

Proposal and rationale:

The proposal is to no longer permit LOA submittals that select D.1.d to also select the Blanket LOA option (E.2). This would apply on a forward-moving basis based on the actual implementation date.

The value to the standards development process of a D.1.d LOA that identifies specific Patent Claims is greater than the value of a Blanket D.1.d LOA. While the IEEE-SA patent policy does not require a patent search, it is reasonable to expect the Submitter of a D.1.d LOA to identify specific Patent Claims as requested in E.1 by providing Patent/Application/Docket Number, Description/Title (optional), and Claim (optional).

Proposed implementation date:

01 January 2019

[Please see below for proposed updates to the LOA Form, the SASB OpMan, and the FAQs.]

LOA Form:

D.1.d: The Submitter is unwilling or unable to grant licenses according to the provisions of either a or b above or to agree that it will not enforce its Essential Patent Claims as described in c above. This statement applies to the Patent Claims identified in E.1 below.

IEEE-SA Standards Board Operations Manual:**6.3.4 Multiple Letters of Assurance and Blanket Letters of Assurance**

A Submitter may provide the IEEE with a Blanket Letter of Assurance only when the LOA indicates licensing assurance for a specific [Proposed] IEEE Standard that covers all Essential Patent Claims the Submitter may currently or in the future have the ability to license. A Submitter may submit separate Letters of Assurance providing different licensing positions for different potential Essential Patent Claims.

Over time, a Submitter may also provide multiple assurances for a given Patent Claim by submitting multiple Letters of Assurance for such claim. For Essential Patent Claims, each such Letter of Assurance shall be binding on the Submitter. Each potential licensee may choose to invoke the terms of any applicable Letter of Assurance accepted by the IEEE, with one exception: If a Submitter has signed and submitted a Letter of Assurance specifically identifying a Patent Claim before or concurrently with signing and submitting a Blanket Letter of Assurance, the Blanket Letter of Assurance cannot be invoked as to the specified Patent Claim. (The Submitter, however, may submit a separate specific Letter of Assurance offering the Blanket Letter of Assurance terms for the specified Patent Claim.) The intention of this paragraph is to permit the Submitter to offer alternative assurances, and to permit the potential licensee to choose from among the alternative assurances offered.

If, after providing a Blanket Letter of Assurance, the Submitter acquires an Essential Patent Claim or a controlling interest in an entity that owns or controls an Essential Patent Claim, the existing Submitter's Blanket Letter of Assurance shall apply to such acquired Essential Patent Claims unless the acquired entity or the prior holder of the acquired Essential Patent Claim has submitted a Letter of Assurance before the acquisition. Any Blanket Letter of Assurance submitted by the acquired entity or the prior holder of the acquired Essential Patent Claim before the acquisition shall continue to apply to acquired Essential Patent Claims covered by such assurance (but not to the acquirer's Essential Patent Claims). Letters of Assurance covering specified Essential Patent Claims shall continue to apply to specified Essential Patent Claims, whether acquired in the acquisition or held by the acquirer before the acquisition, as provided in this Operations Manual. Nothing in this paragraph shall prevent an acquiring party from asking a seller of an acquired Essential Patent Claim or an acquired entity to submit additional Letters of Assurance before closing of the acquisition.

New FAQ (maybe 28A):

What type of licensing assurance does IEEE request?

As indicated in clause 6.2 of the *IEEE-SA Standards Board Bylaws*, licensing assurance shall be either:

- a) A general disclaimer to the effect that the Submitter without conditions will not enforce any present or future Essential Patent Claims against any person or entity making, having made, using, selling, offering to sell, or importing any Compliant Implementation that practices the Essential Patent Claims for use in conforming with the IEEE Standard; or,
- b) A statement that the Submitter will make available a license for Essential Patent Claims to an unrestricted number of Applicants on a worldwide basis without compensation or under Reasonable Rates, with other reasonable terms and conditions that are demonstrably free of any unfair discrimination to make, have made, use, sell, offer to sell, or import any Compliant Implementation that practices the Essential Patent Claims for use in conforming with the IEEE Standard. An Accepted LOA that contains such a statement signifies that reasonable terms and conditions, including without compensation or under Reasonable Rates, are sufficient compensation for a license to use those Essential Patent Claims and precludes seeking, or seeking to enforce, a Prohibitive Order except as provided in this policy.

New FAQ (maybe 81A):

Is it permissible for an LOA with D.1.d selected to be a Blanket LOA?

No. As of 01 January 2019, a Submitter may provide a Blanket Letter of Assurance to IEEE only when the LOA indicates licensing assurance. (See also question 28A.)