

Effectiveness of Updated Patent Policy Text: More Clarity Needed

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Current Situation

- Unclear what patent policy text applies as to PARs begun after effective date of updated patent policy text
- Some companies take position that text in effect on LoA submission date governs forever

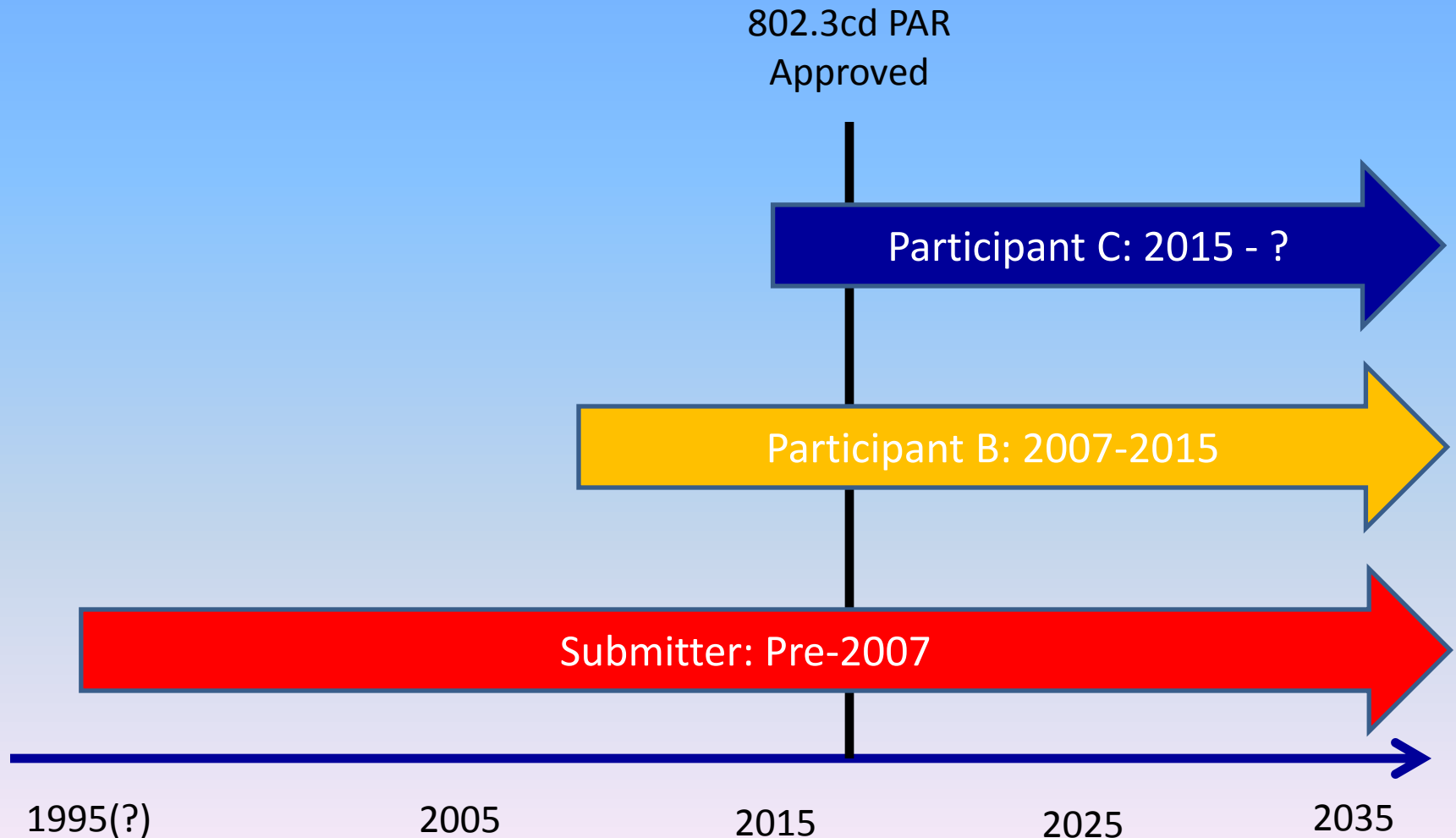
Example

- 2005 LoA committing to license patents essential to 802.3:
 - Submitter makes technical contribution to 802.3cd (PAR approved May 12, 2016)
 - What patent policy text governs LoA?
- Pre-2007:
 - No obligation to conduct reasonable and good faith inquiry before stating that submitter has no essential patents
 - No application of licensing commitment to corporate affiliates
 - No application of licensing commitment to purchasers of essential patent

