that become available after the approval of the standard should not change the validity LoA.

Document Defs Sub/Item EssentialClaim P 1 L 24 # 128
 Commenter Mike Sirtori Affiliation Intel

Comment Type S Comment Status R

Change 'is no commercially and technically feasible' to read 'is no technically feasible'.

SuggestedRemedy

Response Response Status C

REJECT.

Something may be technically but not commercially feasible.

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

Sub/Item EssentialClaim

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Document Defs Sub/Item PatentClaims P 1 L 29 # 50

Commenter Susan Hoyler Affiliation Qualcomm

Comment Type S Comment Status A

Change to read:

"Patent Claim(s)" shall mean one or more claims in issued patent(s) or published patent application(s).

SuggestedRemedy

Response Response Status C

ACCEPT IN PRINCIPLE.

"Patent Claim(s)" shall mean one or more claims in issued patent(s) or pending patent application(s).

Document Defs Sub/Item Submitter P 1 L 27 # 49

Commenter Susan Hoyler Affiliation Qualcomm

Comment Type S Comment Status R

Change to read:

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

SuggestedRemedy

Response Response Status C

REJECT.

Not good form to use "submits" as a part of a definition of "submitter".

Document Defs Sub/Item Submitter P 1 L 27 # 92

Commenter Chuck Adams Affiliation IBM

Comment Type S Comment Status R

Change to read:

"Submitter" when used in reference to a Letter of Assurance shall mean an individual or organization that provides a completed (and accepted?) Letter of Assurance. A Submitter may or may not hold or be aware of holding Essential Patent Claims.

SuggestedRemedy

Response Response Status C

REJECT.

The text 'and accepted' is not necessary because 'completed' is sufficient. You are a submitter regardless if it has been accepted.

Awareness is not necessary for the definition of submitter. Awareness is covered on the LOA box D.2. We are not listing everything a submitter may or may not be. We specifically listed that a submitter may or may not hold essential patent claims to clarify the case where the submitter has been sent a letter requesting a LoA but they do not hold any essential patent claims.

Document Defs Sub/Item Submitter P 1 L 27 # 31

Commenter Geoff Thompson Affiliation Nortel

Comment Type S Comment Status A

RE: Submitter

I think this one is way off. Submitter (for a letter that makes it through the acceptance filter) needs to be the authorized signatory for the organization that holds licensing rights to the patent in question. In the past, PatCom has deemed that to be (a) an officer of the company or (b) a person whose title makes it obvious that he is empowered to license. We have spoken of assuring that the submitter is a proper submitter by pinging a copy of the LoA and our acceptance to the chief counsel of the corporation by registered mail, return receipt requested. Again, we are wandering a little far afield from the actions called for by the 7 or 8 motions approved in March.

SuggestedRemedy

Response Response Status C

ACCEPT IN PRINCIPLE.

The definition of submitter is clarified to make it clear that the 'Submitter' is not necessarily the signer of the form. The text 'an individual or organization' will be changed to read 'a potential patent rights holder (either an individual or an organization)'

TYPE: S/substantive E/editorial

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

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

Document Defs
Sub/Item Submitter

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<i>Document</i>	Defs	<i>Sub/Item</i>	Submitter	<i>P</i>	1	<i>L</i>	27	<i>#</i>	70
<i>Commenter</i>	Jeffery Fromm			<i>Affiliation</i> HP					
<i>Comment Type</i>	S	<i>Comment Status</i>		R					
Change the text 'an individual or organization' to read 'an individual, entity or other organization'.									
<i>SuggestedRemedy</i>									
<i>Response</i>	<i>Response Status</i>		C						
REJECT.									
The drafting committee believes that 'organization' is sufficiently broad and includes 'entities'.									

<i>Document</i>	Global	<i>Sub/Item</i>	<i>P</i>	<i>L</i>	<i>#</i>	35
<i>Commenter</i>	David Ringle		<i>Affiliation</i> IEEE-SA			
<i>Comment Type</i>	S	<i>Comment Status</i>		D		<i>Future Work</i>
If we end up going with much (or all) of these changes, I think that we should very seriously consider switching methodologies for obtaining LoAs. I would much prefer to have the information directly input into an LoA database upon submission/acceptance. This could be efficiently accomplished by having an online LoA submittal process. A submitter would enter our site and then answer a series of questions (PatCom-designed) that would lead to the output of an LoA form as .html or .pdf, with the inputs being captured in the database. [Clyde, RevCom, and I will be designing something like this for the reaffirmation process. Parts of the process could be similar to the current process for filling out the RevCom submittal form.] We don't have to design it all right this second, but I would like us to start thinking along those lines - web-based input of data, form created, form authorized/signed, form accepted by PatCom, data entered into official database with LoA form available for anyone to search/view/download						
<i>SuggestedRemedy</i>						

<i>Proposed Response</i>	<i>Response Status</i>	W
PROPOSED ACCEPT IN PRINCIPLE.		
<Start Don Wright>		
While I can appreciate the value of an on-line form, I'm not sure how we would deal with the legal validity of such a form. How do we establish trust with the signer of the form? Is it legally binding? If we can get over that hurdle, I don't see a problem with having that as a Standards Board approved LOA form.		
<End Don Wright>		
<Start David Ringle>		
The web interface is simply a tool to build the form. The form output is what is sent to the patent holder for a signature and is what is ultimately submitted/accepted by PatCom. Plus, I think having such a design will provide better information to submitters as well as keep them from providing erroneous LoAs [competing checkboxes selected, etc.]		
<End David Ringle>		

IEEE-SA PatCom Drafting Committee output - Comments

Document **Global** Sub/Item P L # **36**
 Commenter David Ringle Affiliation IEEE-SA

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

Most of the recent discussions at PatCom and PP-dialog are along the lines of modifying the assurance policy. I am still not comfortable that this is the only or the best approach that IEEE should take in regards to its patent policy. Are we really going to be achieving our objectives by only having an assurance-lite policy that allows for inclusion of additional cost/licensing information? Would it be better to mandate that all participants either submit an LoA or at least, during registration, state that by participating they/their [employer, Sponsor, etc. (whatever we want to call it)] will provide, at a minimum, RAND [equivalent to LoA Box 2] for any essential patents [patent claims] that they may own? Would it be better for the IEEE to move to a disclosure policy? I think that there are some bigger picture items that are being left out of the current discussions.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

<Start Don Wright>

Getting all participants to sign an LOA has its own set of problems. If you'll remember, that was not approved to be handled in this draft exercise (just as the definition of reasonable rates, terms, and conditions was not included.)

<End Don Wright>

<Start David Ringle>

I don't really want all participants to submit LoA Forms. That would be way too much work for PatCom. What I do want them to do is state (or sign off on upon registration) that they will provide a RAND (at minimum) LoA should they/their employer/whoever they represent turn out to have essential patent claims. It would be an up-front condition of participation for all of our known participants [WG members, Sponsor members, ballot group members, etc] that, just as they would have to agree to signing over copyright to contributions, agreeing to play by the Code of Ethics, etc, they would also be agreeing to play fairly in the patent world. So, we would be protected against any of our participants being able to use a submarine patent. In essence, everyone will be defaulting to a RAND LoA, even without submitting one. Of course, LoA submitters would be able to check Box 1 and/or provide the not-to-exceed rate and a sample license. It is just a different way of looking at one of our potential problems. Sure, anything could be problematic, as I will be the first one to tell you of the problems that I see with sample licenses. {Okay, okay, I won't go there again right now.} I think that such an approach can actually provide good information to the SA and to Sponsors, as it will become evident very quickly as to who is willing to participate in the IEEE according to such rules and who is not. Do we really want any of our participants to be able to participate, but not offer RAND licenses?

<End David Ringle>

Document **Global** Sub/Item P L # **37**
 Commenter David Ringle Affiliation IEEE-SA

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

I understand that part of the current equation is to try to foster more upfront information to enable better downstream [market] decisions. Disclosure of T&Cs can help to achieve that goal. However, I think that a more important goal for the IEEE is to ensure (or attempt to ensure) that its standards will not be hijacked upon approval/publication. I do not believe that an assurance-lite policy goes far enough to achieve that goal. A [mandatory] disclosure policy would be better.

I say that we have an assurance-lite policy, because we do not mandate assurances or even a response [from participants] to a solicitation for an LoA.

We still leave too many doors open for gaming the system. Yes, there will almost always be a loophole somewhere to exploit, but we could do a lot more to reduce such possibilities.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

<Start Don Wright>

If we were to have a mandatory disclosure policy we would have to deal with the problem of either requiring a patent search or forcing everyone to commit to mandatory licensing after some defined Opt-Out period. That would not be liked by many participants.

<End Don Wright>

<Start David Ringle>

My answer to the previous discussion point could remove the need for going as far as a disclosure policy. I guess that I just want PatCom and SA Governance bodies to evaluate other aspects of a potential patent policy, aside from having an assurance policy without further discussion.

