



*Via E-mail only*

February 25, 2016

Douglas Cawley, McKool Smith  
[dcawley@mckoolsmith.com](mailto:dcawley@mckoolsmith.com)

Michael Lindsay, Dorsey & Whitney  
[lindsay.michael@dorsey.com](mailto:lindsay.michael@dorsey.com)

Barry Freedman, Alcatel-Lucent  
[barry.freedman@alcatel-lucent.com](mailto:barry.freedman@alcatel-lucent.com)

Dave Ringle, IEEE  
[d.ringle@ieee.org](mailto:d.ringle@ieee.org)

Daniel Hermele, Qualcomm  
[dhermele@qti.qualcomm.com](mailto:dhermele@qti.qualcomm.com)

Jonathan Wiggins, IEEE  
[j.s.wiggins@ieee.org](mailto:j.s.wiggins@ieee.org)

Dina Kallay, Ericsson  
[dina.kallay@ericsson.com](mailto:dina.kallay@ericsson.com)

### **Dated Notice**

Re: ANSI Executive Standards Council (ExSC) Appeals Panel decision in response to the joint appeal filed by Alcatel-Lucent, Ericsson, and Qualcomm of the ExSC's prior decision to re-accredit IEEE

Dear Appeals Participants:

On February 9, 2016, the ANSI Executive Standards Council (ExSC) heard the above appeal. The decision of the ANSI ExSC follows.

Please be advised that **this transmission via e-mail constitutes your official notification of the decision of the ExSC.**

Parties to the appeal who believe that they have been or will be adversely affected by the results of the subject hearing are hereby notified of their right of further appeal to the ANSI Appeals Board.

Should you choose to appeal this decision to the ANSI Appeals Board, written notice of appeal and all appeals statements and supporting documentation must be filed with the Secretary of the ANSI Appeals Board (the office of the undersigned) by **March 17, 2016**. The appeal shall be accompanied by a check in the amount of \$1,200.00 as a filing fee. If you require an extension for the filing of appeals materials, you must contact the Secretary of the ANSI Appeals Board on or before **March 17, 2016**, or you will forfeit your right to

further appeal. The appeals statement must specify the decision from which the appeal is taken, the ANSI body that made the decision, a short statement of the matter in controversy and the reason(s) why the Appellant believes the decision is in error. The appeals statement must also list all other parties that appeared before the ANSI body with respect to the matter being appealed. A copy of the *ANSI Appeals Board Operating Procedures* is attached to the E-mail that transmitted this decision.

Thank you for your attention to this matter. If you have any questions, or if I may be of assistance to you, please contact me at (212) 642-4914 or send an e-mail to [acaldas@ansi.org](mailto:acaldas@ansi.org).

Sincerely,  
Anne

Anne Caldas  
Secretary  
ANSI Executive Standards Council

cc: P. Griffin, ANSI VP & General Counsel  
L. Hallenbeck, ANSI VP Accreditation Services  
ANSI Executive Standards Council



## **ANSI EXECUTIVE STANDARDS COUNCIL SUMMARY DECISION**

In response to the joint appeal filed by Alcatel-Lucent, Ericsson, and Qualcomm with the ANSI Executive Standards Council (ExSC) of the re-accreditation of IEEE, the ANSI ExSC denies the appeal and affirms its decision to re-accredit IEEE under its revised procedures, including its revised Patent Policy.

---

<b>Appellants:</b>	<b>Alcatel-Lucent, Ericsson, and Qualcomm</b>
<b>Represented by:</b>	Douglas Cawley, McKool Smith Daniel Hermele, Qualcomm Dina Kallay, Ericsson

<b>Respondent:</b>	<b>IEEE</b>
<b>Represented by:</b>	Michael Lindsay, Dorsey & Whitney Dave Ringle, IEEE Jonathan Wiggins, IEEE

---

**Hearing Date:** February 9, 2016

**Hearing Location:** ANSI, New York

### **ANSI Executive Standards Council Panel**

William Berger	Claire Ramspeck
Neil Bogatz, Panel Chair	Jen Rodgers
Scott Colburn	Dan Ryan
Chris Dubay	Peter Shebell
Jessica Evans	Sandra Stuart
Joe Lewelling	Paula Watkins
Greg Orloff	

### **Observers**

Appellant - Observers in person:  
Barry Freedman, Alcatel Lucent  
James Harlan, InterDigital  
Lindsay Martin Leavitt, McKool Smith  
Michael (Mike) Marion, Philips

