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Howard E. Michel
2015 President and CEO, IEEE
445 Hoes Lane
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January 14, 2015

Dear Mr. Michel:

Broadcom Corporation writes in support of proposed clarifications to the IEEE by-laws regarding the use of standards essential patents (“SEP”) in IEEE standards. As you know, this topic has drawn the keen attention of competition authorities globally because of its ramifications for the sustainability of innovation, competition and consumer welfare. Broadcom has been a leading voice on these matters, understandably so given that we hold over 20,000 United States and foreign patents and applications, and have a strong corporate tradition of innovation. We are also deeply engaged in the standards setting process, actively participating in 37 committees at IEEE, for example, with leadership positions in 12 of them. We welcome this opportunity to share our views as IEEE continues to develop and refine its rules on this important subject.

There is general recognition by both standards setting organizations (“SSOs”) as well as regulators in the U.S., Europe and Asia that RAND abuse is an acute problem, and puts the benefits of the standards setting process at risk. The IEEE’s consideration of the proposed clarifications to its by-laws regarding the use of SEPs is both timely and critical to a well-functioning standards setting process. We strongly believe that, in the absence of the proposed IEEE curbs on RAND abuse, IEEE’s core mission of promoting innovation will be subverted by disruptive patent disputes.

In particular, we welcome the following clarifications to the IEEE by-laws regarding the patent policy:

- Allowing enforcement of a Prohibitive Order for SEPs only under exceptional circumstances, such as, if the implementer fails to comply with the outcome of an adjudication;
- Requiring that SEP patent owners are obligated to grant licenses “to an unrestricted number of applicants”, including component suppliers;
- Clarifying that determination of “Reasonable Rate” should include the consideration of the value that the SEP claim contributes to relevant functionality of the smallest saleable Compliant implementation that practices that claim, and should also be considered in light of the value contributed by all Essential Patent Claims for the same IEEE standard practiced in the Compliant implementation; and
- Mandating that an accepted Letter of Assurance intended for a RAND license to be binding upon any and all assignees/transferees of a SEP.

We encourage members of the IEEE Board to support these proposed clarifications to the IEEE Patent Policy. Please share this letter with other members of the IEEE Board of Directors and do not hesitate to contact us if we can be of any assistance. We appreciate your time and attention to this important matter.

Very truly yours,

Art Chong
Executive Vice President, General Counsel and Secretary