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August 13, 2014

Institute of Electrical and Electronics Engineers
Standards Association
445 Hoes Lane
Piscataway, NJ 08854-4141
Attention: David Ringle, Director, IEEE-SA Governance
Sent Via Email: d.ringle@ieee.org

Regarding: Proposed Clarifications to IEEE By-Laws

Dear Mr. Ringle,

We write to urge the Board to adopt the proposed clarifications to the text of Section 6 of the IEEE Standard Association Bylaws which have been submitted by the IEEE Patent Committee for approval by the Standards Board ("Proposal"). Aruba Networks, Inc. ("Aruba") has a strong interest in the continued development of standards by the IEEE, in ensuring that those who contribute technology to a standard get a reasonable return on their investment while at the same time preventing those who agree to license on RAND terms from disrupting implementation of such standards through injunctions or unreasonable licensing terms.

Aruba has been an active participant in the development of, as well as an implementer of, various IEEE standards. On several occasions, Aruba has submitted Letters of Assurance to the IEEE committing to license certain of its essential patented inventions to those implementing specific standards "under reasonable rates to an unrestricted number of applicants on a worldwide basis with reasonable terms and conditions that are demonstrably free of unfair discrimination." Aruba and its customers also have received assertions made by entities claiming to have essential patents for which a Letter of Assurance has been submitted to the IEEE, but who nonetheless demanded license terms and rates far in excess of that which would be reasonable and non-discriminatory.

We view the Proposal as a clarification of the original intent behind Section 6. Indeed, several courts have interpreted the current Bylaws consistent with the Proposal. The United States Trade Representative's August 13, 2013 letter to the International Trade Commission disapproving an exclusion order issued by the International Trade Commission in the Apple/Samsung ITC matter also reflects an understanding of the Bylaws consistent with the Proposal. Nonetheless, other

courts and government bodies have interpreted the current Bylaws in other ways, or expressed confusion as to their meaning. Thus, we believe that clarification is needed.

We support the current Proposal because it strikes an appropriate balance between and among the interests identified above. The Bylaws are intended to encourage the robust development of necessary standards **and** the use and adoption of those standards. Striking a reasonable balance between development and adoption is critical. A standard, no matter how necessary or well thought out, is useless if no one implements it because of concerns about patent hold-up.

From our position as a participant in setting IEEE standards, an entity which has given assurances that we will license certain of our essential patent claims on RAND terms, and a company that has received patent assertions from those who have given such assurances (or whose predecessors in interest have given such assurances) but who later have tried to circumvent those assurances, we think it is important to clarify, as the Proposal does, that:

- (1) By making a RAND commitment, a standard essential patent owner has agreed that monetary remedies will suffice and therefore an injunction or exclusion order should not be available in most circumstances. The Proposal makes clear that an injunction or exclusion order should only be available when the patent owner has no other mechanism to obtain a RAND royalty for a given standard essential patent, e.g. when the implementer refuses to participate in a reasonable process to determine RAND terms for a given standard essential patent, or fails to abide by the final outcome of such a process;
- (2) The terms non-discriminatory and unrestricted in a Letter or Assurance have meaning and require that a RAND license be made available on similar (and reasonable) terms to any implementer, regardless of where in the chain of distribution is that implementer;
- (3) Confirm (once again) that Letters of Assurance are irrevocable once made and that they apply to any patents or patent claims that are subject to the a Letter of Assurance regardless of whether the patent later comes to be assigned to an entity which has not itself submitted a Letter of Assurance; and
- (4) Confirm that the value of a standard essential patent must be appropriately measured both in relation to the value of the non-standardized aspects of the implementers device and in relation to all of the other inventions that make up the standard.

For these reasons, we urge the Board to adopt the Proposal at the upcoming August 2014 meeting. Thank you for your consideration of Aruba's comments. We would appreciate it if you would forward this letter to the members of the IEEE Standards Association Board.

Sincerely,



A handwritten signature in black ink, appearing to read "Ava Hahn".

Ava Hahn
General Counsel

A handwritten signature in black ink, appearing to read "Partha Narasimhan".

Partha Narasimhan
CTO, Office of the Chief Technology Officer