

May 3, 2022

Institute of Electrical and Electronics Engineers  
Sophia A. Muirhead, General Counsel  
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New York, NY 10016-5997  
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**VIA EMAIL**

RE: *Industry and Public Interest Support for Maintaining 2015 IEEE-SA Bylaw Updates*

Dear Ms. Muirhead,

We write regarding the Board of Governor's December 2020 direction to the IEEE-SA's Standards Board to undertake a focused review of the IEEE-SA patent policy, and the associated consultation issued by IEEE-SA to stakeholders that was completed in October 2021. The IEEE-SA's Patent Policy is and remains the model for standard setting organization (SSO) IPR policies, particularly following the 2015 update to the patent policy. The 2015 updates clarified issues that have been the source of time-consuming and expensive disputes at other SSOs. By enacting the updates, IEEE-SA distinguished itself positively. By almost any measure, standardization work at IEEE has thrived in the wake of these updates.<sup>1</sup>

It is critical to the IEEE, to industry, to consumers, and in the larger public interest that the IEEE-SA maintain its Patent Policy in its current form. The IEEE should not permit itself to be pressured into unwelcome and unproductive changes championed only

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<sup>1</sup> IPlytics, *IEEE's Empirical Record of Success and Innovation Following Patent Policy Update* (2018), [https://www.iplytics.com/wp-content/uploads/2018/04/IPlytics\\_Report-on-IEEE-activities\\_2018.pdf](https://www.iplytics.com/wp-content/uploads/2018/04/IPlytics_Report-on-IEEE-activities_2018.pdf).

by a very small but highly vocal sub-set of participants in standards development at IEEE-SA.

Many of our companies previously wrote in support of the IEEE Patent Policy in their February 9, 2021 Joint Stakeholder letter, signed by more than 40 companies. And many of our companies submitted comments in October 2021 in response to the Standard's Board's request for comments on the Patent Policy. We have been strong friends and supporters of the IEEE mission. We have contributed extensively to IEEE standards and the decisions we have made to implement those standards have contributed to their success and IEEE-SA's global reputation.

An objective review of the comments submitted to the Standards Board makes evident that stakeholder support for the IEEE's current Patent Policy is overwhelming, including support from some of the largest patentholders for IEEE standards. There were approximately five times as many organizations that expressed support for the policy than against. The companies that expressed support for the 2015 Patent Policy update constitute a significant representation of mainstream stakeholders, large and small, who power the digital economy and create and deliver innovative products and services in many areas of the economy. The organizations that lent their names and signatures to supporting the IEEE Patent Policy belong to a wide range of sectors, such as Information and Communications Technology (ICT), consumer electronics, manufacturing, smart energy, chip manufacturers, connected health, automotive, software developers, systems integrators, network operators, audio-visual and even the craft beverage industry.

The organizations that support maintaining the current patent policy include prolific contributors to IEEE standards development activities and holders of patented technologies, including patents that are essential to IEEE standards. These organizations find IEEE to be an attractive place to engage in standardization because of the clarity that the IEEE 2015 patent policy update provides. Among the respondents supporting the current policy are some of the largest and most innovative patent holders in the world, all of whom care that IEEE maintain the current *balanced* approach to its Patent Policy

respecting the rights of both standards essential patent claim holders and users of IEEE standards.

On the other hand, the small handful of respondents that have opposed and arguably harassed IEEE since 2015 have only made modest contributions to key IEEE standards such as the 802.11 standards as compared to the contributions of the companies that expressed support for the 2015 update.<sup>2</sup> Putting aside individual submissions and association body submissions on both sides, we count only about *eight* operating companies that filed comments seeking changes to the IEEE Patent Policy, whereas more than *eighty* operating companies signed their name to submissions in support of the Patent Policy. Of those eight opposing companies, only one has historically been a significant contributor in developing IEEE standards.<sup>3</sup>

We understand that the IEEE’s review will encompass the non-mandatory factors in the definition of “Reasonable Rate,” as well as provisions pertaining to Prohibitive Orders (*i.e.*, injunctions and exclusion orders). Companies with strong interest in SEP monetization are suggesting that IEEE return to the period captured in the facts of the *Innovatio* case, in which an entity that acquired patents from a participant in the 802.11 working group and tried to assert those patents – seeking thousands of dollars per Wi-Fi router – against retail stores, coffee shops, hotels, and small businesses. Why would IEEE-SA want to return to a world in which the cost of implementing IEEE-SA standards like 802.11 was uncertain, inevitably discouraging adoption? Preventing abusive licensing practices like those described in the *Innovatio* case is precisely why large, mainstream national organizations such as the National Retail Foundation wrote to IEEE in support of the 2015 updates. To retreat from the 2015 Updates would be to forget these lessons from the very recent past and would only encourage patent assertion entities and the companies that sell patents to them to once again target IEEE users with unfair (in some cases, ridiculous) licensing assertions.

