

Analysis of the IPR policy of the NFC Forum

This analysis is a supplement to *A study of IPR policies and practices of a representative group of Standards Developing Organizations worldwide*, prepared by Rudi Bekkers and Andy Updegrave. See <http://home.tm.tue.nl/rbekkers/nas>

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This analysis has the following parts:

Part A: Adoption and general aspects of the IPR policy

Part B: Formal aspects and principles of the IPR policy

Part C: Patent disclosure

-- general

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-- relating to standard

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Part D: Licensing commitments

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This analysis has the format of a structured survey, with numbered questions. Text in **green** indicates our own conclusions and observations. All the SDO's we analyzed were given the opportunity to review this document and comment on it. Text in **orange** are comments, complimentary explanations and corrections received by representatives of the SDO.

Note: this analysis has been performed to the best of our knowledge, using the various public documents concerning the IPR policy of your SDO. See also the disclaimers in the main report.

Note: in this analysis, the work 'policy' generally refers to the whole set of binding rules, not necessarily only to the document which is titled 'policy'. An exception is where we make specific references to documents.

Part A: Adoption and general aspects of the IPR policy

A1. What is the most version of or a reference (internet) to the formal, current IP policy of your SDO? What are relevant to additional documents such as guidelines, explanations, forms, and so on?

The latest version of the policy available at the web site is:

NFC FORUM, INC. INTELLECTUAL PROPERTY RIGHTS POLICY, As approved on November 9, 2004, is the most recent version of the policy. http://www.nfc-forum.org/join/join_thanks/NFC_Forum_IPR_POLICY.pdf. This document includes several licensing forms.

The FAQ on the website has some clarifications about the policy: <http://www.nfc-forum.org/resources/faqs#a>

Other relevant documents are:

NFC FORUM, INC. Rules of Procedure, As approved on June 1, 2012, http://www.nfc-forum.org/join/join_thanks/NFC_Forum_Rules_of_Procedure.pdf

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NFC FORUM, INC. BY-LAWS, As approved on November 23, 2011, http://www.nfc-forum.org/join/join_thanks/NFC_Forum_By-laws.pdf

A2. What changes to the policy have been made over time, and have there been additional clarifications or additions? What prompted these changes?

I have no information on this.

A3. What are current discussions going on in this SDO concerning the IP policy? What is being discussed, and what prompted these discussions?

I have no information on this.

Part B: Formal aspects and principles of the IPR policy

B1. What is the legal foundation of the IPR policy (statutes, undertaking, contract, etc.)? What is the legal status of those that are involved (e.g. member, participant)?

The NFC Forum (also called: 'consortium') has a set of binding by-laws, and these stipulate that members are bound to the IPR Policy.

Sources and additional details:

All rules relating to intellectual property of any type [...] shall be subject to such Consortium's Intellectual Property Rights Policy (the "IPR Policy") and related rules of procedure (the "Rules of Procedure") as may from time to time be adopted, amended or modified by an affirmative Strong Super Majority Vote of the Board of Directors ...] (By-laws, at §2.8)

All Members and all Representatives are subject to this IPR Policy and the Rules of Procedure. (IPR Policy, at §1.2)

B2. What is the nature of SDO membership (companies, individuals)? How does this relate to the rules on disclosure and/or commitments?

Members are normally companies. Individual people ('representatives') are assumed to talk on behalf of their company. There are also a number of non-profit members, of various nature.

B3. Are there specific rules on firms that are subsidiaries? Do obligations that follow from the IPR policy also apply to parent companies?

All the relevant obligations in the policy also bind parent companies and subsidiaries.

An NFC Forum representative further clarified: "The policy also binds all parent and sister

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companies of a member as well as a member's subsidiaries. This is accomplished by requiring any ultimate parent of a member to countersign its membership application. However, in order to avoid undue burdens for members that are part of complex corporate structures, an applicant can apply for an exception, provided that it proposes an acceptable mechanism for "fire walling" the knowledge of the member from its affiliates. "

Sources and additional details:

[Definition of] Related Party: Any entity which controls or is controlled by a Member or which, together with a Member, is under the common control of a third party, in each case where such control results from ownership, either directly or indirectly, of more than 50% of the voting rights in the entity in question. (IPR Policy, at §2)

All the relevant obligations in the policy address the member including its 'related parties'.