Adjunct #1: If we move to an environment with patent pools, will we not (basically) be asking potential patent holders to do patent searches?

Adjunct #2: I know that we want/need to retain most of our participants. But, we also need to craft a patent policy that is in the best interests of IEEE as an SDO. I think that no matter what, as we have been seeing lately, whatever changes we implement will not be liked by a portion of our participants. You can't please all of the patent holders all of the time.....

<End David Ringle>

TYPE: S/substantive E/editorial

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

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

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 Sub/Item

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Document **LoA** Sub/Item P L # 160
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **D**
 SuggestedRemedy
 Nothing, empty comment
 Proposed Response Response Status **W**
 PROPOSED REJECT.

Document **LoA** Sub/Item P 1 L 3 # 181
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Change 'Please return via mail,e-mail (.pdf), or FAX to:' to read 'Please return via mail, e-mail in a PDF format or by fax:'.
 SuggestedRemedy
 Proposed Response Response Status **W**
 PROPOSED ACCEPT IN PRINCIPLE.

Please return via mail, e-mail (as a PDF) or by fax:

Document **LoA** Sub/Item P 1 L 7 # 93
 Commenter Chuck Adams Affiliation IBM
 Comment Type **S** Comment Status **D**
 'No license is implied by submission of this Letter of Assurance'.
 Unless a non-assert, with or without terms, is declared in the LOA.
 SuggestedRemedy
 Proposed Response Response Status **W**
 PROPOSED REJECT.
 A non-assert is not a license.

Document **LoA** Sub/Item P 1 L 3 # 182
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Change 'Secretary, IEEE-SA Standards Board Patent Committee' to read 'Patent Administrator, IEEE-SA Standards Board Patent Committee'.
 SuggestedRemedy
 Proposed Response Response Status **W**
 PROPOSED ACCEPT.

Document **LoA** Sub/Item A P 1 L 11 # 183
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 'Legal Name' - Of Organization?
 SuggestedRemedy
 Proposed Response Response Status **W**
 PROPOSED REJECT.

The submitter may not be an organization. An individual may hold a patent and provide assurance.

IEEE-SA PatCom Drafting Committee output - Comments

Document **LoA** Sub/Item **A** P **1** L **9** # **18**
 Commenter Geoff Thompson Affiliation Nortel

Comment Type **S** Comment Status **D**
 A. SUBMITTER

It isn't obvious to me, even with the hint "Legal Name" whether this is supposed to be filled in with the name of a person or a company that the person is representing. Proposed remedy: Change label to "Owner of recording holding licensing rights" That would (presumably) give one the ability to cross check with PTO records for the patent to see if the person was even alleging to represent the correct entity.

SuggestedRemedy

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

The entity submitting the form may be any one of the following:

- 1) An individual holding a patent
- 2) An organization holding a patent
- 3) An individual holding no patent applicable to the specified IEEE standard
- 4) An organization hold no patent applicable to the specified IEEE standard
- 5) An individual holding no patents
- 6) An organization holding no patents

Therefore "Owner of record holding licensing rights" would not cover cases 5 or 6.

Document **LoA** Sub/Item **B** P **1** L **12** # **213**
 Commenter Amy Marasco Affiliation Microsoft

Comment Type **S** Comment Status **D**
 Change 'SUBMITTER'S CONTACT FOR LICENSE APPLICATION' to read 'SUBMITTER'S CONTACT'

May not be any license offered, so no Application.

SuggestedRemedy

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

Changed to "SUBMITTER'S CONTACT INFORMATION"

Document **LoA** Sub/Item **B** P **1** L **12** # **94**
 Commenter Chuck Adams Affiliation IBM

Comment Type **S** Comment Status **D**
 SUBMITTER'S CONTACT FOR LICENSE APPLICATION

Rewrite as 'Submitter's Licensing Contact'

SuggestedRemedy

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

Changed to "SUBMITTER'S CONTACT INFORMATION" since the submitter may not be offering a license

Document **LoA** Sub/Item **B** P **1** L **12** # **53**
 Commenter Gil Ohana Affiliation Cisco

Comment Type **S** Comment Status **D**
 To address the issue of whether the signatory is or is not "the individual within the issuing organization who has clear authority for intellectual property and legal matters" we could add a box asking for a representation that the signatory is authorized to bind his/her company on intellectual property, legal, and licensing matters.

SuggestedRemedy

See comment.

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

The first sentence under "G. SIGNATURE" already includes such a statement.

Document **LoA** Sub/Item **B** P **1** L **13** # **184**
 Commenter Susan Hoyer Affiliation Qualcomm

Comment Type **S** Comment Status **D**
 Change 'SUBMITTER'S CONTACT FOR LICENSE APPLICATION' to read 'SUBMITTER'S CONTACT INFORMATION'.

SuggestedRemedy

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

TYPE: S/substantive E/editorial

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

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

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

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Document **LoA** Sub/Item **B** P **1** L **14** # **185**

Commenter Susan Hoyler Affiliation Qualcomm

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

'Name' - Can submitter be a different person than authorized person?

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED ACCEPT IN PRINCIPLE.

The submitter is the individual or organization potentially hold a patent. The signer must be an person authorized as per the 1st sentence of "G. SIGNATURE"

Document **LoA** Sub/Item **B** P **1** L **14** # **186**

Commenter Susan Hoyler Affiliation Qualcomm

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

Change:

'Name & Department:'

to read:

Name:
Organisation:
Department:

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED ACCEPT IN PRINCIPLE.

We will split Name and Dept onto two lines

Document **LoA** Sub/Item **B** P **1** L **14** # **19**

Commenter Geoff Thompson Affiliation Nortel

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

RE: B. Name & Department

Licensing contact information should have separate lines name & department name. The information taken and recorded should be carefully structured for durability. Names are generally not durable so the emphasis should be on the correct contact information for the licensing department, not the person who submits the LoA (and gets a new job 6 months later)

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED ACCEPT.

Document **LoA** Sub/Item **B** P **1** L **16** # **187**

Commenter Susan Hoyler Affiliation Qualcomm

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

URL - Do you just want the company's general web site? Is this optional?

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED ACCEPT.

This can be whatever the submitter would like. In the past, it was suggested to be a pointer to IP licensing information.

Document **LoA** Sub/Item **B** P **1** L **18** # **188**

Commenter Susan Hoyler Affiliation Qualcomm

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

Change 'The IEEE does not review and does not endorse the contents nor confirm' to read 'The IEEE neither reviews or endorses the contents nor confirms the'.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED ACCEPT IN PRINCIPLE.

Having three "OR" / "NOR" was confusing.

Changed "confirm" to "confirms"

TYPE: S/substantive E/editorial

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

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

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

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Document **LoA** Sub/Item **B** P **1** L **18** # **20**

Commenter Geoff Thompson

Affiliation Nortel

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

RE B. Note

Only one web site is listed above.

SuggestedRemedy

Change "...any of he web sites listed above" To: "...any of the contact information supplied by the submitter."

Proposed Response Response Status **W**

PROPOSED ACCEPT IN PRINCIPLE.

Changed to:

"Note: The IEEE does not review and does not endorse the contents nor confirms the continuing accuracy or consistency of any contact information or web site listed above."

Document **LoA** Sub/Item **C** P **1** L **20** # **111**

Commenter Amy Marasco

Affiliation Microsoft

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

'referencing an Amendment, Corrigenda, or Revision'

Should item C in the LOA be modified so that it is clear the LOA applies to just an Amendment document, for example, and not the Standard the Amendment will be applied to?

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED ACCEPT IN PRINCIPLE.

Changed to read:

C. (PROPOSED) IEEE STANDARD OR PROJECT (AMENDMENT, CORRIGENDA, REVISION):

Document **LoA** Sub/Item **D** P **1** L **24** # **95**

Commenter Chuck Adams

Affiliation IBM

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

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

Rewrite as 'SUBMITTER'S POSITION REGARDING LICENSING OF ESSENTIAL PATENT RIGHTS:'

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED ACCEPT.

Document **LoA** Sub/Item **D** P **1** L **25** # **214**

Commenter Amy Marasco

Affiliation Microsoft

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

Change 'ESSENTIAL PATENT RIGHTS' to read 'ESSENTIAL PATENT CLAIMS'.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED ACCEPT.

Document **LoA** Sub/Item **D** P **1** L **25** # **189**

Commenter Susan Hoyler

Affiliation Qualcomm

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

Change 'SUBMITTER'S POSITION REGARDING LICENSING ESSENTIAL PATENT RIGHTS:' to read 'SUBMITTER'S LICENSING ASSURANCE:'.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

Changed to:

SUBMITTER'S POSITION REGARDING LICENSING OF ESSENTIAL PATENT CLAIMS:

Submitter's position might not be a licensing assurance.