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<sup>2</sup> See, e.g., *IEEE’s Empirical Record of Success and Innovation Following Patent Policy Update (2018)*, at 9-14, available at [https://www.iplytics.com/wp-content/uploads/2018/04/IPlytics\\_Report-on-IEEE-activities\\_2018.pdf](https://www.iplytics.com/wp-content/uploads/2018/04/IPlytics_Report-on-IEEE-activities_2018.pdf).

<sup>3</sup> *Ibid.*, at 14 (identifying top Wi-Fi contributors)

IEEE leadership should also consider the strong opposition recently expressed by mainstream industry to the use of SEP injunctions to coerce unfair settlements. According to the submissions filed in response to the public consultation on the 2021 Draft Policy Statement on Licensing Negotiations and Remedies for SEPs Subject to Voluntary F/RAND Commitments, mainstream stakeholders employing tens of millions of Americans – including many companies that have actively participated in standards development at IEEE-SA – do not support the use of such SEP injunctions. The US Dept. of Justice’s reclassification of the 2020 Supplemental Response to its 2015 Business Review Letter as “advocacy” further reinforces the sound legal basis of the 2015 Patent Policy update. FTC Commissioner Slaughter’s remarks at the October 2021 meeting of the American National Standards Institute’s Intellectual Property Rights Policy Advisory Group noting how the IEEE Patent Policy has “fairly robust safeguards” also points to the balanced approach that the policy follows.

It is important to consider how retreating from the clarity provided by the 2015 Patent Policy update will impact IEEE-SA and its standardization activities. Any dilution of the 2015 Patent Policy will again raise concerns among participating members and implementers of the IEEE standards about their vulnerability to holdup and to lawsuits from SEP aggressors. IEEE should also consider when changes to the Patent Policy will lead to increased litigation around patents essential to IEEE standards. For instance, Wi-Fi SEPs account for only approximately 2% of litigated SEPs, while patents essential to cellular technologies-related standards developed in bodies whose IPR policies do not provide the same level of clarity have accounted for a noteworthy 76% of SEP litigation<sup>4</sup>. This may also cause some contributors to re-think their participation in IEEE-SA standards development and might encourage other SEP holders to refuse to license their SEPs under any new patent policy. Importantly, such a change might also create reputational risks for IEEE, and create confusion both for IEEE and its participants just as IEEE is embarking

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<sup>4</sup> Figure 4 at *SEP Litigation Trends: What Does the Data Say*, Tim Pohlman, IPWatchDog.com, April 28, 2021, available at: <https://www.ipwatchdog.com/2021/04/28/sep-litigation-trends-data-say/id=132727/>

on new standards development in emerging technologies – areas of interest to industry, consumers and governments. This could also stymie the pace of IEEE’s standards development activities. IEEE can easily avoid such a risk by keeping intact its current Patent Policy, which has contributed to the recent successes of IEEE-SA’s standardization efforts.

We appreciate and support the IEEE-SA’s efforts in enacting the 2015 Updates and thank you again for your ongoing support of the IEEE’s mission to “foster technological innovation and excellence for the benefit of humanity.” To that end IEEE should maintain its current Patent Policy.

Sincerely,

**/n software**

**Airfuel Alliance**

**ACT | The App Association**

**Apple Inc.**

**Cisco**

**Computerways Inc.**

**Continental Automotive GmbH**

**Fair Standards Alliance**

**Google**

**High Tech Inventors Alliance (HTIA)**

**Honda Motor Co., Ltd.**

**HP Inc.**

**Intel Corporation**

**Juniper Networks, Inc.**

**Kamstrup**

**Lenovo**

**Nordic Semiconductor**

**Public Interest Patent Law Institute (PIPLI)**

**Public Knowledge**

**Sagemcom Broadband SAS**

**Sequans Communications**

**Sierra Wireless**

**Sky**

**Software and Information Industry Association (SIIA)**

**TEEM**

**Tesla, Inc.**

**u-blox America**

**Vemos**

**Volkswagen Group of America, Inc.**

**cc:**

Konstantinos Karachalios, Managing Director of IEEE-SA

David Ringle, Director, IEEE Standards Association

2022 IEEE-SA Board of Governors