

## 6. Patents

### 6.1 Definitions

The following terms, when capitalized, have the following meanings:

*“Accepted Letter of Assurance”* and *“Accepted LOA”* shall mean a Letter of Assurance that the IEEE-SA has determined is complete in all material respects and has been posted to the IEEE-SA web site.

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

*“Blanket Letter of Assurance”* shall mean a Letter of Assurance that applies to all Essential Patent Claims for which a Submitter may currently or in the future (except as otherwise provided for in these *Bylaws* and in the *IEEE-SA Standards Board Operations Manual*) have the ability to license.

*“Enabling Technology”* shall mean any technology that may be necessary to make or use any product or portion thereof that complies with the [Proposed] IEEE Standard but is neither explicitly required by nor expressly set forth in the [Proposed] IEEE Standard (e.g., semiconductor manufacturing technology, compiler technology, object-oriented technology, basic operating system technology, and the like).

*“Essential Patent Claim”* shall mean any Patent Claim the use of which was 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 was no commercially and technically feasible non-infringing alternative. An Essential Patent Claim does not include any Patent Claim that was essential only for Enabling Technology nor any claim other than that set forth above even if contained in the same patent as the Essential Patent Claim.

*“Letter of Assurance”* and *“LOA”* shall mean a document, including any attachments, stating the Submitter’s position regarding ownership, enforcement or licensing of Essential Patent Claims, for a specifically referenced IEEE Standard, submitted in a form acceptable to the IEEE-SA.

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

1  
2 “*Reasonable and Good Faith Inquiry*” includes, but is not limited to, a Submitter using  
3 reasonable efforts to identify and contact those individuals who are from, employed by or  
4 otherwise represent the Submitter and who are known to the Submitter to be current or past  
5 participants in the development process of the [Proposed] IEEE Standard identified in a Letter of  
6 Assurance, including, but not limited to, participation in a Sponsor-Ballot or Working Group. If  
7 the Submitter did not or does not have any participants, then a Reasonable and Good Faith  
8 Inquiry may include, but is not limited to, the Submitter using reasonable efforts to contact  
9 individuals who are from, employed by, or represent the Submitter and who the Submitter  
10 believes are most likely to have knowledge about the technology covered by the [Proposed]  
11 IEEE Standard.

12  
13 “*Statement of Encumbrance*” shall mean a specific reference to an Accepted LOA or a general  
14 statement in the transfer or assignment agreement that the Patent Claim(s) being transferred or  
15 assigned are subject to any encumbrances that may exist as of the effective date of such  
16 agreement. An Accepted LOA is an encumbrance.

17  
18 “*Submitter*” when used in reference to a Letter of Assurance shall mean an individual or an  
19 organization that provides a completed Letter of Assurance. A Submitter may or may not hold  
20 Essential Patent Claims.  
21

## 22 **6.2 Policy**

23  
24 IEEE standards may be drafted in terms that include the use of Essential Patent Claims. If the  
25 IEEE receives notice that a [Proposed] IEEE Standard may require the use of a potential  
26 Essential Patent Claim, the IEEE shall request licensing assurance, on the IEEE Standards Board  
27 approved Letter of Assurance form, from the patent holder or patent applicant. The IEEE shall  
28 request this assurance without coercion.  
29

30 The Submitter of the Letter of Assurance may, after Reasonable and Good Faith Inquiry, indicate  
31 it is not aware of any Patent Claims that the Submitter may own, control or have the ability to  
32 license that might be or become Essential Patent Claims. If the patent holder or patent applicant  
33 provides an assurance, it should do so as soon as reasonably feasible in the standards  
34 development process. This assurance shall be provided prior to the Standards Board’s approval  
35 of the standard. This assurance shall be provided prior to a reaffirmation if the IEEE receives  
36 notice of a potential Essential Patent Claim after the standard’s approval or a prior reaffirmation.  
37 An asserted potential Essential Patent Claim for which an assurance cannot be obtained (e.g., a  
38 Letter of Assurance is not provided or the Letter of Assurance indicates that assurance is not  
39 being provided) shall be referred to the Patent Committee.  
40