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 **29** # **190**
 Commenter Susan Hoyer Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Change 'with respect to the reasonableness of rates, terms, and conditions of' to read 'with respect to terms, and conditions, including the reasonableness of rates of'.
 SuggestedRemedy

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

Additional wording ("including the reasonableness of rates") does not change meaning. The language here reflects the language of the bylaws and allows the IEEE to separate the cases of "without compensation" and "under reasonable rates."

Document **LoA** Sub/Item **D** P **1** L **31** # **191**
 Commenter Susan Hoyer Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Change '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' to read 'Subject to the Scope of Assurance specified in subpart E below, and for purposes of the [Proposed] IEEE standard specified in subpart C above, the Submitter provides the following assurance in connection with Essential Patent Claims it may own or control (Check'.
 SuggestedRemedy

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

The word "MAY" includes the case of both "may" and 'may not"

The entire form is for the purposed of the standard identified in part C. There's no need to repeat that.

Document **LoA** Sub/Item **D** P **1** L **34** # **192**
 Commenter Susan Hoyer Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Change 'worldwide, non-discriminatory basis with reasonable terms and conditions to comply with the [Proposed] IEEE Standard.' to read 'worldwide basis under reasonable terms and conditions demonstrably free of unfair discrimination to comply with the [Proposed] IEEE Standard'.
 SuggestedRemedy

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

Document **LoA** Sub/Item **D** P **1** L **35** # **215**
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **D**
 Change 'conditions to comply with the' to read 'conditions to implement the'.
 Should be consistent with the permissions shown in C below. Same change on line 41.
 SuggestedRemedy

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

Document **LoA** Sub/Item **D** P **1** L **37** # **96**
 Commenter Chuck Adams Affiliation IBM
 Comment Type **S** Comment Status **D**
 D 1 A and B. Change the text to read:
 A sample of such a license (or relevant licensing terms) that is substantially similar to what the Submitter would issue is attached (optional).
 SuggestedRemedy

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

Changed to:

A sample of such a license (or material licensing terms) that is substantially . . .

IEEE-SA PatCom Drafting Committee output - Comments

Document **LoA** Sub/Item **D** P **1** L **37** # **79**
 Commenter Jeffery Fromm Affiliation HP

Comment Type **S** Comment Status **D**
 Change the text 'A sample of such a license that is substantially similar to what the Submitter would issue is attached (optional).' to read 'A sample of a license acceptable to the Submitter is attached (Optional)'.

SuggestedRemedy

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

Changed to read as follows based on another comment:

"A sample of such a license (or material licensing terms) that is substantially similar to what the Submitter would issue is attached (optional)."

Document **LoA** Sub/Item **D** P **1** L **37** # **28**
 Commenter Geoff Thompson Affiliation Nortel

Comment Type **S** Comment Status **D**
 The "sample of such license" check box and text should only exist once in the document.

SuggestedRemedy

It can be give its own heading between D & E.

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

The drafting committee believes providing the check box twice under D.1.A and D.1.B make it clear that the license only applies to those specific licensing commitments.

Document **LoA** Sub/Item **D** P **1** L **37** # **193**
 Commenter Susan Hoyer Affiliation Qualcomm

Comment Type **S** Comment Status **D**
 change 'A sample of such a license that is substantially similar to what the Submitter would issue is attached (optional).' to read 'Available license terms and conditions are set forth in the attached schedule (OPTIONAL)'.

Same change for line 45.

SuggestedRemedy

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

Changed to "A sample of such a license (or material licensing terms) that is substantially similar to what the Submitter would issue is attached (optional)."

Document **LoA** Sub/Item **D** P **1** L **39** # **80**
 Commenter Jeffery Fromm Affiliation HP

Comment Type **S** Comment Status **D**
 Change the text 'under reasonable' to read 'under objectively reasonable'.

SuggestedRemedy

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

Document **LoA** Sub/Item **D** P **1** L **39** # **194**
 Commenter Susan Hoyer Affiliation Qualcomm

Comment Type **S** Comment Status **D**
 Change '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.' to read 'The Submitter will grant a license that may be royalty bearing to an unrestricted number of applicants on a worldwide basis, under reasonable terms and conditions demonstrably free of unfair discrimination to comply with the [Proposed] IEEE Standard.'.

SuggestedRemedy

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

Accept changed related to "demonstrably free of unfair discrimination."

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 **43** # **144**
Commenter Mike Sirtori Affiliation Intel
Comment Type **E** Comment Status **D**
Add a period to after '(optional)'.
SuggestedRemedy

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

Document **LoA** Sub/Item **D** P **1** L **45** # **54**
Commenter Gil Ohana Affiliation Cisco
Comment Type **S** Comment Status **D**
Picking up on our comment on the Ops Manual excerpt, we propose changing the reference to "A sample of such a license" to "A sample of such a license or a statement of material licensing terms".
SuggestedRemedy
See comment.

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

Changed To:

A sample of such a license (or material licensing terms) that is substantially . . .

Document **LoA** Sub/Item **D** P **1** L **47** # **22**
Commenter Geoff Thompson Affiliation Nortel
Comment Type **S** Comment Status **D**
RE: D 1 C

This says that a submitter can not collect royalties from a company for using the technology on ANY product as long as the company also happens to build/sell/use whatever the technology in the assured standard. I do not believe that this is the intended meaning.
SuggestedRemedy

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

Text now reads:

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

Document **LoA** Sub/Item **D** P **1** L **47** # **97**
Commenter Chuck Adams Affiliation IBM
Comment Type **S** Comment Status **D**
D 1 C

Could create a new D1Ca allowing Submitter to indicate if relevant licensing terms apply to the non-assert (eg reciprocity). Not sure I support this, but some folks might prefer this to a RF license with the same terms.
SuggestedRemedy

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

If there are terms, the licensor should check
D 1 A

IEEE-SA PatCom Drafting Committee output - Comments

Document **LoA** Sub/Item **D** P **1** L **48** # **216**
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **D**
 'creating, using, selling, offering to sell, importing, distributing or implementing' - Language should be mapped to the patent statute and used consistently everywhere in the document.
 SuggestedRemedy

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

Changed "creating" to "making" therefore to read:

". . . making, using, selling, offering to sell, importing, distributing or implementing. . ."

Distributing and Implementing make it clear the non-assert covers non-tangible implementations such as software or business processes.

Document **LoA** Sub/Item **D** P **1** L **48** # **195**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Change 'entity creating, using' to read 'entity making, using'
 SuggestedRemedy

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

Document **LoA** Sub/Item **D** P **1** L **48** # **145**
 Commenter Mike Sirtori Affiliation Intel
 Comment Type **S** Comment Status **D**
 Change 'or entity creating, using' to read 'or entity making, using'.
 SuggestedRemedy

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

Document **LoA** Sub/Item **D** P **1** L **50** # **196**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Change 'enforce any of its Essential Patent Claims as described in C above.' to read 'enforce its Essential Patent Claims as described in subpart C above.'
 SuggestedRemedy

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

Change to read:

". . . will not enforce its Essential Patent Claims as described in part C above."

Document **LoA** Sub/Item **D** P **2** L **12** # **147**
 Commenter Mike Sirtori Affiliation Intel
 Comment Type **S** Comment Status **D**
 'Note: Complete this section only if box D.1 above is checked'. Why do we need this limitation.
 SuggestedRemedy

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

D.2 says the submitter knows of no essential patents so how could the section where a list of patents are to be listed apply?

IEEE-SA PatCom Drafting Committee output - Comments

Document **LoA** Sub/Item **D** P **2** L **2** # **197**
 Commenter Susan Hoyler Affiliation Qualcomm

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

Change:

'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.'

to read:

'the Submitter lacks knowledge of any Essential Patent Claims in connection with the [Proposed] IEEE Standard identified in subpart B above. For these purposes, 'a reasonable and good faith inquiry' shall not require a Submitter to conduct any patent search.'

Delete the text:

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

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

- 1) No difference between NOT AWARE and LACKS KNOWLEDGE
- 2) Statement needs to refer to MIGHT BECOME ESSENTIAL PATENT CLAIMS.
- 3) Moved no duty to search to top of section D.

Document **LoA** Sub/Item **D** P **2** L **2** # **217**
 Commenter Amy Marasco Affiliation Microsoft

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

'NOT AWARE' - The Bylaws only request an LOA when the Submitter is aware of Essential Patent Claims, and there is no requirement to submit "negative" LOAs – under what circumstances would this option be used, and if the intent is to make an obligation on all WG members, why isn't this spelled out in the bylaws?

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

This is not an obligation to all working group members. This allows a recipient, who receives a request for an assurance and who holds no potentially essential patent claims to respond to such a request. A lack of response will be noted and it could hold up or prevent the approval of the standard.

Document **LoA** Sub/Item **D** P **2** L **2** # **98**
 Commenter Chuck Adams Affiliation IBM

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

D2

At the end of this paragraph, I would add a statement that there is no mandatory requirement that all referenced individuals be contacted nor all referenced individuals must respond to such an inquiry. The IEEE is looking for a good faith response not a policing of a Submitter's operations. The W3C addressed this in such a way to avoid liability on the part of good faith responders.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

The drafting committee believes that the statement "After a reasonable and good faith inquiry" covers the concerns raised.

