

5 November 2021

Mr. Andrew Dryden
ISO Technical Programme Manager
Chemin de Blandonnet 8
CP 401
1214 Vernier, Geneva
Switzerland

Dear Mr. Andrew Dryden,

The IEEE Standards Association (IEEE SA) has been notified that comments were received on the 60-day ballot considering the adoption of IEEE Std 802.11ax-2021 under the ISO/IEEE PSDO Agreement. Specifically, four National Bodies (Sweden, Finland, Japan, and Germany) indicated concern with the presence of Letters of Assurance (LOAs) submitted to IEEE where item D.1.d was checked (referred to in the comments as “negative LOAs”). Please refer to SE-001, FI-002, JP1-004, and DE-005 in SC6N17559 for the text of the comments.

The four National Bodies highlighted various issues related to patent rights in the 60-day ballot. Generally, the comments require IEEE SA to draw attention to patent rights of which it is aware in relation to IEEE Std 802.11ax-2021. Some of the comments also asserted that fast tracking under the PSDO agreement cannot proceed unless existing negative LOAs submitted to IEEE SA in relation to IEEE Std 802.11ax-2021 are replaced with LOAs where assurance is provided (sometimes referred to as “positive LOAs”). IEEE SA’s responsibility under the *ISO/IEC Directives, Part 1 Consolidated JTC 1 Supplement 2019 — Procedures specific to JTC 1* is to “draw the attention of the committee [SC6 in this case] to any patent rights of which the proposer is aware and considers to cover any item of the proposal” [clause 2.14.2 a)]. IEEE SA has fulfilled this responsibility in relation to the submission of IEEE Std 802.11ax-2021 for consideration under the PSDO agreement, as described below.

IEEE SA has published the four negative LOAs that have been submitted in relation to IEEE Std 802.11ax-2021. They are available for consideration by ISO and other interested parties via <https://standards.ieee.org/about/sasb/patcom/patents.html>. One of the negative LOAs is not relevant in the context of this response because the submitter subsequently provided a positive LOA in relation to IEEE Std 802.11ax-2021. The three relevant LOAs state that the submitter “*may own, control, or have the ability to license Patent Claims that might be or become Essential Patent Claims*” (in relation to IEEE Std 802.11ax-2021). The LOAs indicate the possibility of Patent Claims relevant to IEEE Std 802.11ax-2021 but do not make definitive assertions of any Patent Claims. In addition, none of the LOAs identify any specific patent rights. Even if the LOAs identified specific patent rights, a position on whether they “cover any item” in IEEE Std 802.11ax-2021 would not be taken by IEEE SA because, as noted in the IEEE SA’s LOA form, “IEEE takes no position with respect to the validity or essentiality of Patent Claims.” IEEE SA’s policy in this respect is also documented in the *IEEE SA Standards Board Bylaws* [clause 6.2]. On this basis, while IEEE SA is aware of the possibility of potential Patent Claims noted in the three relevant LOAs, IEEE SA is unable to conclude there are any patent rights of which it “is aware” that it “considers to cover any item of the proposal” (i.e., IEEE Std 802.11ax-2021).

On this basis, and noting that both questions in the 60-day ballot exceeded the required majority threshold, IEEE SA believes that it would be appropriate to continue the normal approval process for fast tracking of IEEE Std 802/11ax-2021 under the PSDO agreement. The next step in the process is an FDIS ballot.

ISO policies related to IPR are generally focused on ensuring that any essential patent rights on ISO standards are available under RAND terms. The *ISO/IEC Directives, Part 1 Consolidated JTC 1 Supplement 2019 – Procedures specific to JTC 1* support this focus, both during the standards development/approval process and afterwards. For example, the *Consolidated JTC 1 Supplement* specify [clause 2.14.3] further consideration by ISO is required if patent rights are identified that “*appear*” to cover elements of a published standard cannot be obtained on RAND terms. The comments by the National Bodies during the 60-day ballot on IEEE Std 802.11ax-2021, particularly those asking for positive LOAs before ISO fast tracking of IEEE Std 802.11ax-2021, also seem to be aligned with this focus.

If ISO has any concerns about the possibility that anyone (including the submitters of the three relevant LOAs) might have patent rights covering any portion of IEEE Std 802.11ax-2021, then one option to assist the resolution of these concerns is for ISO to issue requests for IPR declarations under ISO’s IPR policies. One benefit of such an approach is that it would put ISO in a position to consider any refusals to provide access to patent rights under RAND terms based on information consistent with the requirements for an *ISO Type 3 Declaration* in the *Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC*. An *ISO Type 3 Declaration* requires the submitter to provide details of the patent, to specify the portion of the standard affected by the patent, and to provide a description of how the patent affects the standard. None of this information is currently available for consideration by ISO based on the material in the three LOAs submitted to IEEE SA. Of course, whether or when ISO wants to issue such a request is a decision for ISO.

Regards,



James E. Matthews
President, IEEE Standards Association

cc: Henry Cuschieri, José Alcorta, Konstantinos Karachalios, Paul Nikolich, Dorothy Stanley, Andrew Myles