Antonio Parenti, EU Delegation to the UN  
Richard Taffet, Morgan, Lewis & Bockius

Respondent – Observers in person:  
Konstantinos Karachalios, IEEE

Appellant - Observers on the phone:  
Monica Barone, Qualcomm  
Dan Bart, Valley View Corporation  
Monica Magnusson, Ericsson  
Stefanie Mielert, Fraunhofer  
Elisabeth Opie, counsel for Fraunhofer  
George Willingmyre, GTW Associates  
Sybille Zitko, EU permanent delegation  
Bastien Beley, Government of France

Respondent – Observers on phone:  
Eileen Lach, IEEE  
Karen Kenney, IEEE  
Yvette Ho Sang, IEEE

## **Background**

IEEE is accredited by the ANSI Executive Standards Council (ExSC)<sup>1</sup> as a developer of American National Standards (ANSs) and has been an ANSI accredited standards developer (ASD) since 1982. Accreditation by ANSI means that an ASD's written procedures used to develop proposed ANSs are in compliance with the *ANSI Essential Requirements: Due process requirements for American National Standards* (Essential Requirements).<sup>2</sup> In 2015, IEEE submitted revisions to its accredited procedures for review by the ExSC and re-accreditation. These revisions included changes to IEEE's Patent Policy, the subject of this appeal.

IEEE's revised Patent Policy was announced for public comment in the April 17, 2015, issue of *Standards Action*. Public comments were received and IEEE provided all commenters written responses in accordance with ANSI's procedures. On June 29, 2015, members of the ANSI Intellectual Property Rights Policy Committee (IPRPC) were asked to vote on IPRPC Letter Ballot 539 (IPRPC Letter Ballot), which posed the question: "[d]o you believe the IEEE Patent Policy is in compliance with the ANSI Patent Policy" and allowed them to also provide explanatory comments. The results of the IPRPC Letter Ballot were: Yes: 15; No:

---

<sup>1</sup> The ANSI Executive Standards Council (ExSC) is the ANSI Program Oversight Committee charged with overseeing the accreditation of standards developers in accordance with procedures approved by the ANSI National Policy Committee (NPC). ANSI Constitution and By-Laws, Section 7.10. [http://publicaa.ansi.org/sites/apdl/Documents/About%20ANSI/Governance/ANSI\\_Constitution\\_and\\_ByLaws\\_2015.pdf](http://publicaa.ansi.org/sites/apdl/Documents/About%20ANSI/Governance/ANSI_Constitution_and_ByLaws_2015.pdf).

<sup>2</sup> *ANSI Essential Requirements: Due process requirements for American National Standards*: [www.ansi.org/essentialrequirements](http://www.ansi.org/essentialrequirements)

10; Abstain: 11; and Vote not cast: 1. Many IPRPC members provided ANSI with additional comments.

The ExSC was provided for consideration of the IEEE Patent Policy revisions: (i) all public comments resulting from the *Standards Action* publication and IEEE's responses to them; (ii) the results of the IPRPC Letter Ballot and all comments received from IPRPC members; (iii) a Department of Justice Business Review Letter, dated February 2, 2015 (DOJ BRL) (including the IEEE's earlier communication to the DOJ requesting the DOJ BRL and the DOJ's press release on the subject)<sup>3</sup>; and (iv) IEEE-SA Standards Board Bylaws and IEEE-SA Standards Board Operations Manual ("IEEE's Revised Procedures").<sup>4</sup> In Executive Session on September 17, 2015, the ExSC approved the re-accreditation of IEEE, including its revised Patent Policy.<sup>5</sup>

Representatives of Alcatel-Lucent, Ericsson, and Qualcomm (Appellants) filed a joint appeal of the ExSC's decision to re-accredit IEEE on October 19, 2015. In accordance with clause 17 *ExSC hearing of appeals* a hearing was held on February 9, 2016. For the reasons set forth below the ExSC Panel denies the appeal and affirms its earlier decision to re-accredit IEEE under its revised procedures, including its revised Patent Policy.

## **Analysis**

Appellants maintain that ANSI's re-accreditation of IEEE was improper because: (1) IEEE failed to follow the due process procedures set forth in the *Essential Requirements* and other documents external to ANSI in the development of the IEEE Patent Policy; and (2) the IEEE Patent Policy, for a number of reasons, is not itself in compliance with the *Essential Requirements*. As detailed below in Part I of this decision, we do not believe the *Essential Requirements* or its due process principles apply to the development of an ASD's Patent Policy. As detailed below in Part II of this decision, we find nothing in the IEEE Patent Policy itself that violates the *Essential Requirements*.<sup>6</sup>

---

<sup>3</sup> See DOJ BRL, <http://www.justice.gov/archive/atr/public/busreview/311470.htm>. See DOJ Press Release, <http://www.justice.gov/opa/pr/departments-justice-will-not-challenge-standards-setting-organizations-proposal-update-patent> (February 25, 2016).

