

**IEEE P802.11
Wireless LANs**

Changes in IEEE's Patent Policy rules

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Abstract

At their December 1995 meeting the Standards Board approved Changes 2 and 3 to the IEEE Standards Board Bylaws and the IEEE Standards Operations manual respectively.

IEEE Standards Board Bylaws

Change 2

5. Patents

IEEE standards may include patented technology if there is no equivalent, noninfringing way of achieving the objectives of the standard, if it is justified for technical reasons, and if the patent holder agrees to nondiscriminatory licensing at reasonable rates.

IEEE standards may include the known use of patent's, including patent applications, if there is compelling technical justification in the opinion of the standards-developing committee and provided the IEEE receives assurance from the patent holder that it will license applicants under reasonable terms and conditions for the purpose of implementing the standard. This assurance shall be provided without coercion and prior to approval of the standard (or reaffirmation when a patent becomes known after initial approval of the standard). This assurance shall be a letter that is in the form either

- a) A general disclaimer to the effect that the patentee will not enforce any of its present or future patent(s) whose use would be required to implement the proposed IEEE standard against any person or entity using the patent(s) to comply with the standard or
- b) A license that will be made available to all applicants without compensation or under reasonable rates with terms and conditions that are demonstrably free of any unfair discrimination.

5.1 Disclaimer

The following notice shall appear in all IEEE Standards:

— "IEEE Standards documents may involve the use of patented — technology. Their approval by the Institute of Electrical and — Electronics Engineers, Inc. does not mean that using such — technology for the purpose of conforming to such standards is — authorized by the patent owner. It is the obligation of the user — of such technology to obtain all necessary permissions."

(This section has been moved to the Operations Manual.)

Rationale: These changes have been recommended by PatCom to update the IEEE Standards Board Bylaws according to previous requests of the IEEE Standards Board.

IEEE Standards Operations Manual

Changes 3

6.3 Patents

If an IEEE standards-developing committee chooses to use patented technology in its standard, it is essential that the committee cite the reasons why such technology needs to be incorporated into the standard. In addition, alternative technologies should be identified that achieve the same end, along with the advantages and disadvantages of that alternative technology. This information shall be placed on file in the IEEE Standards Department.

The record should be written in the context of who the proponents are of the patented technology and the interests they may have in the adoption of the particular technology. Further, statements that assess the alternatives to patented technologies shall be structured to indicate

- a) If these alternatives will satisfy the public need, and
- b) If the use of the patented technology will exclude any segment of the relevant industry from meaningful competition

The guidelines listed in the following subclauses will be subject to objective oversight and a set of uniform guidelines of a special Patent Committee that reports to the IEEE Standards Board.

6.3.1 Guidelines

A patented technology may only be used when all of the following requirements can be met and documented:

- The patent does not give undue preferred status to a company or a segment of the industry that would benefit by its incorporation
- The patent represents the best available technology
- The patent is accessible to all in the industry on a nondiscriminatory basis for a reasonable cost
- There are no alternative methods or devices that can be used to meet the requirements of the standard without infringing on the patent
- There has been no coercion of a patent owner to provide that technology
- Adopting such technology is not in itself prohibitively costly or noncompetitive to a substantial part of the industry

The patent policy is set forth in clause 5 of the IEEE Standards Board Bylaws.

Patent holders shall submit letters of assurance to the IEEE Standards Department (to the attention of the Administrator, Intellectual Property) before the time of Standards Board review for approval. The IEEE will provide contact information about the patent holder upon request.

6.3.1 Public Notice

(The following material was originally part of the IEEE Standards Board Bylaws. It has been changed and moved to the IEEE Standards Operations Manual.)

The following notice shall appear in all IEEE Standards:

Note: Attention is called to the possibility that implementation of this standard may require use of subject matter covered by patent rights. By publication of this standard, no position is taken with respect to the existence or validity of any patent rights in connection therewith. The IEEE shall not be responsible for identifying all patents for which a license may be required by an IEEE standard or for conducting inquiries into the legal validity or scope of those patents that are brought to its attention.

In addition, the following notice shall appear when the IEEE receives assurance from a patent holder that a license will be made available to all applicants either without compensation or under reasonable rates, terms, and conditions that are demonstrably free of any unfair discrimination.

The patent holder has, however, filed a statement of assurance that it will grant a license under these rights without compensation or under reasonable rates and nondiscriminatory, reasonable terms and conditions to all applicants desiring to obtain such a license. The IEEE makes no representation as to the reasonableness

of rates and/or terms and conditions of the license agreement offered by the patent holder. Contact information may be obtained from the IEEE Standards Department.

6.3.2 Submittal

Patent holders shall submit to the Patent Committee of the IEEE Standards Board, prior to any significant drafting of the standard, a draft of the license that assures that the technology will be made available at nominal competitive costs to all who seek to use it for compliance with an incorporated IEEE standard.

Through the working group, the sponsor chair shall request that known patent holders submit a statement either that the patent does not apply to the standard or that licenses will be made available without compensation or under reasonable rates, terms, and conditions. This assurance shall be obtained without coercion and submitted the IEEE at the earliest practical time prior to the approval of an IEEE standard. The IEEE encourages early disclosure of patent information that might be relevant to the standard to the working group.

While standards may include the known use of patents if there is technical justification, the working group should not attempt to determine whether or not a patent applies. the working group shall accept the view of the patent holder.

6.3.3 Record of statement

A record of the patent holder's statement shall be placed and retained in the files of the IEEE Standards Department.

6.3.4 Notice

An IEEE standard that may require the use of a patent shall contain a notice in the foreword that includes, but is not restricted to, the following statements:

"The IEEE Standards Board calls attention to the fact that it is claimed that [appropriate portions of the Std] is the subject of (a) patent(s) owned by [name of patentee]. The IEEE takes no position with respect to patent validity. [The name of patentee] has assured IEEE that it is willing to grant a license on this/these patent(s) on reasonable and nondiscriminatory terms to anyone wishing to obtain such a license. The undertakings of [the name of patentee] in this respect are on file with the IEEE Standards Department, and the license details may be obtained from [appropriate department of the patentee, with complete mailing address]."

Rationale: These changes have been recommended by PatCom to update the IEEE Standards Operations Manual according to previous requests of the IEEE Standards Board. Revisions have been made to satisfy the concerns expressed by the Standards Board at its September meeting.