IEEE-SA PatCom Drafting Committee output - Comments

Document **LoA** Sub/Item **D** P **2** L **32** # **148**
 Commenter Mike Sirtori Affiliation Intel
 Comment Type **S** Comment Status **D**
 Should 'above in D.2;' read 'above in D.1;'.
 SuggestedRemedy

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

Document **LoA** Sub/Item **D** P **2** L **4** # **218**
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **D**
 Change '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.' to read 'has contacted (a) those individuals who are 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, including, but not limited to, participation in a Sponsor-Ballot or Working Group, and (b) the manager of each individual identified in (a) above.'.

SuggestedRemedy

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

The drafting committee believed the subject matter experts in a company should be contacted in order to prevent a company from sending people to standards meetings who are largely unaware of relevant work going on within the company.

Document **LoA** Sub/Item **D** P **2** L **4** # **146**
 Commenter Mike Sirtori Affiliation Intel
 Comment Type **S** Comment Status **D**
 Change 'has contacted those individuals who are from' to read 'used reasonable efforts to identify and contact those individuals who are from'.
 SuggestedRemedy

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

Document **LoA** Sub/Item **D** P **2** L **9** # **21**
 Commenter Geoff Thompson Affiliation Nortel
 Comment Type **S** Comment Status **D**
 RE D. Note

Disclaimer doesn't cover IEEE's position on the validity or essentiality of the claims. Patent holders WILL claim that the IEEE has acknowledged the validity of their patent when they go shopping for licenses. Counter asserting text is essential.

SuggestedRemedy
 Add those two items to the disclaimer

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

Copied text from bylaws into the note of section D.

Document **LoA** Sub/Item **E** P **2** L **12** # **198**
 Commenter Susan Hoyer Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Below the Item E title add the text 'Note: Complete this section only if Subpart D has been completed.'.

SuggestedRemedy

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

Text about completing section is now at the beginning of section E.

IEEE-SA PatCom Drafting Committee output - Comments

Document **LoA** Sub/Item **E** P **2** L **12** # **199**
Commenter Susan Hoyler Affiliation Qualcomm

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

Change '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.' to read 'The Submitter may, but is not required to, identify one or more of its Essential Patent Claims to which this Letter of Assurance shall apply (Check box 1 or box 2 below)'.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

- 1) Assurance relates to patent claims that may become essential
- 2) Text indicating standards to which the assurance applies has been added to section C.

Document **LoA** Sub/Item **E** P **2** L **12** # **219**
Commenter Amy Marasco Affiliation Microsoft

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

Change 'if box D.1 above' to read 'if box D above'.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

This section only applies if the submitter has checked D.1.A, D.1.B, D.1.C or D.1.D not if D.2 is checked so D.1 is correct.

Document **LoA** Sub/Item **E** P **2** L **15** # **200**
Commenter Susan Hoyler Affiliation Qualcomm

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

Change '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.)' to read 'this Letter of Assurance shall only apply to the Patent Claims identified below. (If no Patent Claim is identified below, then this Letter of Assurance shall apply to all Patent Claims claimed in the specified patent or patent application)'.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

"Claims claimed" is poor wording.

The drafting committee believes "disclosed" is proper.

Document **LoA** Sub/Item **E** P **2** L **15** # **23**
Commenter Geoff Thompson Affiliation Nortel

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

RE E. 1

Change the parenthetical text to read "(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 applications listed below.)"

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED ACCEPT.

Document **LoA** Sub/Item **E** P **2** L **28** # **201**
Commenter Susan Hoyler Affiliation Qualcomm

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

Change 'Use additional pages, as necessary.' to read 'For additional patents, use additional pages as necessary.'.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED ACCEPT.

TYPE: S/substantive E/editorial

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

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

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

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IEEE-SA PatCom Drafting Committee output - Comments

Document **LoA** Sub/Item **E** P **2** L **30** # **202**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Change '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.' to read 'When checked, this Letter of Assurance shall constitute 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 box D of subpart 1; however, a Blanket Assurance shall not supersede any pre-existing or simultaneously submitted Letter of Assurance identifying a specific Essential Patent Claim.'

SuggestedRemedy

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

- 1) First changed is overly wordy
- 2) Changed D.2 to D.1
- 3) keep "assurance"
- 4) assurances applies to patent claims

Document **LoA** Sub/Item **E** P **2** L **30** # **24**
 Commenter Geoff Thompson Affiliation Nortel
 Comment Type **S** Comment Status **D**
 RE: E. 2
 I foresee problems arising from which one got there first (as being seen poorly from a view 5 years later and subject to contention). Also, I believe that any efforts that we put forth to try to have individual LoAs live through successors will be complicated by trying to prove that blanket assurances follow the same path.

SuggestedRemedy

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

The new Ops Man instructs the PatCom Administrator to record both the date the LOA is received and the date the LOA is accepted. This should address your concern.

Document **LoA** Sub/Item **E** P **2** L **32** # **220**
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **D**
 Change 'above in D.2;' to read 'above in D.1;'.
SuggestedRemedy

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

Document **LoA** Sub/Item **E** P **2** L **33** # **203**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Why can't someone make a blanket assurance under one of the D.1 choices?
SuggestedRemedy

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

Text D.2 was in error and should have been D.1

Document **LoA** Sub/Item **F** P **2** L **35** # **99**
 Commenter Chuck Adams Affiliation IBM
 Comment Type **S** Comment Status **D**
 F

I would add a note indicating that excluding submitter's affiliate obligations does not exclude other essential claim holders from requiring reciprocity through all affiliates.

SuggestedRemedy

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

The drafting committee believes such a statement is not a part of the commitment being made to the IEEE and may vary from license to license.

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 **F**

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IEEE-SA PatCom Drafting Committee output - Comments

Document **LoA** Sub/Item **F** P **2** L **36** # **204**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **E** Comment Status **D**
 Change 'described in D and E' to read 'described in subparts D and E'.
 SuggestedRemedy

Proposed Response Response Status **W**
 PROPOSED ACCEPT IN PRINCIPLE.
 Changed to "described in parts D and E above."

Document **LoA** Sub/Item **F** P **2** L **38** # **205**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Change 'that such commitments shall not' to read 'that such statements shall not'.
 SuggestedRemedy

Proposed Response Response Status **W**
 PROPOSED REJECT.
 The drafting committee believes the content of the LOA are commitments and not just statements.

Document **LoA** Sub/Item **G** P **3** L **10** # **26**
 Commenter Geoff Thompson Affiliation Nortel
 Comment Type **S** Comment Status **D**
 G Option A & B
 Sorry, I can't parse my way through this. Needs to be restated more simply.
 SuggestedRemedy

Proposed Response Response Status **W**
 PROPOSED ACCEPT IN PRINCIPLE.
 Options A and B were provided by the drafting committee as alternatives. Should notice simply be provided or should the patent holder agree to bind any successors and assigns? What does the broader audience think of these options.

Document **LoA** Sub/Item **G** P **3** L **10** # **151**
 Commenter Mike Sirtori Affiliation Intel
 Comment Type **S** Comment Status **D**
 Options A and B - is it mandatory to check one or the other of these ?
 SuggestedRemedy

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

Options A and B were provided by the drafting committee as alternatives. Should notice simply be provided or should the patent holder agree to bind any successors and assigns? What does the broader audience think of these options.

Document **LoA** Sub/Item **G** P **3** L **10** # **211**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Don't need this option A and B if you reword the above paragraph.
 SuggestedRemedy

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

Options A and B were provided by the drafting committee as alternatives. Should notice simply be provided or should the patent holder agree to bind any successors and assigns? What does the broader audience think of these options.

IEEE-SA PatCom Drafting Committee output - Comments

Document **LoA** Sub/Item **G** P **3** L **24** # **27**

Commenter Geoff Thompson

Affiliation Nortel

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

G Signatures lines

Shouldn't we put in a line between "Title" and "Signature" that says: "Authorized representative of:_____"

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

Not necessary as the combination of the contents of part A and G makes it clear who the submitter is and that the signer is authorized to sign.

Document **LoA** Sub/Item **G** P **3** L **27** # **38**

Commenter Amy Marasco

Affiliation Microsoft

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

Change 'IEEE-SA Standards Board Patent Committee.' to read 'IEEE-SA Patent Administrator or the Standards Board Patent Committee.'

To be consistent with the OpsMan.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

The "full name" of PatCom is properly the IEEE-SA Standards Board Patent Committee.

Document **LoA** Sub/Item **G** P **3** L **27** # **212**

Commenter Susan Hoyer

Affiliation Qualcomm

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

Change 'This assurance applies from the date of the standard's approval to the date of the standard's withdrawal and is' to read ' This Letter of Assurance applies from the date of the standard's final approval to the date of the standard's withdrawal or fundamental modification and is'.