<sup>4</sup> IEEE's Revised Procedures, <http://standards.ieee.org/develop/policies/bylaws/index.html> (February 25, 2016)

<sup>5</sup> The *Conflict-of-interest* rules of the *Operating Procedures of the ANSI Executive Standards Council* (see Section 12), were implemented in connection with the ExSC's initial consideration of IEEE's re-accreditation as well as with this appeal. As a result, certain members of the ExSC were recused. Some others were unavailable to participate. The ExSC panel members identified above that heard this appeal will be referred to throughout this decision as "ExSC Panel."

<sup>6</sup> This decision summarizes the key oral and written arguments presented to the ExSC Panel. While this decision may not reference every argument or point made in connection with the appeal, the ExSC Panel had full access to and considered the complete record.

I. The Development of IEEE’s Patent Policy is Not Subject to the *Essential Requirements*

A. The Plain Text of the *Essential Requirements* Makes Clear that the Document Applies to Standards Development

Appellants argue that the process employed by IEEE to develop the revisions to its Patent Policy did not reflect a consensus of all interested stakeholders but, rather, impermissibly reflected only the specific private commercial interests of stakeholders affiliated with certain members of the IEEE Patent Committee (PatCom). (Written Statement in Support of Appeal – ANSI Reaccreditation of IEEE-SA In Light of Revisions to IEEE-SA Patent Policy (hereinafter, “Appellants’ Brief”) at page 3). Appellants maintain that PatCom improperly developed and submitted the Bylaw change to the IEEE Standards Board (SASB) under procedures that violated the *Essential Requirements* and IEEE due process requirements, and that IEEE improperly dismissed Appellants’ appeal which sought to challenge these events. According to Appellants, IEEE violated ANSI’s due process requirements regarding openness, lack of dominance, balance, notification, consideration of views and objections, and consensus vote as set forth in Sections 1.0-1.9 of the *Essential Requirements* by developing the IEEE Patent Policy behind “closed” doors and then dismissing Appellants’ appeal challenging IEEE’s conduct.

We do not find this argument persuasive as it rests on the false premise that the *Essential Requirements* apply to the development of an ASD’s procedures. They do not. Instead, the *Essential Requirements* apply to the approval of standards (i.e., ANSs). As stated clearly in Section 1 of the *Essential Requirements*, the *Essential Requirements* apply to “activities related to the development of consensus for approval, revision, reaffirmation, and withdrawal of American National Standards (ANS)” (Section 1, emphasis added). Section 1.9 provides that “written procedures shall govern the methods used for standards development...” (Section 1.9, emphasis added). Section 1 thus makes clear that the *Essential Requirements* relate to standards development and not, as Appellants would have it, to the process by which an ASD’s written procedures themselves are developed.

Section 2, which discusses the “benchmarks” of the *Essential Requirements*, also makes this clear. The benchmarks of the *Essential Requirements* include: “[t]imely and adequate notice of any action to create, revise, reaffirm, or withdraw a standard” (Section 2.1, emphasis added), balance in the consensus body dealing with the “standards” (Section 2.3, emphasis added), and an appeals mechanism for use by adversely affected persons “with regard to the development of a proposed American National Standard or the revision, reaffirmation, or withdrawal of an existing American National Standard” (Section 2.8.1, emphasis added). This language shows that what is being “benchmarked” is not how the procedures themselves were written but whether the procedures ensure that due process principles, such as openness, are accorded to the process by which proposed ANSs are approved.

Section 4.1, entitled “Accreditation of American National Standards Developers,” states that “[t]o be accredited by ANSI, the developer’s procedures and practices for standards development shall meet the criteria for accreditation as set forth below.” Section 4.1.1 – which lists the “Criteria for accreditation” – states that “the operating procedures used for the development of evidence of consensus for approval, revision, reaffirmation, or withdrawal of standards as [ANSs] shall satisfy the essential requirements contained herein” (Section 4.1, emphasis added). Here too, the *Essential Requirements* make clear that they govern standards development and not the internal processes of an ASD by which their written procedures for standards development are drafted.<sup>7</sup>

Finally, the ANSI Patent Policy itself, which is developed and maintained by the IPRPC (subject to approval by the ExSC and the National Policy Committee)<sup>8</sup>, contains no requirement that ASDs develop compliant patent-policy-related procedures through an open, consensus-based process. In fact, it gives ASDs a choice to either include the “text” of the ANSI Patent Policy itself, “along with any additional information” or submit to ANSI “a written statement of full compliance” (Essential Requirements, Section 3.0). It is silent about how the “text,” the “additional information” or the “statement of full compliance” is written or by whom.