Part C: Patent disclosure

Patent disclosure, general

C1. What is the nature of disclosure rules? (E.g. obligation vs. invitation / encouragement)

Disclosure is linked to making licensing commitments. There are two important aspects here:

- All members (existing as well as new members) need to make licensing commitments, whether or not they own essential IPR. So the existence of a licensing commitment does not disclose whether that party does believe to own essential patents.

- In some cases, members are required to disclose specific patent properties. *Curiously, this only needs to be done for*

(1) those patents that are exceptions to the 'default licensing mode' the member has chosen. If a member commits itself to RAND-RF, then it only needs to disclose patents that it would license for (royalty bearing) RAND, and if a member commits itself to (royalty bearing) RAND then it only needs to disclose patents that it would license FR-RAND.

(2) those patents a member is not willing to license. (Note that this option does not exist for patents that are part of a contribution by a submitter; see question D1 below)

An NFC Forum representative further clarified: "Your understanding of the Forum's disclosure mechanism is correct. The policy was a result of long discussion between the founding members in 2004, and at this late date it is not possible to recall why this specific decision was made."

Sources and additional details:

Notwithstanding the election according to Section 3.2(a)(i) or (ii) above, the Submitter may, at the time of making the Submission, elect the other one of said options with respect to certain specific of its Controlled Necessary Claims inherent in the Submission by identifying such specific Controlled Necessary Claims. In case of Controlled Necessary Claims under non-public patent applications, the disclosure of such Controlled Necessary Claims need not be in such detail as would disclose any trade secrets. (IPR Policy at §3.2)

C2. Are there any exemptions to the disclosure rules? (For instance, a policy could specify that if a company makes a RF / RAND-z commitment, there is no more requirement for specific patent disclosure).

See Question C1 above.

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C3. At what point in time are parties required to disclose essential patents? Is it related to when a standardization activity reaches a particular state of advancement, and/or events relating to the specific member (joining the SDO, joining a WG, etc)?

If a members need to disclose (see above), it is at the same time as making the licensing commitments – see at D1 and D2 below.

C4. How is dealt with disclosure of patents owned by other (third) parties (non-members / non-participants)?

The policy provides no information on this. All policy clauses relate to members only.

Patent disclosure, relating to the knowledge of the party about its IPR

All the following items are about the knowledge the claimant has about its patents, or should have about its patents.

C5. Are the disclosure rules limited to patents (1) covering its own contributions, (2) standards developed in the working group the party is participating in, (3) any standard developed in the SDO?

Other than any of these possibilities. See at C1 above.

C6. Does the policy refer to patents that 'are' essential, 'believed' to be essential, 'may' be essential, etc?)

Not applicable as there is no direct disclosure obligation.

C7. What knowledge is assumed to be known to the party and/or its representatives in meetings?

Not applicable as there is no direct disclosure obligation.

C8. Are patent searches required, encourage, or not required?

It is explicitly stated that patent searches are not required.

Sources and additional details:

In no event shall the Consortium, or any Member be obligated to conduct any patent searches regarding any Necessary Claims that may be infringed by any implementation of a Draft Specification or Specification. (IPR Policy, at §3.11)

Patent disclosure, relating to standard

C9. How exactly is 'essentiality' defined and/or to be interpreted? Is it 'purely' technical essentiality or are there elements of commercial essentiality?

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The policy is about pure technical essentiality.

Sources and additional details:

The obligations refer to necessary claims and necessarily infringed. These are defined as follows:

[Definition of] Necessarily Infringed: Unavoidable infringement by an implementation of a Specification or part thereof, there being no technically feasible non-infringing alternative way to implement the Specification or part thereof without resulting in such infringement. (IPR Policy, at §2)

[Definition of] Necessary Claims: Those claims under patents and/or patent applications anywhere in the world that would be Necessarily Infringed by the implementation of a body of a Specification and/or direct normative references to other existing standards and/or specifications contained in a body of a Specification and/or by the implementation of a part thereof, irrespective of whether the implementation of such body of a Specification and/or direct normative references and/or a part thereof is stipulated in the said Specification as optional or mandatory. Necessary Claims shall not include (i) any enabling technologies that may be necessary to make or use any product but are not themselves expressly set forth in either the body of the Specification or the direct normative references to other existing standards and/or specifications contained in such body of the Specification (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, and the like); or (ii) normative references to other existing standards and/or specifications in the direct normative references referred to in the body of the Specifications. (IPR Policy, at §2)

C10. Do disclosures have to specify for which standard(s) the patents are believed to be essential? How specific is this information required to be? (e.g. WG/SC/TC, specific standard, version of the specific standard / year).