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED REJECT.

Suggested text is not consistent with the SASB Bylaws which were recently approved by the SA BoG.

The IEEE has only one kind of approval of a standard.

Document **LoA** Sub/Item **G** P **3** L **4** # **25**

Commenter Geoff Thompson

Affiliation Nortel

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

G Paragraph 1

I like it. Do we want to further push the envelope by binding the submitter to present the commitments made in this letter to the court as binding in any bankruptcy proceeding?

SuggestedRemedy

Proposed Response Response Status **W**

PROPOSED ACCEPT.

Thanks for the complement.

The other issue is outside of the scope of the work assigned to the drafting committee and perhaps outside the scope of PatCom in general.

IEEE-SA PatCom Drafting Committee output - Comments

Document **LoA** Sub/Item **G** P **3** L **5** # **207**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Change 'the Submitter and all Affiliates' to read 'the Submitter and, if applicable, all Affiliates'.
 SuggestedRemedy

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

Current text properly excludes the Affiliates to which the LoA is not applicable.

Document **LoA** Sub/Item **G** P **3** L **5** # **206**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Change 'By signing this letter' to read 'By signing this Letter of Assurance'.
 SuggestedRemedy

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

Document **LoA** Sub/Item **G** P **3** L **6** # **81**
 Commenter Jeffery Fromm Affiliation HP
 Comment Type **S** Comment Status **D**
 Change the text 'are relying upon' to read 'will rely upon'.
 SuggestedRemedy

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

"are" covers from the moment the LOA is complete into the future. "will" has an indeterminate starting point.

Document **LoA** Sub/Item **G** P **3** L **6** # **208**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 Change 'representations and commitments provided in this letter and acknowledge' to read 'to the representations and statements provided herein. You further acknowledge'.
 SuggestedRemedy

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

The drafting committee believed this letter contains commitments and not simply statements.

Document **LoA** Sub/Item **G** P **3** L **6** # **209**
 Commenter Susan Hoyler Affiliation Qualcomm
 Comment Type **S** Comment Status **D**
 ChaNge 'Standard identified above are relying upon and may enforce the terms of this letter.' to read 'identified above in subpart C may and are relying upon and may enforce the terms of this Letter of Assurance'.
 SuggestedRemedy

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

Added " in part C"

IEEE-SA PatCom Drafting Committee output - Comments

Document **LoA** Sub/Item **G** P **3** L **7** # **210**
Commenter Susan Hoyler Affiliation Qualcomm

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

Change '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.' to read 'You also agree that any sale or other transfer of any rights in or to any Essential Patent Claims are the subject of this Letter of Assurance and shall be subject to and without limiting representations and statements made in this Letter of Assurance, and that this agreement is a material part of the Letter of Assurance.'

SuggestedRemedy

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

Text changed to read:

"The submitter agrees not to sell or otherwise transfer any rights in any Essential Patent Claims that it holds or controls with the effect of circumventing or negating any of the representations and commitments made in this letter. "

Document **LoA** Sub/Item **G** P **3** L **7** # **149**
Commenter Mike Sirtori Affiliation Intel

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

Change 'You agree not to' to read 'Submitter agrees not to'.

SuggestedRemedy

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

Document **LoA** Sub/Item **G** P **3** L **7** # **150**
Commenter Mike Sirtori Affiliation Intel

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

Change 'that you hold or control in a manner that circumvents or negates any' to read 'that it holds or controls for the purpose of circumventing or negating any'.

SuggestedRemedy

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

Text now reads:

The Submitter agrees not to sell or otherwise transfer any rights in any Essential Patent Claims that it holds or controls with the effect of circumventing or negating any of the representations and commitments made in this letter.

Document **LoA** Sub/Item **G** P **3** L **8** # **221**
Commenter Amy Marasco Affiliation Microsoft

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

Add the text 'You may satisfy this obligation by making any such assignment or transfer subject to any obligations under this Letter of Assurance that your company has incurred.' and delete OPTION A and OPTION B.

SuggestedRemedy

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

Options A and B were provided by the drafting committee as alternatives. Should notice simply be provided or should the patent holder agree to bind any successors and assigns? What does the broader audience think of these options.

IEEE-SA PatCom Drafting Committee output - Comments

Document **OpsMan** Sub/Item **5.3.9** P L # **62**
 Commenter Jeffery Fromm Affiliation HP

Comment Type **S** Comment Status **A** Future Work

I would also like to suggest two further changes/additions to the Operations Manual as follows:

SuggestedRemedy

Change Section 5.3.9 to read as follows:

5.3.9 Compliance with laws

All Standards meetings shall be conducted in compliance with all applicable laws. In particular, in the course of IEEE standards development, participants shall not engage in fixing prices, dividing markets or other conduct that violates the antitrust laws. Discussions concerning input costs such as potential patent license royalties are generally permissible, but should be distinguished from any discussion concerning participants' own product prices which should never occur. That said, however, any need for or interest in extended dialogue about "legal" issues such as patent license terms or other intellectual property rights matters is best handled by an intellectual property rights group composed of interested legal, technical and other resource individuals.

Add the following new provision:

What is a reasonable and non-discriminatory (RAND) license? A RAND license is one with terms that are objectively fair and practical to both the licensees and the Patent Holders. RAND does not mean that all licensees will receive the same terms and conditions. Patent Holders may change their licensing provisions over time. Late comers may pay more than early adopters. Those with significant patent portfolios to trade may get more favorable licenses than those lacking such assets. There may be reasonable grant backs, reciprocity requirements and numerous other provisions. Patent Holders may refuse to license essential claims for use outside of the standard. And Patent Holders may refuse to license non-essential patent claims at all. However, RAND does mean that a fair license to essential claims will always be available to all desiring to practice the standard and that Patent Holders will not refuse to license or seek to enjoin anyone for using their essential patent claims to practice the standard.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

This is beyond any reasonable interpretation of the mandate that the motions have provided us at this time. This will be added to the list for a future PatCom discussion and is recorded in this database as a 'Future Work' item.

Document **OpsMan** Sub/Item **6.3** P **1** L **13** # **82**
 Commenter Chuck Adams Affiliation IBM

Comment Type **S** Comment Status **A** Future Work

Change the text 'IEEE accepts the letter of assurance.' to read 'IEEE accepts the letter of assurance, and the date acknowledgment of acceptance is confirmed to the submitter.'

SuggestedRemedy

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Beyond the reasonable scope of current approved motions. This does need fixed however and is recorded in this database as a 'Future Work' item. See comment #175.

Document **OpsMan** Sub/Item **6.3** P **1** L **15** # **55**
 Commenter Gil Ohana Affiliation Cisco

Comment Type **S** Comment Status **A** Future Work

Would it make sense to specify when an LoA becomes effective? Maybe "Completed letters of assurance are accepted by the PatCom Administrator and are effective upon receipt, provided that the PatCom Administrator may refer an LoA to PatCom for its consideration. An LoA referred by the PatCom Administrator to PatCom become effective upon acceptance by PatCom."

SuggestedRemedy

See comment.

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Beyond the reasonable scope of current approved motions. This does need fixed however and is recorded in this database as a 'Future Work' item. See comment #175.

Document **OpsMan** Sub/Item **6.3** P **1** L **15** # **45**
 Commenter Susan Hoyer Affiliation Qualcomm

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

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

This is unnecessary. It is stated in the Bylaws

SuggestedRemedy

Delete.

Response Response Status **C**

ACCEPT.

TYPE: S/substantive E/editorial

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

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

Document **OpsMan**
 Sub/Item **6.3**

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IEEE-SA PatCom Drafting Committee output - Comments

Document **OpsMan** Sub/Item **6.3** P **1** L **17** # **102**
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **A**
 Change the text 'An Essential Patent Claim' to read 'A known Essential Patent Claim'.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Text is being deleted. See comment #45.

Document **OpsMan** Sub/Item **6.3** P **1** L **17** # **71**
 Commenter Jeffery Fromm Affiliation HP
 Comment Type **S** Comment Status **A**
 Change the text 'be obtained shall be' to read 'be obtained (either no letter of assurance is provided or the letter of assurance indicates that assurance is not being provide) shall be'
 SuggestedRemedy

Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Text is being deleted. See comment #45.

Document **OpsMan** Sub/Item **6.3** P **1** L **21** # **57**
 Commenter Gil Ohana Affiliation Cisco
 Comment Type **S** Comment Status **R**
 It might be a good idea to state on what basis the PatCom administrator should determine that the individual signing the LoA does or does not have "clear authority for intellectual property and legal matters." Maybe revise as "Unless the letter of assurance is received from an individual within the issuing organization who, as shown by a statement made within the letter, has clear authority for intellectual property and legal matters"

SuggestedRemedy
 See comment.

Response Response Status **C**
 REJECT.
 We give that flexibility to the PatCom administered. The LoA signature section contains a representation by the signer that they have the authority to bind.