In short, applying the *Essential Requirements* to the development of patent policies finds no support in the plain language of the *Essential Requirements*.

**B. The Other Documents Cited by Appellants Do Not Require a Different Interpretation of the *Essential Requirements***

Appellants also cite to a number of external documents and court cases, including the World Trade Organization (WTO) Technical Barriers to Trade (TBT) Code of Good Practice (WTO Agreement) and the Standards Development Organization Advancement Act of 2004 (SDOAA), to argue that the due process principles of openness, transparency, and the like should govern how an ASD develops its ANSI-accredited procedures. Appellants suggest that the ExSC should read the *Essential Requirements* through the prism of these other documents – which Appellants maintain contain language that supports their argument – so as to ensure consistency between the *Essential Requirements* and the legal requirements or policy objectives found in these other documents (Appellants’ Brief at pages 9-10). We find Appellants’ arguments unpersuasive.

---

<sup>7</sup> Appellants nevertheless maintain that because patent policies, like the IEEE Patent Policy, “directly impact” the development and implementation of standards, the ExSC Panel should give the *Essential Requirements* a longer reach in this case. Appellants’ Brief, page 3. This approach, however, would constitute a clear departure from the ExSC’s historical interpretation of the applicability of the *Essential Requirements*.

<sup>8</sup> The ANSI Constitution and By-Laws charges the IPRPC with “developing Institute positions on issues relating to the incorporation of essential patents or other proprietary intellectual property in national, regional or international standards.” ANSI Constitution and By-Laws, Section 7.05.

It must be first understood that ANSI's Constitution and By-Laws limits the ExSC's jurisdiction to the application of the *Essential Requirements*:

Pursuant to procedures and policies approved by the National Policy Committee, the [ExSC] shall be responsible for overseeing the accreditation of standards developers and U.S. [Technical Advisory Groups] TAGs to [the International Organization for Standardization] ISO and for other duties that may be delegated to it by the National Policy committee, the Board of Directors, or the Executive Committee.

ANSI Constitution and By-Laws, Section 7.10. Since the various external documents and court cases presented by Appellants were not "approved by the National Policy Committee" nor otherwise delegated to the ExSC, they are not binding on the ExSC and the ExSC is not required to apply them in making its accreditation or re-accreditation decisions.<sup>9</sup>

Nevertheless, we do take note of Appellants' arguments and find nothing that persuades us that a plain reading of the excerpted materials presented to the ExSC Panel is inconsistent with the *Essential Requirements*. For example, the core WTO document that Appellants argue applies to policy development is entitled "Code of Good Practice for the Preparation, Adoption and Application of Standards" (emphasis added). Also, the SDOAA's definition of "standards development activity" plainly does not state as Appellants maintain that such activity includes the development of Intellectual Property policies. (Appellants' Brief at page 10).

In sum, the ExSC Panel is not bound by the various documents presented by Appellants and we find Appellants' arguments relating to these documents unpersuasive in any event.

## II. IEEE's Patent Policy Meets the Requirements of ANSI's *Essential Requirements*

Appellants offer a number of arguments to show why the IEEE Patent Policy violates Section 3.1 of the *Essential Requirements*, ANSI patent policy – Inclusion of Patents in American National Standards (ANSI Patent Policy). While there are variations among these arguments, each rests at least in part on the assumption that any difference between the IEEE Patent Policy and ANSI's Patent Policy itself signals a lack of compliance. This is not so. Section 3 of the *Essential Requirements* recognizes that patent policies may depart from the specific text in 3.1 ANSI Patent Policy. It notes that an ASD may "choose" to include the text of the ANSI Patent Policy in its accredited procedures along with any additional information as required or submit to ANSI a written statement of full compliance with it in addition to policy statements that satisfy its requirements (Section 3.1, emphasis added).