As explained above, there are no disclosures as such. But the licensing commitments may include disclosures and these commitments do mention the draft specification in question.

C11. How should the submitter deal with mandatory vs. optional portions of the standard, or with informative portions / informative references in the standard, etc.?

For optional features, the same rules apply as for mandatory features.

Sources and additional details:

[Definition of] Necessary Claims: Those claims under patents and/or patent applications anywhere in the world that would be Necessarily Infringed by the implementation of a body of a Specification and/or direct normative references to other existing standards and/or specifications contained in a body of a Specification and/or by the implementation of a part thereof, irrespective of whether the implementation of such body of a Specification and/or direct normative references and/or a part thereof is stipulated in the said Specification as optional or mandatory. Necessary Claims shall not include (i) any enabling technologies that may be necessary to make or use any product but are not themselves expressly set forth in either the body of the Specification or the direct normative references to other existing standards and/or specifications contained in such body of the Specification (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, and the like); or (ii) normative references to other existing standards and/or specifications

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in the direct normative references referred to in the body of the Specifications. (IPR Policy, at §2)

C12. How should the submitter deal with elements of the standards that only affect certain product categories (terminal vs. base stations, or encoders vs. decoders)?

The policy provides no information on this.

Patent disclosure, relating to patent identities

C13. Are blanket disclosures (general declarations) allowed and, if relevant, under what circumstances?

Specific patent identities are only required in very specific cases (see question C1).

C14. Do disclosure rules only apply to granted patents, or also to (published / unpublished) patent applications? Do other types of IP (copyright etc.) need to be disclosed?

Also patent applications are explicitly included.

Sources and additional details:

[Definition of] IPR: An abbreviation of "Intellectual Property Rights". As used in this IPR Policy, IPR means claims in patents and patent applications and copyrights, but excludes trademarks and trade secrets. Trademarks and trade secrets are not included in any Member's licensing obligations. (IPR Policy, at §2)

C15. Are there requirements for disclosing equivalent patents in different patent jurisdictions? (i.e. patent family members)

The policy provides no information on this.

Patent disclosure, other

C16. Does the SDO make available specific (paper or electronic) patent disclosure forms? If so, is the use of these forms mandatory?

There is no disclosure form as such. Some patents are disclosed via the commitment form, see Question D4.

C17. Are there provisions concerning updating of disclosures in case of changes in the (proposed / final) standard or the (applied / granted / rejected / expired) patent, or updated information concerning the patent identities?

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Not applicable.

C18. Are there requirements to withdraw disclosures when patents 'lose' their essentiality (e.g. due to the surfacing of a new, alternative implementation that can also fulfill the required element of the standard in question)

Not applicable.

C19. In addition to the formal, written disclosure statements, what information on potentially essential patents do participants need to provide during standardization meetings? Is it different for own proposals vs. proposals by others? Is this information (oral statements?) recorded, and to whom is it available?

No additional disclosure obligations or events are indicated in the policy.

C20. Are all patent disclosures being made public? Where and in what form? Is there any information in the disclosures that is not made public?

The policy does not state this. They do not seem to be available from the NFC Forum website either.

An NFC Forum representative clarified: *"Member IPR election forms are not made available to the general public. All IPR election forms are made available to members via a secure members Website."*

C21. How does the SDO deal with situations in which a party claims that a disclosed patent is not in fact essential or not any longer essential? Have such situations occurred?

The policy provides no information on this.

Part D: Licensing commitments

D1. What best characterizes the commitment model? For instance, (1) Parties are committed to license by default and do not have to make a commitment statement (or make a general statement when joining the SDO); (2) Parties are *required* to issue a commitment statement (even if it's a statement of refusal to license) or (3) Parties are *invited* to issue a commitment statement.