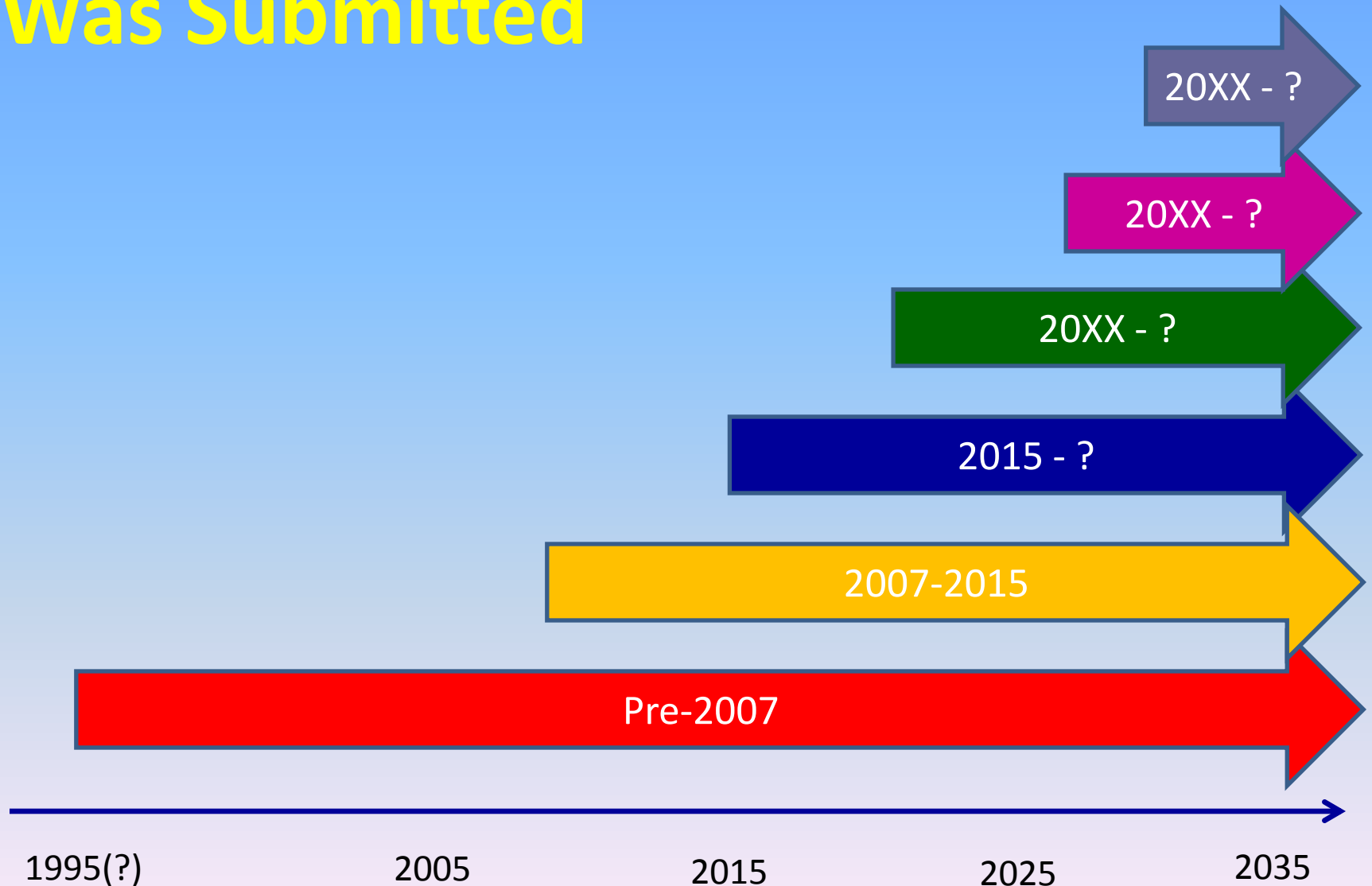
Potential Answers

- Text in effect at time LoA was submitted
- Text in effect on date PAR was approved
- Other choices?