---

<sup>9</sup> As noted, under the ANSI Constitution and By-Laws, the IPRPC also has an important role to play in ensuring that the ANSI Patent Policy remains responsive to legal and policy considerations both nationally and internationally. Thus, even though the ExSC remains responsible for all accreditation and re-accreditation decisions, it routinely seeks guidance from the IPRPC on patent-policy-related issues, as it did in this case. The IPRPC, through its Letter Ballot 539, determined that the IEEE Patent Policy complies with ANSI's Patent Policy.



Indeed, the *Essential Requirements* in general and the ANSI Patent Policy in particular establish the minimum required content for procedures developed by ASDs and ANSI encourages ASDs to customize their accredited procedures in a manner that is suited to their sectors. In the *Motorola v. VITA* ANSI ExSC Appeals decision dated October 1, 2007, for example, the ExSC noted:

ANSI's no "one-size-fits-all" policy is fully supported by the application of the *Essential Requirements* in a manner, such as in the case of the VITA Patent Policy, that encourages new ways to meet ANSI's objectives ... in ways that are suited to a particular industry or developer

Id. at 9. As long as these customized policies align with the requirements contained in ANSI's Patent Policy, they will be deemed to be in compliance.

The additional, specific arguments made by Appellants concerning why the IEEE Patent Policy falls short of ANSI's *Essential Requirements* are also unavailing. The IPRPC addressed these same issues and determined that the IEEE Patent Policy is in compliance with the ANSI Patent Policy (IPRPC Letter Ballot). Moreover, the DOJ reviewed these same arguments and found each unavailing (DOJ BRL). For the reasons set forth below, we agree with the IPRPC and the DOJ.

#### 1. Compliant Implementation - Whole vs. Portion

Appellants first maintain that there exists a "fundamental and irreconcilable difference" between the IEEE Patent Policy and Section 3.1.1 of the *Essential Requirements* because Section 3.1.1 requires that a license assurance be made available for "applicants desiring to utilize the license for the purpose of implementing the standard," whereas the IEEE-SA Patent Policy requires an essential patent claim holder to make licenses available for products (including components or sub-assemblies) that implement merely a "portion" of a complete standard, however small that portion may be (Appellants' Brief at page 13).

The ExSC Panel finds this argument unpersuasive. ANSI's Patent Policy states broadly that the Letter of Assurance (LOA) "be made available to applicants desiring to utilize the license for the purpose of implementing the standard" (Section 3.1.1). That language is broad enough to include any applicant desiring a license for any conforming implementation of the standard. The IEEE Patent Policy requires the patent holder to provide a "license for Essential Patent Claims... to make ... [or] sell ... any Compliant Implementation that practices the Essential patent Claims for use in conforming with the IEEE Standard" (IEEE's Revised Procedures, Section 6.2, emphasis added). This language – which seems intended to allow broad access to contributions that are required to implement standards while permitting the owner of the contribution a reasonable royalty – is not inconsistent with the ANSI Patent Policy.

## 2. Reasonable Rates

Appellants argue that IEEE's inclusion in its Patent Policy of a definition of "Reasonable Rate" under which one mandatory factor ("shall mean appropriate compensation...excluding the value, if any, resulting from the inclusion of the [patent claim's] technology in the IEEE standard") and three recommended factors ("should include" x, y, and z) impermissibly restricts royalties a patent holder can obtain. (emphasis added) Appellants say that these restrictions violate the *Guidelines for Implementation of the ANSI Patent Policy* (ANSI Patent Policy Guidelines)<sup>10</sup> that state that "license terms and conditions...should be determined only by the prospective parties to each license" (Appellants' Brief at page 14).

The ExSC Panel finds this argument unpersuasive. First, the ANSI Patent Policy Guidelines are merely suggestions and are not binding on ASDs. (ANSI Patent Policy Guidelines at page 3, "adherence is not essential".) Second, even if the ANSI Patent Policy Guidelines were binding on ASDs, they do not preclude an ASD like IEEE from providing reasonable "factors" that are required or recommended to be utilized in determining a "Reasonable Rate." Third, the "should" language when read in context of the full sentence is self-evidently permissive: "In addition, determination of such Reasonable Rates should include, but need not be limited to, the consideration of..." Thus, all that is suggested is that factors be "considered." Finally, IEEE's Patent Policy FAQs explicitly state that "[w]hile the IEEE-SA Patent Policy recommends consideration for use in determining a Reasonable Rate, these considerations are not mandatory."<sup>11</sup> Appeal of Certain Parties from ANSI Reaccreditation of IEEE, IEEE Response to Statement of Appeal (hereinafter, "IEEE's Response") at page 2 (emphasis added).

