

March 24, 2015

By Email

Mr. David Law
Patent Committee Chair
IEEE-SA Standards Board, Patent Committee
445 Hoes Lane
Piscataway, NJ 08854

Re: Licensing Assurances and IEEE's 2015 Patent Policy

Dear Mr. Law:

I am writing in response to the IEEE Board of Directors' decision on February 8, 2015 to approve the revisions to Section 6 of the IEEE-SA Standards Board Bylaws, as set forth in "Draft 39" (hereinafter, the "2015 Patent Policy"), indicating an effective date of March 15, 2015. The goal of this letter is to highlight aspects of IEEE's and the Department of Justice's position on this matter, and provide an understanding of the course of action InterDigital will follow going forward.

As confirmed in IEEE's request for a favorable Business Review Letter from the Department of Justice ("BRL Request"), the 2015 Patent Policy "does not retroactively amend previously Accepted Letters of Assurance."¹ Additionally, IEEE acknowledges in its published FAQs that the 2015 Patent Policy "will apply to any LOAs (for any project or standard) submitted on or after the effective date."² Moreover, the 2015 Patent Policy includes significant substantive changes to the rules and obligations associated with the submission of a letter of assurance ("LOA") to IEEE and prior versions of IEEE's policy have never included such rules and obligations. Accordingly, these changes are not mere "clarifications" to IEEE's prior policies and any attempt to label the 2015 Patent Policy as such would undermine a purported justification for IEEE's claim, and a basis for the Department of Justice's conclusion, that the changes are not inconsistent with U.S. antitrust laws.

In its BRL Request, IEEE asserted that "the claim of 'buyer-side price-fixing' is simply wrong" because, *inter alia*, the submission of a LOA "is entirely voluntary" and that patent owners who do not wish

¹ IEEE Request for Business Review Letter (September 30, 2014) at 19.


² IEEE-SA, *Understanding Patent Issues During IEEE Standards Development* (2015), at 20, available at <http://standards.ieee.org/faqs/patents.pdf>.

to submit a LOA under the proposed policy “are free not to do so.”³ Similarly, the Department of Justice explicitly concluded in its Business Review Letter that the 2015 Patent Policy is unlikely to harm competition “given that, *inter alia*, . . . patent holders can avoid the updated IEEE RAND Commitment and still participate in standards-setting activities at IEEE-SA (or can depart to other SSOs).”⁴ Calling the 2015 Patent Policy a “clarification” of prior IEEE policies runs directly counter to these assertions. It would involuntarily render previously accepted LOAs as submissions under the 2015 Patent Policy. And, contrary to the Department of Justice’s basis for issuing the Business Review Letter, patent holders could not avoid the new commitments and obligations contained in the 2015 Patent Policy.

In view of the foregoing, InterDigital will continue to honor each of the commitments it made under the relevant IEEE patent policies in effect prior to the effective date of the 2015 Patent Policy, including its commitment to make licenses available on reasonable and non-discriminatory terms for patent claims deemed essential to an IEEE standard. However, for the avoidance of doubt, InterDigital’s prior commitments do not reflect or incorporate any of the rights, obligations, or limitations of the the 2015 Patent Policy.

Going forward, InterDigital will – in the spirit of IEEE’s motto “Advancing Technology for Humanity” – continue to work with IEEE to advance key technologies for the benefit of all industry participants, most notably end consumers, who have benefited enormously from the growth and advancement of key technologies. However, InterDigital will not make licensing assurances under the new policy; and will instead make alternative licensing assurances, on a case-by-case basis, that are consistent with the goals of driving technology adoption while ensuring fair compensation for research success.

Sincerely,



Lawrence F. Shay
Executive Vice President, Intellectual Property

cc: Mr. David Ringle, IEEE-SA Standards Board, PatCom Administrator

³ *Id.*

⁴ Department of Justice Business Review Letter (February 2, 2015) at 8.