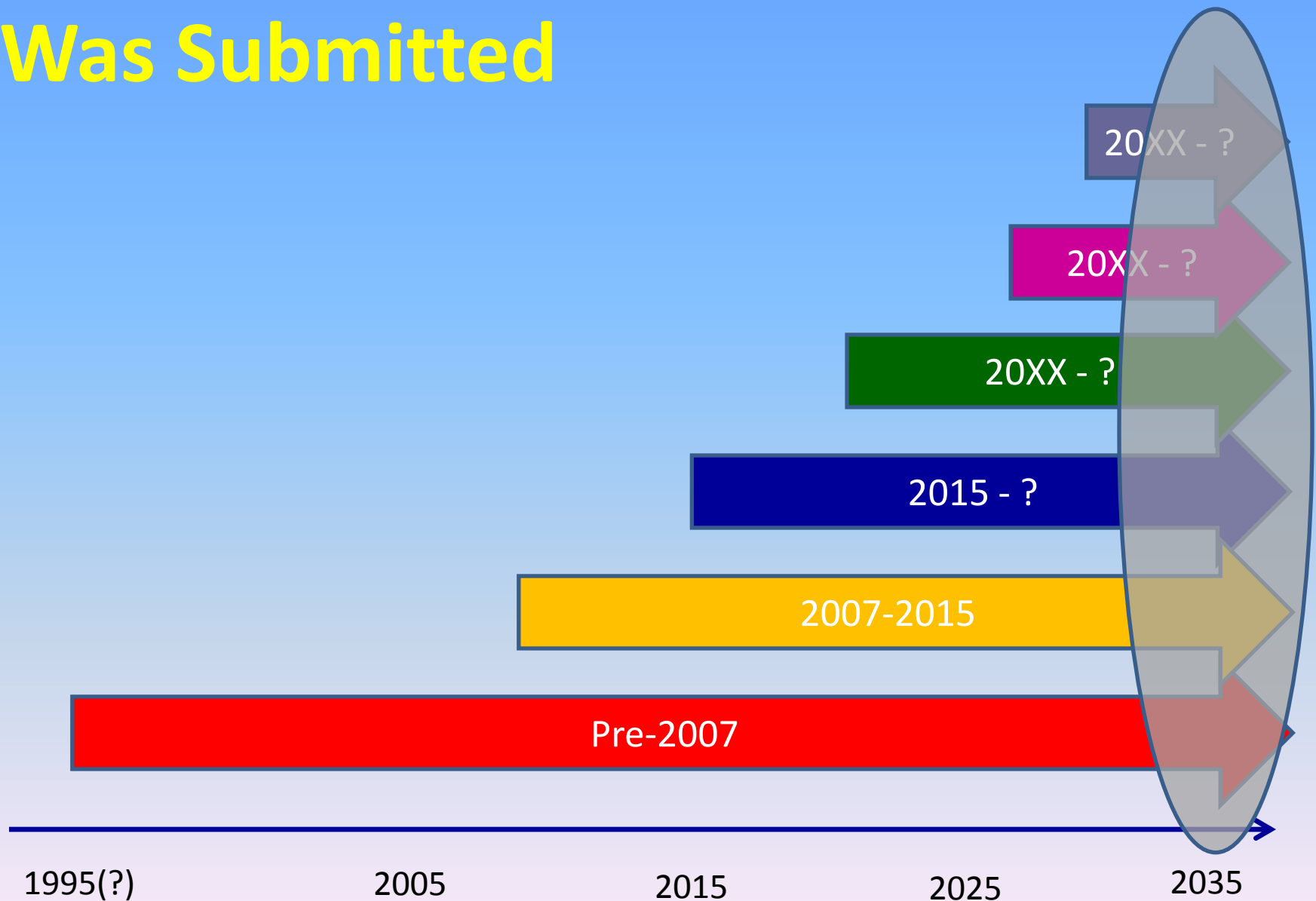
Text in effect on date LoA was submitted



Text in Effect on Date LoA Was Submitted



Text in Effect on Date LoA Was Submitted



Proposal

- Focus on date of PAR approval
 - objective
 - definite
- If that date is after effective date of new policy text, previously submitted LoA is governed by new policy text
- If participant has previously issued LoA that could govern new standards development, then (notwithstanding Ops Man 6.3.4) participant can submit new LoA to cover prospective activity (PARs approved after effective date of updated text)

Objections

Proposal applies updated patent policy text retroactively

- **No:**
 - Updated text only applies to new activities
 - Submitter has opportunity to withdraw LoA it gave previously as to new PAR
- To avoid application to old content in new amendments, limit application to content added to amended or revised standard after PAR approval date

Objections

Proposal rewrites contract between submitter and IEEE-SA

- **No:**
 - Previous LoA did not specify particular patent policy
 - Submitters recognize that patent policy text can change under IEEE-SA governance process
 - Not unfair to apply updated text to current participation, particularly when submitter of LoA is able to withdraw LoA as to post-update PARs

Time to move on

- More than 18 months since effective date of policy updates
- Working groups are asking for clarity on this issue
- Clarity benefits work of SA

Thank you