Each member is obliged to make a choice for a licensing commitment. This is independent on whether they actually believe to own essential patents or not.

Below is a summary:

Type (in the context of new specification)	When must commitment form be submitted	Choice of IPR modes	Choice relates to
Submitters	At the time of submission.	RAND-FR or RAND, <i>NOT</i> refuse to license	Specific specification

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Participants	At latest when a draft specification is posted for final comments	RAND-FR, RAND, or a refusal to license	Specific specification
Non-participants ('other members')	At latest within 45 days when a draft specification is posted for final comments	RAND-FR, RAND, or a refusal to license	Specific specification
New members	no later than 6 week after joining the consortium	RAND-FR, RAND, or a refusal to license	Any existing specification

Sources and additional details:

See §3.1 to §3.4 of the IPR policy.

D2. If licensing statements are used, when must they be made? For instance: (1) Upon joining the SDO, (2) when a patent disclosure is made, (3) when a draft standard reaches a particular state of advancement, (4) when requested by the SDO.

See at question D1, above.

D3. Are there differences between licensing commitment policies between working groups or standardization activities? To what degree do the commitment requirements depend on whether a member/participant is actually participating in a working group (or standardization activity) or not?

There are no differences between TC's but there are differences depending on the role of the member, as outlined in Question D1.

D4. Does the SDO make available specific (paper or electronic) licensing commitment forms? If so, is the use of these forms mandatory?

Yes, there is a form (three different ones for submitters, participants and other members, respectively) and its use is mandatory.

In fact, they are referred to as 'election forms', which well reflects their function.

Such election shall be made pursuant to a written declaration in the form of Appendix A to this IPR Policy. (IPR Policy, at §3.2b)

D5. Are issued licensing commitments binding to other members of the SDO only, or to any implementer of the standard requesting a license?

Licensing commitments are binding to any implementer of the standard.

Sources and additional details:

Agree that, if the Draft Specification, in connection with which the Submission is made, is finally approved by the Consortium, the Submitter and each of its Related Parties will license all of its Controlled Necessary Claims inherent in the Submission on an irrevocable, non-exclusive and worldwide basis, without compensation and otherwise on a RAND basis, to all Implementers solely for the purpose of implementing such approved

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Specification or a part thereof and subject to Reciprocity; or [...] (IPR Policy, at §3.2)

[Definition of] Implementers: Those Members and non-Members who desire to use or implement a Specification. (IPR Policy, at §2)

D6. Is there a specific or 'minimal' commitment type required or requested by the SDO? (e.g. FRAND, FRAND-z, RF, non-assertion) If so, does this specific or 'minimal' commitment type depend on the working group or standardization activity?

The minimum commitment type sought is RAND, but members may also choose commit to license at RF-RAND. See also Question D8 for an innovative approach relating to these different licensing modes and reciprocity.

D7. Is there any 'opt-out' option for patent holders (indicating it is not willing to license certain patents), or any 'opt-down' option (e.g. from RAND-z to RAND)? How does it work and when does it need to be exercised? What are the consequences of such a choice?

Participants and non-participating members of a TC have the possibility to refuse to license a patent (in contrast to submitters, which cannot do so for patents covering their submissions).

Once a choice for a licensing mode is done, however, there is no way to change that.

Sources and additional details:

Notwithstanding the election according to Section 3.4(a)(i) or (ii) above, the non- Participant Member may, simultaneously when making such election, elect the other one of said options or state that it is not willing to provide a license under either one of said options with respect to specific Controlled Necessary Claims inherent in such Draft Specification by identifying such specific Controlled Necessary Claims and by reasonably identifying the portion of such Draft Specifications, to which such specific Controlled Necessary Claim(s) relate. In case of Controlled Necessary Claims under non-public patent applications, the disclosure of such Controlled Necessary Claims need not be in such detail as would disclose any trade secrets. (IPR Policy, at 3.3 which is for participants. A similar text is at 3.3 and 3.5 for non-participants and for new members, respectively).

D8. Does the policy require, allow or forbid parties to include specific licensing terms as part of their commitment (such as conditions of bilateral or universal reciprocity, scope of use, etc.)? Does the policy (or the forms) explicitly specify such options, or does it simply tolerate it in practice?