The DOJ reviewed this language, stating that the IEEE Patent Policy "mandates consideration of one factor in determining a Reasonable Rate and recommends consideration of three other factors" (emphasis added). The DOJ concluded that the IEEE Patent Policy "does not mandate any specific royalty calculation methodology or specific royalty rates." (DOJ BRL at pages 11-12, emphasis added). Finally, the IEEE itself confirmed that it does not engage in the negotiation of any commercial terms between licensor and licensee and its Patent Policy therefore is in keeping with the ANSI Patent Policy Guidelines.

## 3. Prohibitive Orders

Appellants next argue that there exists a fundamental and irreconcilable difference between the IEEE Patent Policy and the *Essential Requirements* in that the former now constrains the ability of a patent holder to seek and enforce injunctions or exclusion orders while the latter does not include any such limitations on patent holder rights.

---

<sup>10</sup> Guidelines for Implementation of the ANSI Patent Policy (ANSI Patent Policy Guidelines) <http://publicsp.ansi.org/sites/apdl/Documents/Standards%20Activities/American%20National%20Standards/Procedures,%20Guides,%20and%20Forms/ANSI%20Patent%20Policy%20Guidelines%202016.pdf>

<sup>11</sup> Understanding Patent Issues During IEEE Standards Development: <http://standards.ieee.org/faqs/patents.pdf> (February 25, 2016)

The ExSC Panel finds this argument unconvincing as the ANSI Patent Policy does not define any particular formula to balance patent holders' and patent implementers' rights and there is nothing in the IEEE Patent Policy that suggests the balance struck in this case is unreasonable. Indeed, the DOJ reviewed this language and noted that it is unlikely to cause competitive harm (DOJ BRL at page 11). Appellants acknowledge there is no language in the ANSI Patent Policy that addresses restrictions relating to injunctions or exclusion orders and we find nothing in the Appellants' arguments that persuades us such language is prohibited by the *Essential Requirements*.

#### 4. Exclusion of Technology

Appellants next argue that there exists a "fundamental and irreconcilable" difference between the IEEE Patent Policy and the ANSI Patent Policy in that ANSI's Patent Policy confirms that "there is no objection in principle to drafting an American National Standard in terms that include the use of an essential patent claim," whereas under IEEE's Patent Policy -- as indicated in its implementation by IEEE and adoption of FAQ 13A of *IEEE, Understanding Patent Issues During IEEE Standards Development* -- if a patent holder exercises its option not to file a letter of assurance or to file a letter electing option (d) under the revised IEEE-SA patent policy, it is at risk of its technology being excluded from the draft IEEE standard. This "Hobson's choice," according to Appellants, puts a patent holder at risk that its technology will be excluded from IEEE standards, not on the technical merits of the technology and notwithstanding an assurance to license on RAND terms may be available, but merely because the IEEE administratively mandates acceptance of the IEEE Patent Policy's prescriptive requirements (Appellants' Brief at pages 14-15).

The ExSC Panel finds this argument unpersuasive. First, there is nothing in the language of the ANSI Patent Policy or the other provisions of the *Essential Requirements* that requires an ASD to include specific patented technology or even to base its technology selection solely on "technical considerations" regardless of the relative cost (or uncertainty of cost) of a technology. Second, there is nothing in the IEEE Patent Policy that prohibits a patent holder from participating in IEEE standards development activities whether or not it submits a LOA and without regard to the licensing position that it discloses in its LOA. Accordingly, the argument relating to exclusion of technology is rejected.

#### 5. Other Law

Finally, Appellants argue that the IEEE's revised patent policy is more stringent than the law in the U.S. and other countries and thus, unlike a policy that simply requires that patents be licensed on RAND terms, imposes restrictions that are contrary to law (Appellants' Brief at pages 11-12). However, the DOJ itself found that the provisions contained in the IEEE Patent Policy are in fact consistent with patent law and practice. *See, e.g.*, DOJ BRL at page 8 (observing that IEEE Patent Policy provisions "are not out of step with the direction of current U.S. law interpreting RAND commitments or the evolution of U.S. patent damages law for complex products that incorporate many patented technologies, whether or not the patents are RAND-encumbered"). Moreover, even if the IEEE Patent

Policy is “more stringent” than the laws in the U.S. and abroad, there is nothing in ANSI’s Patent Policy that forbids that.

### **Conclusion**

In light of the written evidence and oral testimony presented by all parties and based on the analysis set forth earlier in this decision, the ANSI ExSC Panel denies the appeal and affirms its decision to re-accredit IEEE under its revised procedures.