Document **OpsMan** Sub/Item **6.3** P **1** L **28** # **72**
 Commenter Jeffery Fromm Affiliation HP
 Comment Type **E** Comment Status **A**
 Change 'December 31 2006' to read 'December 31, 2006'.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Change to '31 December 2006'.

Document **OpsMan** Sub/Item **6.3** P **1** L **6** # **9**
 Commenter Geoff Thompson Affiliation Nortel
 Comment Type **S** Comment Status **R**
 RE SB Ops Manual clause 6.3 I can't see that this text is in satisfaction of any of the approved motions of March. Adding other changes that "seem like a good idea" just confuse this cumbersome and contentious process even further.

SuggestedRemedy
 Back these changes out and put it in the pot of things to be considered in the future, with appropriate prioritization. Alternatively, this text could be presented as new business items at the June meeting by any member of the committee.

Response Response Status **C**
 REJECT.

See responses to individual comments that reference this comment (comments #11, #12, #13 and #14).

IEEE-SA PatCom Drafting Committee output - Comments

Document **OpsMan** Sub/Item **6.3** P **1** L **8** # **39**
Commenter Susan Hoyler Affiliation Qualcomm

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

Change the third paragraph to read:

If a Letter of Assurance is submitted by an organizational member of IEEE, unless it states that the individual submitting the Letter of Assurance on its behalf is authorized to do so in connection with the subject matter of the Letter of Assurance, the IEEE Standards Association (PatCom Administrator) shall send a certified letter, return receipt requested, to the General Counsel or other appropriate representative of the submitting organization confirming the IEEE's receipt of the Letter of Assurance and its understanding that the Letter of Assurance is factually correct and was submitted by an individual within the submitting organization with the authority to do so. No response to this letter, other than the return receipt, shall be requested by the IEEE.

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.

SuggestedRemedy

Response Response Status **C**

REJECT.

The current text gives the PatCom admin the flexibility required. The suggest text will not work as the new LoA requires the individual submitting to state they have the authority to do so. Based on this, and a mandated LoA, the suggested text would result in the PatCom administrator never checking.

Document **OpsMan** Sub/Item **6.3** P **2** L **47** # **44**
Commenter Susan Hoyler Affiliation Qualcomm

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

"A Submitter, however, at its option, may later submit a separate Letter of Assurance offering a blanket assurance for the specified Essential Patent Claim."

This is not consistent with the concept of a Blanket Assurance that applies to all existing and future Essential Patent Claims.

SuggestedRemedy

Response Response Status **C**

REJECT.

This is as per design. The intent is not to have a blanket LOA apply to all existing specific Essential Patent Claims where there is already an LOA.

Document **OpsMan** Sub/Item **6.3** P **2** L **49** # **60**
Commenter Gil Ohana Affiliation Cisco

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

Hopefully this is not too much of a nit in a paragraph that shows careful drafting, but should we admit the possibility that a patent holder, having submitted an LoA that identifies a specific patent, might later submit a blanket LoA that specifically refers to the earlier LoA and supersedes it? As the paragraph is now written, replacing a previously submitted LoA that identifies specific patents with a blanket would seem to require two letters, first the blanket LoA and then a second letter that explicitly applies the blanket commitment to the specific patent that was previously identified.

SuggestedRemedy

Response Response Status **C**

REJECT.

This case would required complicated changes to the LOA form. We prefer two LOA submissions versus complication.

TYPE: S/substantive E/editorial

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

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

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Document **OpsMan** Sub/Item **6.3.1** P **1** L **29** # **40**
Commenter Susan Hoyler Affiliation Qualcomm

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

Change this subclause to read:

The following notice shall appear in each published IEEE standard in connection with which the IEEE receives a Letter of Assurance.

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 or for conducting inquiries into the legal validity or scope of those patents that are brought to its attention. One or more patent holders or patent applicants have filed Letter(s) of Assurance stating that it/they will grant licenses to applicants to practice the Essential Patent Claim(s) under reasonable terms and conditions that are demonstrably free of any unfair discrimination, with or without compensation as determined by the patent holder or patent applicant. The IEEE makes no representation as to the reasonableness of terms or conditions of any license agreements offered by patent holders or patent applications, including as respects any rates sought or charged for such licenses. Further information may be obtained from the IEEE Standards Association.

If the IEEE has not received a Letter of Assurance in connection with any Patent Claim disclosed for purposes of a specific IEEE standard prior to the time of its 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 or for conducting inquiries into the legal validity or scope of those patents that are brought to its attention

SuggestedRemedy

Response Response Status **C**

REJECT.

Existing language already covers the changes proposed.

Document **OpsMan** Sub/Item **6.3.1** P **1** L **39** # **83**
Commenter Chuck Adams Affiliation IBM

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

Change the text 'Essential Patent Claims for' to read 'Essential Patent or Application Claims for'.

SuggestedRemedy

Response Response Status **C**

REJECT.

The definition of Essential Patent Claim already covers this.

Document **OpsMan** Sub/Item **6.3.1** P **1** L **39** # **10**
Commenter Geoff Thompson Affiliation Nortel

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

RE SB Ops Manual clause 6.3.1 change #1 & 4

See comment #2 and associated remedy.

SuggestedRemedy

See comment.

Response Response Status **C**

REJECT.

The is an approved motion from March to change from Essential Patents to Essential Patent Claims.

Document **OpsMan** Sub/Item **6.3.1** P **1** L **39** # **73**
Commenter Jeffery Fromm Affiliation HP

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

Change the text 'create a compliant implementation of' to read 'implement'.

SuggestedRemedy

Response Response Status **C**

REJECT.

Important to retain compliant because LOAs only apply to compliant implementations.

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** # **11**

Commenter Geoff Thompson Affiliation Nortel

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

RE SB Ops Manual clause 6.3.1 change #2

See comment #9 and associated remedy

SuggestedRemedy

Response Response Status **C**

REJECT.

This change was necessary to make this text consistent with Essential Patent Claims.

Document **OpsMan** Sub/Item **6.3.1** P **1** L **46** # **74**

Commenter Jeffery Fromm Affiliation HP

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

Change the text 'under reasonable' to read 'under objectively reasonable'.

SuggestedRemedy

Response Response Status **C**

REJECT.

Want to remain consistent with the ANSI essential requirements which uses 'reasonable', not 'objectively reasonable'.

Document **OpsMan** Sub/Item **6.3.1** P **1** L **47** # **12**

Commenter Geoff Thompson Affiliation Nortel

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

RE SB Ops Manual clause 6.3.1 change #3 & 5

See comment #9 and associated remedy

SuggestedRemedy

Response Response Status **C**

REJECT.

Change #3 - Correcting 'IEEE Standards Department' to 'IEEE Standards Association' is minor editorial fix to make things right.

Change #5 - This change was necessary to make this text consistent with Essential Patent Claims.

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Document **OpsMan** Sub/Item **6.3.1** P **1** L **5** # **103**
 Commenter Amy Marasco Affiliation Microsoft

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

'The following notice shall appear in all IEEE Standards:'

This section restructured so that the mandatory text is cited first, then the potential additional text is cited for when an LOA is received, to make it clearer.

SuggestedRemedy

Change the text to read:

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.

Further, the following notice shall additionally 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 under reasonable rates, terms, and conditions (either for free or under reasonable rates) that are demonstrably free of any unfair discrimination.

A patent holder or patent applicant has filed a Letter of Assurance that it will grant licenses under its rights without compensation or under reasonable rates, and other 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.

Response Response Status **C**

REJECT.

This is a restructuring change that is unrelated to the scope of the motions approved in March.

The current text is designed so the IEEE-SA editor can easily choose between two sets of text and then cut and past into the draft.

Document **OpsMan** Sub/Item **6.3.1** P **2** L **14** # **58**
 Commenter Gil Ohana Affiliation Cisco

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

In the statement for the situation in which an LoA was received, the fact that an LoA had been received was prominently mentioned in the statement. Should the statement for the situation in which no LoA was received equally prominently note the absence of an LoA? Maybe insert, after the first sentence, the following: "No patent holder or patent applicant has filed a statement of assurance that it will grant licenses to these patent rights to applicants desiring to obtain such licenses."

SuggestedRemedy

Response Response Status **C**

REJECT.

This text is also used in the case where there were no identified potential Essential Patent Claims and therefore no LOAs were sought.

This is also outside the scope of the current work.

Document **OpsMan** Sub/Item **6.3.2** P **2** L **17** # **13**
 Commenter Geoff Thompson Affiliation Nortel

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

RE SB Ops Manual clause 6.3.2 paragraph 1

See comment #9 and associated remedy

SuggestedRemedy

Response Response Status **C**

REJECT.

The drafting committee believes that this change is editorial as it aligns this text with the subsequent paragraph.