Commitments are subject to reciprocity by definition.

If a members elects to make its licenses available at RAND-RF conditions, it is nevertheless allowed to charge royalties in case a licensee has elected to make its own essential patents available only for a royalty-bearing RAND.

This is an innovative approach, which provides incentives for parties to make licenses available at no cost, while not depriving others of their right to demand a licensing fee. (It is, in some sense, comparable to what some called RFR: <http://www.goland.org/RoyaltyFreeReciprocal/>)

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Sources and additional details:

[Definition of] Reciprocity: The requirement that any Member's obligation to grant licenses under its Controlled Necessary Claims shall not be effective as to any other Member or Implementer, which does not make all of its Controlled Necessary Claims available on reasonable terms to the first mentioned Member. (IPR Policy, at §2)

Claims subject to payment of a royalty or other compensation, then Submitter is entitled to unilaterally and retroactively change its election of the option set forth in Section 3.2(a)(i) above under its Controlled Necessary Claims from a royalty free RAND license to a royalty bearing RAND license with respect to such Member or Implementer. In such case such Submitter will be able to collect such royalty from the Member or Implementer retroactively commencing on the date such Member or Implementer has elected to license such Controlled Necessary Claims subject to payment of a royalty or other compensation. (IPR Policy, at §3.2C)

D9. Does a commitment (1) cover any patents that are essential to the developed standards, (2) only cover those patents that are actually disclosed, or (3) only cover patents relating to the own contributions of the patent holder?

For existing members, participants, or submitters, the commitment covers the specific specifications for which the commitment election form is submitted.

For new members, the commitment covers all existing specifications.

D10. Is a patent holder still bound to a licensing commitment should an earlier disclosed patent eventually turn out not to be essential? (e.g. differences in adopted standard, differences in granted patent)

If the commitment arises from being a 'submitter', the commitment only holds if the draft specification for which the submission was made was approved.

Sources and additional details:

Agree that, if the Draft Specification, in connection with which the Submission is made, is finally approved by the Consortium, the Submitter and each of its Related Parties will license all of its Controlled Necessary Claims inherent in the Submission on an irrevocable, non-exclusive and worldwide basis, without compensation and otherwise on a RAND basis, to all Implementers solely for the purpose of implementing such approved Specification or a part thereof and subject to Reciprocity; or [...] (IPR Policy, at §3.2)

D11. What is the geographic scope of the commitments? Relatedly, do commitments relate only to the disclosed patents, or also to all equivalent patents in other jurisdictions (i.e. patent family members)?

Commitments are world-wide by definitions.

Sources and additional details:

Agree that, if the Draft Specification, in connection with which the Submission is made, is finally approved by the Consortium, the Submitter and each of its Related Parties will license all of its Controlled Necessary Claims inherent in the Submission on an irrevocable, non-exclusive and

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worldwide basis, without compensation and otherwise on a RAND basis, to all Implementers solely for the purpose of implementing such approved Specification or a part thereof and subject to Reciprocity; or [...] (IPR Policy, at §3.2)

D12. Are commitments limited to the use of these patented technologies only in order to produce products that comply to specific standards? Or all standards developed by the SDO, or not limited at all?

Commitments are limited to the purpose of implementing the standard for which the specific commitment is given.

Sources and additional details:

Quotes from Agree that, if the Draft Specification, in connection with which the Submission is made, is finally approved by the Consortium, the Submitter and each of its Related Parties will license all of its Controlled Necessary Claims inherent in the Submission on an irrevocable, non-exclusive and worldwide basis, without compensation and otherwise on a RAND basis, to all Implementers solely for the purpose of implementing such approved Specification or a part thereof and subject to Reciprocity; or [...] (IPR Policy, at §3.2)

D13. Does the policy specify any legal restriction concerning commitments? (For instance, a policy may specify that a FRAND commitment implies that an injunctive relief may not be sought.)

No, the policy does not state any legal restrictions.

D14. Does the policy explicitly require that commitments are irrevocable? If so, does the policy mention allowable exceptions (such as defensive suspension, or if the licensee refuses to offer a reciprocal license)?

The policy stipulates that licensing commitments are irrevocable.