41 A Letter of Assurance shall be either:

- 42  
43 a) A general disclaimer to the effect that the patentee without conditions will not enforce  
44 any present or future Essential Patent Claims against any person or entity making,  
45 using, selling, offering to sell, importing, distributing or implementing a compliant

1 implementation of the standard; or

- 2
- 3 b) A statement that a license for a compliant implementation of the standard will be made
- 4 available to an unrestricted number of applicants on a worldwide basis without
- 5 compensation or under reasonable rates, with reasonable terms and conditions that are
- 6 demonstrably free of any unfair discrimination. At its sole option, the Submitter may
- 7 provide with its assurance any of the following: (i) a not-to-exceed license fee or rate
- 8 commitment, (ii) a sample license agreement, or (iii) one or more material licensing
- 9 terms.

10

11 Copies of an Accepted LOA may be provided to the working group, but shall not be discussed, at

12 any standards working group meeting.

13

14 The Submitter and all Affiliates (other than those Affiliates excluded in a Letter of Assurance)

15 shall not assign or otherwise transfer any rights in any Essential Patent Claims that are the

16 subject of such Letter of Assurance that they hold, control or have the ability to license with the

17 intent of circumventing or negating any of the representations and commitments made in such

18 Letter of Assurance.

19

20 The Submitter of a Letter of Assurance shall agree (a) to provide notice of a Letter of Assurance

21 either through a Statement of Encumbrance or by binding any assignee or transferee to the terms

22 of such Letter of Assurance; (b) to require its assignee or transferee to agree to similarly provide

23 such notice and (c) to bind subsequent assignees or transferees to agree to provide such notice as

24 described in (a) and (b).

25

26 This assurance shall apply to the Submitter and its Affiliates except those Affiliates the

27 Submitter specifically excludes on the relevant Letter of Assurance.

28

29 If, after providing a Letter of Assurance to the IEEE, the Submitter becomes aware of additional

30 Patent Claim(s) not already covered by an existing Letter of Assurance that are owned,

31 controlled or licensable by the Submitter that may be or become Essential Patent Claim(s) for the

32 same IEEE Standard but are not the subject of an existing Letter of Assurance, then such

33 Submitter shall submit a Letter of Assurance stating its position regarding enforcement or

34 licensing of such Patent Claims. For the purposes of this commitment, the Submitter is deemed

35 to be aware if any of the following individuals who are from, employed by, or otherwise

36 represent the submitter have personal knowledge of additional potential Essential Patent Claims,

37 owned or controlled by the Submitter, related to a [Proposed] IEEE Standard and not already the

38 subject of a previously submitted Letter of Assurance: (a) past or present participants in the

39 development of the [Proposed] IEEE Standard, or (b) the individual executing the previously

40 submitted Letter of Assurance.

41

42 The assurance is irrevocable once submitted and accepted and shall apply, at a minimum, from

43 the date of the standard's approval to the date of the standard's withdrawal.

44

September 12, 2006

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

4  
5 Nothing in this policy shall be interpreted as giving rise to a duty to conduct a patent search. No  
6 license is implied by the submission of a Letter of Assurance.

7  
8 In order for IEEE's patent policy to function efficiently, individuals participating in the standards  
9 development process: (a) shall inform the IEEE (or cause the IEEE to be informed) of the holder  
10 of any potential Essential Patent Claims, of which they are personally aware and that are not  
11 already the subject of an existing Letter of Assurance, owned or controlled by the participant or  
12 the entity the participant is from, employed by, or otherwise represents; and (b) should inform  
13 the IEEE (or cause the IEEE to be informed) of any other holders of potential Essential Patent  
14 Claims that are not already the subject of an existing Letter of Assurance.