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 **6.3.2** P **2** L **19** # **104**
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **A**
 Change the text 'application might be essential to the' to read 'application might be infringed by an implementation of the'.
 SuggestedRemedy

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

'any individual believes that Patent Claims might be Essential Patent Claims, that fact should be made known to the entire working group'

Document **OpsMan** Sub/Item **6.3.2** P **2** L **24** # **14**
 Commenter Geoff Thompson Affiliation Nortel
 Comment Type **S** Comment Status **R**
 RE SB Ops Manual clause 6.3.2 paragraph 2
 See comments #2 and 9 and associated remedies. However, it should be noted that paragraph two badly needs to be simplified to (take one sentence from previous paragraph) "At each meeting the chair or chair's delegate shall issue a call for patents in accordance with and using the material provided by Clause 6 of the IEEE-SA Standards Board Bylaws."
 SuggestedRemedy

Response Response Status **C**
 REJECT.

The suggested text is not wide enough as we need to include the case - for example where a potential Essential Patent Claim is identified and a letter sent requesting an LoA to the holder - this is also something the chair, or the chair's delegate, needs to do.

Document **OpsMan** Sub/Item **6.3.2** P **2** L **24** # **140**
 Commenter Mike Sirtori Affiliation Intel
 Comment Type **S** Comment Status **A**
 Change 'ask each holder of' to read 'ask each known holder'.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 'ask any holder'.

Document **OpsMan** Sub/Item **6.3.2** P **2** L **24** # **105**
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **R**
 'The chair or the chair's delegate shall ask each'.
 Shouldn't IEEE do the asking for consistency, and request the response to come back to the IEEE/? Or is it permitted to discuss these requests and any responses within the working group?
 SuggestedRemedy

Response Response Status **C**
 REJECT.

The 'chair or the chair's delegate' is the IEEE. The request and the response is recorded in the minutes. Any discssion has to under the restrictions of the Operations Maunal subclause 5.3.8.

Document **OpsMan** Sub/Item **6.3.2** P **2** L **26** # **84**
 Commenter Chuck Adams Affiliation IBM
 Comment Type **S** Comment Status **A**
 Add the text 'Requests for LOA's will contain sufficient definition (eg draft standard and identification of specific claim references, as known), in order for the recipient to have sufficient information for a proper response to the LOA request.' to the end of this paragraph.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 'Information regarding the draft standard upon request.'

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 **6.3.2** P **2** L **26** # **59**
Commenter Gil Ohana Affiliation Cisco

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

The language here was a little imprecise. We were not certain what was meant by "(or applicant for) a Patent Claim". A better way of phrasing this might be "An inventor or assignee of (a) an issued patent containing an Essential Patent Claim or (b) a patent application that, if it were issued would contain an Essential Patent Claim, must complete and submit"

SuggestedRemedy

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Change to 'shall ask any patent holder of, or patent applicant for, a Patent Claim that might become an Essential Patent Claim'.

Document **OpsMan** Sub/Item **6.3.3** P **2** L **31** # **15**
Commenter Geoff Thompson Affiliation Nortel

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

RE SB Ops Manual clause 6.3.3, change 1

This looks like a text "Clause 6" was changed to a link "Clause 6 (or is something else going on?). This would, in general be a wonderful thing to do to improve the quality of the ops manual. That, however was not the charter of the group. Adding such changes is confusing to an already too confusing situation.

SuggestedRemedy

Back these changes out, save them for another process where we just deal with editorial document improvement that is, hopefully content and politics free.

Response Response Status **C**

REJECT.

Clause 6 was a hyperlink when this was HTML until it was turned into a Word document.

Document **OpsMan** Sub/Item **6.3.3** P **2** L **33** # **85**
Commenter Chuck Adams Affiliation IBM

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

Change the text 'Essential Patent Claim' to read 'Essential Patent / Application Claim'.

SuggestedRemedy

Response Response Status **C**

REJECT.

This is covered by the definition of Essential Patent Claim.

Document **OpsMan** Sub/Item **6.3.3** P **3** L **32** # **106**
Commenter Amy Marasco Affiliation Microsoft

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

Change the text 'of validity for any assurance received from' to read 'of validity for any Letter of Assurance received from'.

SuggestedRemedy

Response Response Status **C**

ACCEPT.

TYPE: S/substantive E/editorial

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

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Document **OpsMan** Sub/Item **6.3.4** P **2** L **35** # **41**
 Commenter Susan Hoyler Affiliation Qualcomm

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

Change this subclause to read:

A Submitter may submit to the IEEE a Blanket Letter of Assurance which will provide a licensing assurance for all Essential Patent Claims the Submitter may currently or in the future hold or control in connection with the specified IEEE standard. A Submitter may alternatively submit separate Letters of Assurance in connection with each Essential Patent Claim relating to the specified IEEE standard.

Over time, a Submitter may also submit multiple Letters of Assurances for a given Essential Patent Claim. Each potential licensee for the Essential Patent Claim may choose, at its option, the licensing assurance provided by any of the Letters of Assurance, with one exception:

If a Submitter has first submitted a Letter of Assurance identifying a specific Essential Patent Claim and thereafter submits a Blanket Letter of Assurance, a potential licensee may not elect to pursue a license under the Blanket Letter of Assurance. (A Submitter, however, at its option, may later submit a separate Letter of Assurance offering a blanket assurance for the specified Essential Patent Claim.) The intention of this paragraph is to permit Submitters to offer alternative assurances over time, and to permit potential licensees to choose form among the alternative assurances offered.

If, after submitting a Blanket Letter of Assurance, a Submitter acquires an Essential Patent Claim or an entity that owns or controls an Essential Patent Claim, the Submitter's existing Blanket Letter of Assurance shall apply to such acquired Essential Patent Claims; provided, however, if a Letter of Assurance was submitted in connection with the acquired Essential Patent Claim prior to the acquisition, then that Letter of Assurance shall apply to the acquired Essential Patent Claim. In all instances, Letters of Assurance concerning specified Essential Patent Claims shall apply to the specified Essential Patent Claims. Nothing in this paragraph shall prevent an acquiring party from asking a seller of an acquired Essential Patent Claim to submit additional Letters of Assurance before closing of the acquisition.

SuggestedRemedy

Response Response Status **C**

ACCEPT IN PRINCIPLE.

Reject Changes in the first paragraph are redundant with the definitions.

Accept:

'submit multiple assurances' to 'submit multiple Letters of Assurances'

'letters of assurances' to 'Letters of Assurances' multiple where required.

'The intention of this paragraph is to permit Submitters to offer alternative assurances over time, and to permit potential licensees to choose form among the alternative assurances offered.'

'holds' to 'owns or controls' in 3rd paragraph.

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

'Submitter's Blanket' to 'Submitter's existing Blanket'

Reject others as no substantive difference.

Document **OpsMan** Sub/Item **6.3.4** P **2** L **35** # **16**
 Commenter Geoff Thompson Affiliation Nortel

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

RE SB Ops Manual clause 6.3.4

While I agree that the deleted text of 6.3.4 more properly belongs in the bylaws, making that change was not in the motions and thus outside the charter of the drafting committee. Further, the only action item for the drafting group regarding blanket letters of assurance was with regard to modifying the LoA, presumably within the existing P&P. There was no charter to modify the P&P. I do not recall any agreement whatsoever about precedent of blanket vs specific assurance LoAs and do not see that trying to restrict things in this area is of any great use to the IEEE.

SuggestedRemedy

All of 6.3.4 (and the associated change in the penultimate paragraph in clause 6 of the bylaws) should be backed out and taken as two new items. My suspicion is that moving the disclaimer to the bylaws can move ahead easily. I would expect the other new text will be quite contentious. There needs to be discussion and clear direct set by PatCom proper action as an announced agenda item in an open regular meeting.

Response Response Status **C**

REJECT.

Can't really do the Blanket LoA right without dealing with the corner cases in the P&P. The blanket vs specific needs to be clarified so we felt it our duty to explain how the blanket worked.

Document **OpsMan** Sub/Item **6.3.4** P **2** L **37** # **107**
 Commenter Amy Marasco Affiliation Microsoft

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

Change the text 'future hold or control' to read 'future hold directly or through an Affiliate.'

An alternative would be to define "control".

SuggestedRemedy

Response Response Status **C**

REJECT.

Covered in bylaws where it states LoA applies to submitter and its affiliates except those specifically excluded.

IEEE-SA PatCom Drafting Committee output - Comments

Document **OpsMan** Sub/Item **6.3.4** P **2** L **40** # **86**
Commenter Chuck Adams Affiliation IBM
Comment Type **S** Comment Status **R**
Add the text 'A request can be made of the submitter, that the IEEE Standards Association could be provided with knowledge of claims subsequently asserted under a Blanket LOA, for updating the prior Blanket LOA.' to the end of the first paragraph.
SuggestedRemedy

Response Response Status **C**
REJECT.
Currently the IEEE can always request other information. This wording doesn't place any obligation on the submitter, also a Blanket LOA, or any LoA for that matter, doesn't require disclosure.