Only when standards are withdrawn, the Board of Directors may decide to release the obligation of the IPR owners to new licensees (but must continue to respect them for existing licensees).

Sources and additional details:

Quotes from Agree that, if the Draft Specification, in connection with which the Submission is made, is finally approved by the Consortium, the Submitter and each of its Related Parties will license all of its Controlled Necessary Claims inherent in the Submission on an irrevocable, non-exclusive and worldwide basis, without compensation and otherwise on a RAND basis, to all Implementers solely for the purpose of implementing such approved Specification or a part thereof and subject to Reciprocity; or [...] (IPR Policy, at §3.2)

Withdrawal of Specifications: In the event that any Specification is withdrawn by the Consortium, then all obligations of Members under existing licenses based on this IPR Policy to Controlled Necessary Claims with respect to such Specification shall remain in force, but the Board of Directors may decide to release all obligations to provide future licenses on RAND terms, with such obligations to terminate on a date to be approved

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by the Board of Directors. (IPR Policy, at §3.7)

D15. What does the policy specify about the eventual transfer of patents for which commitments have been made?

The policy specifies nothing at all concerning transfer of patents.

D16. Does the policy specify anything about ex-ante disclosure of most restrictive licensing terms? (e.g. forbidden, voluntary, mandatory, recommended, endorsed)

The policy specifies nothing at all concerning ex-ante closure of most restrictive licensing terms.

D17. Is there any link between the IPR policy – or the SDO in general – and a patent pool or other licensing programs? Can you describe this link?

The policy does not mention such a link. Interestingly, however, Vialicensing has joined the NFC Forum as a member, perhaps in relation to the pools it administers.

<http://www.vialicensing.com/newsdetail.aspx?id=374> The NFC technology, however, is not listed as an existing pool or a 'pool under development' on the Vialicensing website.

<http://www.vialicensing.com/licensing/index.aspx>

An NFC Forum representative clarified: "There is not now, nor has there ever been, a formal business relationship between the NFC Forum and ViaLicensing. ViaLicensing did not renew its annual membership in the NFC Forum, which expired in March 2012. It is our understanding that ViaLicensing has suspended its NFC patent licensing program."

D18. Are all licensing commitments being made public? Where and in what form? Is there any information in the disclosures that is not made public?

The policy does not state this. They do not seem to be available from the NFC Forum website either.

An NFC Forum representative clarified: "Member IPR election forms are not made available to the general public. All IPR election forms are made available to members via a secure members Website."

Part E: SDO procedures and public

E1. What are the remedies available to SDO in case of non-compliance with the policy (e.g. failure to disclose, failure to provide licensing commitments, other violations of the policy)?

If a member fails to submit its licensing form in time, then it is assumed that this member chose the RAND mode. Note that this is not the most restrictive mode from the perspective of the patent owner. So it is then RAND by default, not RAND-RF by default.

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Given the above, does it happen that members simply refrain from sending in the form, saving time and effort?

Sources and additional details:

3.8 Failure to Make Licensing Elections

In the event that a Member fails to timely return a signed and completed election form as required by Section 3.2(b), 3.3(b), 3.4(b) or 3.5(b) above, then such Member shall be deemed to have elected to license, or to cause its Related Party(s) to license, all of its Controlled Necessary Claims inherent in the Specification in question, with the terms to be as set forth in Section 3.2(a)(ii), 3.3(a)(ii), 3.4(a)(ii) or 3.5(a)(ii) above, as applicable. In the event that such Member or a Related Party of such Member shall later bring an infringement action against any Implementer with respect to such Controlled Necessary Claim(s), the Consortium shall have no obligation to intervene, but such Implementer shall be entitled to claim protection, and assert a complete defense against such action, under this Section 3.8 as a third party beneficiary. (IPR Policy at §3.8)

E2. How does the policy deal with companies that chose not to enter into licensing commitments (insofar as the policy allows such a choice)?

In case licenses are not going to be available, the committee will seek technically feasible alternatives not infringing the patent(s) in question and use that in the standard (or amend an existing standard once already there).

Note that this policy refers specifically to IPRs of members. There is no word on patents owned by third parties that may come to the attention of the NFC Forum.

Sources and additional details:

3.6 Refusals to License

3.6.1 In the event that any Member identifies any Controlled Necessary Claim(s) under Section 3.3 or Section 3.4 above as being such, for which it is not willing to grant a license, before a Draft Specification, to which such Controlled Necessary Claim(s) relate, is finally approved by the Consortium, diligent efforts shall be made by the Sub-Group creating the Draft Specification to seek a technically feasible alternative that would not result in infringement of the Controlled Necessary Claim(s) in question or the Board of Directors of the Consortium will seek alternative means of resolution, consulting appropriate experts if and to the extent necessary in the reasonable judgement of the Board of Directors.

3.6.2 In the event that any new Member identifies any Controlled Necessary Claim(s) under Section 3.5 above as being such, for which it is not willing to grant a license, diligent efforts shall be made by the Board of Directors amending the relevant Specification to seek a technically feasible alternative that would not result in infringement of the Controlled Necessary Claim(s) in question or the Board of Directors of the Consortium will seek alternative means of resolution, consulting appropriate experts if and to the extent necessary in the reasonable judgement of the Board of Directors.

E3. How does the SDO deal with non-members (third parties), for instance when it is brought to the attention of the SDO that such a third party owns IPR essential to one of its standards?

The policy does not provide any information on how is dealt with patents of non-members.

An NFC Forum representative clarified: "You are correct that no mechanism exists for dealing with essential IP that is believed to be owned by non-members. Note that the most common statements in IPR policies is that the third party would be contacted and asked to discuss whether it would be willing to provide a RAND license, and that if such a promise is not

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given, that the SSO will consider taking appropriate actions. Given that this is both obvious and high level, its inclusion in IPR policies is almost unnecessary. In any event, since the Forum has not yet encountered an issue involving essential IP controlled by a third party, it is unclear what action the Forum's Board of Directors might take to address such cases."

E4. What are the policy and practices about (1) handling and possible rejection of incomplete disclosure or licensing statement, (2) correction of clerical errors (including patent identities), (3) resubmission of statements in any of the above cases?

The policy provides no information on this.

Part F: Conflicts and enforcement

F1. Can you please describe the main disputes (if any) that have arisen in terms of respecting or interpretation the IPR policy?

N/a

Part G: Other

G1. Is the content of meetings of Technical Committees, Technical Bodies or similar groups considered to be public information? This is especially relevant for patent examiners, who need to consider whether such information should or should not be considered when examining prior art in (new) patent applications.

A NFC Forum representative clarified: "Information about and content of meetings of NFC Forum Technical Committees, Working Groups, Task Forces and other Forum groups is not disclosed to the public."

G2. Are there any specific provisions on software / copyright when that software is part of the content of the standard? (This question does not concern the copyright on the text of the standard as such.)

In the policy copyright is included as an IPR as such and the same rules apply as for patents.

Sources and additional details:

[Definition of] IPR: An abbreviation of "Intellectual Property Rights". As used in this IPR Policy, IPR means claims in patents and patent applications and copyrights, but excludes trademarks and trade secrets. Trademarks and trade secrets are not included in any Member's licensing obligations. (IPR Policy, at §2)

G3. Are there any rules in relation to IPR in standards of other SSOs that are normatively referenced in a standard?

IPR on normatively references standards is included, but Indirect normative references are excluded (i.e. if there is a normative reference to a standard that in turn has normative references).

other standards that are normatively references in an NFC Forum standard are not considered to be 'necessary claims' and thus outside the IPR policy.

Sources and additional details:

[Definition of] Necessary Claims: Those claims under patents and/or patent applications anywhere in the world that would be Necessarily Infringed by the implementation of a body of a Specification and/or direct normative references to other existing standards and/or specifications contained in a body of a Specification and/or by the implementation of a part thereof, irrespective of whether the implementation of such body of a Specification and/or direct normative references and/or a part thereof is stipulated in the said Specification as optional or mandatory. Necessary Claims shall not include (i) any enabling technologies that may be necessary to make or use any product but are not themselves expressly set forth in either the body of the Specification or the direct normative references to other existing standards and/or specifications contained in such body of the Specification (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, and the like); or (ii) normative references to other existing standards and/or specifications in the direct normative references referred to in the body of the Specifications. (IPR Policy, at §2)

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