Document **OpsMan** Sub/Item **6.3.4** P **2** L **46** # **108**
Commenter Amy Marasco Affiliation Microsoft
Comment Type **S** Comment Status **A**
Change the text 'before signing and submitting' to read 'before or concurrently with signing and submitting'.
SuggestedRemedy

Response Response Status **C**
ACCEPT.

Document **OpsMan** Sub/Item **6.3.4** P **3** L **10** # **87**
Commenter Chuck Adams Affiliation IBM
Comment Type **S** Comment Status **A**
Question - Is there any prohibition preventing the submitter of a Blanket LOA from excluding future filed or published claims of acquired claims, as a condition of submitting an LOA? I am not advocating this, but just want to get a clarification.
SuggestedRemedy

Response Response Status **C**
ACCEPT IN PRINCIPLE.
No - this cannot be done - you can't exclude.

Document **OpsMan** Sub/Item **6.3.4** P **3** L **11** # **61**
Commenter Gil Ohana Affiliation Cisco
Comment Type **S** Comment Status **R**
To what date does "before the acquisition" refer? If it is the date on which the acquisition closes, it may be too late, because the buyer could cause the seller to submit the letter. It would be preferable to set the date at the date of execution of the agreement to purchase, which in public company deals can be months before the closing date.
SuggestedRemedy

Response Response Status **C**
REJECT.
This solution doesn't solve the problem. No matter what date is set there is a time before it which a LoA can be submitted. What if the buyer gets the seller to submit before the execution of the agreement to purchase.

Document **OpsMan** Sub/Item **6.3.4** P **3** L **14** # **109**
Commenter Amy Marasco Affiliation Microsoft
Comment Type **E** Comment Status **A**
Change the text 'continue to apply specified Patent' to read 'continue to apply to specified Patent'.
SuggestedRemedy

Response Response Status **C**
ACCEPT.

Document **OpsMan** Sub/Item **6.3.4** P **3** L **14** # **141**
Commenter Mike Sirtori Affiliation Intel
Comment Type **S** Comment Status **A**
Change 'to apply specific' to read 'to apply to specific'.
SuggestedRemedy

Response Response Status **C**
ACCEPT.

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Document **OpsMan** Sub/Item **6.3.4** P **3** L **16** # **110**
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **A**
 Change the text 'as provided this Patent Policy and this Operations Manual.' to read 'as provided in the Operations Manual.'
 SuggestedRemedy

Response Response Status **C**
 ACCEPT.

Document **OpsMan** Sub/Item **6.3.5** P **3** L # **77**
 Commenter Jeffery Fromm Affiliation HP
 Comment Type **E** Comment Status **R**
 Missing comma, change the text 'IEEE Standard and' to read 'IEEE Standard, and'.
 SuggestedRemedy

Response Response Status **C**
 REJECT.

Document **OpsMan** Sub/Item **6.3.5** P **3** L **23** # **42**
 Commenter Susan Hoyer Affiliation Qualcomm
 Comment Type **S** Comment Status **R**
 Change 1st paragraph to read:
 A Letter of Assurance expressly referencing an Amendment, Corrigenda, or Revision of an IEEE standard shall remain in force in connection with Essential Patent Claim(s) relating to the Amendment, Corrigenda or Revision once it is merged into or approved for the IEEE 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.
 SuggestedRemedy

Response Response Status **C**
 REJECT.
 Revisions don't get merged.

Document **OpsMan** Sub/Item **6.3.5** P **3** L **23** # **75**
 Commenter Jeffery Fromm Affiliation HP
 Comment Type **S** Comment Status **R**
 Change the text 'an Amendment, Corrigenda' to read 'a Standard, Amendment, Corrigenda'.
 SuggestedRemedy

Response Response Status **C**
 REJECT.

Standards don't get merged into standard, only amendments and corrigenda get merged into the base standard. It is stated in the ByLaws that LoAs are irrevocable until the withdrawal of a standard.

Document **OpsMan** Sub/Item **6.3.5** P **3** L **23** # **112**
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **A**
 Change the text 'to the technology of the Amendment and Corrigenda' to read 'to the technology described in the Amendment or Corrigenda'.
 SuggestedRemedy

Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 'to the technology specified in the Amendment or Corrigenda'.

Document **OpsMan** Sub/Item **6.3.5** P **3** L **24** # **76**
 Commenter Jeffery Fromm Affiliation HP
 Comment Type **S** Comment Status **R**
 Change the text 'the Amendment and Corrigenda' to read 'the Standard, or the Amendment and Corrigenda'.
 SuggestedRemedy

Response Response Status **C**
 REJECT.
 LoA applies to Standards and Standard do not go away so this text doesn't need to address these.

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 **25** # **78**
 Commenter Jeffery Fromm Affiliation HP
 Comment Type **S** Comment Status **R**
 Change the text 'of the Standard' to read 'of the referenced or merged Standard'.
 SuggestedRemedy
 Response Response Status **C**
 REJECT.
 Duplicate of #76.

Document **OpsMan** Sub/Item **6.3.5** P **3** L **26** # **17**
 Commenter Geoff Thompson Affiliation Nortel
 Comment Type **S** Comment Status **A**
 I feel that the terms "fundamental application" and "re-use" will give us trouble forever. I think that the rest of the paragraph is pretty much OK. I do note that it does not address the simple case, that is (presumably) "A Letter of Assurance referencing a standard will remain in force for the application of the Essential Patent Claim(s) to the technology for subsequent Revisions of the Standard." The paragraph needs to be split into the two separate issues. Issue one, the LoA survives revisions (for its original scope) and issue two, worthy of a second paragraph. That is "new fundamental application issue. That needs to be addressed separately after the simpler issue #1 is put to bed. The judgement "will require" is too conclusive. It should be replaced by something more like "may not be covered by".
 In the example there isn't an illustration that is close enough to the line to give folks much help. For example, there are often patents on serial encoding methods. Would an LoA for a line code used in a 100 Mb/s 802.3 physical layer need to be renewed for use at a different line speed (say 1 Gigabit)? What would be the requirement if there were only a change in media? For example an LoA was received for Auto Negotiation on copper. Can we use the same assurance for a subsequent fiber project? In any case, the example should not be in the policy. It should go in "the Standards Companion"
 SuggestedRemedy

Response Response Status **C**
 ACCEPT IN PRINCIPLE.
 Accept splitting the paragraph as suggested.
 The purpose of the ops man is to tell you what to do. Please provide better examples.

Document **OpsMan** Sub/Item **6.3.5** P **3** L **26** # **113**
 Commenter Amy Marasco Affiliation Microsoft
 Comment Type **S** Comment Status **R**
 'new fundamental applications'
 Needs clarification, as 'fundamental' and 'application' are not well-defined.
 SuggestedRemedy
 Response Response Status **C**
 REJECT.
 Your suggestions please.

Document **OpsMan** Sub/Item **6.3.5** P **3** L **26** # **143**
 Commenter Mike Sirtori Affiliation Intel
 Comment Type **S** Comment Status **R**
 Add the text 'to the extent that the Essential Patent Claims are necessary to achieve compatibility with the previously adopted standard, and to the extent that the amendment, corrigenda or revision does not add [CAN'T READ TEXT] or applications.' after 'of the standard'.
 SuggestedRemedy
 Response Response Status **C**
 REJECT.
 Unable of read scan of handwritten comments supplied in pdf.

Document **OpsMan** Sub/Item **6.3.5** P **3** L **28** # **88**
 Commenter Chuck Adams Affiliation IBM
 Comment Type **S** Comment Status **R**
 Could be clearer whether it is intended for the LOA submission applies to just the Amendment/Corrigenda/Revision or with the base standard as well.
 SuggestedRemedy
 Response Response Status **C**
 REJECT.
 Please provide clarifying lanugage.

IEEE-SA PatCom Drafting Committee output - Comments

Document **OpsMan** Sub/Item **6.3.5** P **3** L **29** # **43**

Commenter Susan Hoyler Affiliation Qualcomm

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

Not clear what the intent is here. Some discussion may be appropriate to determine appropriate language. Example below not clear either.

SuggestedRemedy

Suggest further discussion

Response Response Status **C**

REJECT.

No alternative suggested.

Document **OpsMan** Sub/Item **6.3.5** P **3** L **30** # **114**

Commenter Amy Marasco Affiliation Microsoft

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

'Revision of a new IEEE Standard'

This seems to be the meaning of the example shown below - re-use of IEEE803.2 material in IEEE1394 would require a new LOA ?

SuggestedRemedy

Response Response Status **C**

REJECT.

Document **OpsMan** Sub/Item **6.3.5** P **3** L **All** # **142**

Commenter Mike Sirtori Affiliation Intel

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

Lower case amendment, corrigenda, revision, standard and letter of assurance.

SuggestedRemedy

Response Response Status **C**

ACCEPT.

Will be implemented global where appropriate.

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**

Sub/Item **6.3.5**

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