IEEE 802

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| Proposed letter to 11ax patent holders | | |
| Date: 2024-11-12 | | |
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Abstract

**Note: this proposed letter represents the opinion of the author of the submission and does not necessarily represent the view of IEEE 802, IEEE SA or IEEE.**

This document contains a draft of a possible letter to be sent to six companies that arguably need to submit an IPR declaration to ISO on *ISO*’s [*Patent Statement and Licensing Declaration" Form*](https://www.iso.org/sd/fetch/iVx8VvrOieNvmnNYaOXTfS33f-gQ707i3o-CbobJ1KOZ_I9FvuI3mggjdGD-d9Vw) as part of the process to approve IEEE 802.11ax as an ISO/IEC/IEEE 8802 series standards

The six companies that have [submitted “negative LoAs” to IEEE SA](https://standards.ieee.org/wp-content/uploads/import/governance/patcom/xls-files/ieee-802.11-amendments.xlsx) with respect to IEEE 802.11ax:

* Ericsson (Sweden)
* Interdigital (USA)
* Panasonic (Japan)
* Huawei (China)
* KPN (Netherlands)
* Nokia (Finland)

The addressees of each letter are the probably the contacts specified in the [submitted “negative LoAs” to IEEE SA](https://standards.ieee.org/wp-content/uploads/import/governance/patcom/xls-files/ieee-802.11-amendments.xlsx), although further investigations may suggest alternative more appropriate addressees.

This draft letter will be considered at the IEEE 802 JTC1 SC meeting scheduled for November 2024.

## Draft of a letter from IEEE 802 six companies that arguably need to submit an IPR declaration to ISO in relation to IEEE 802.11ax

Dear <name of patent holder contact>

I am writing to you on behalf of the *IEEE 802* (*LAN/MAN Standards Committee*). *IEEE 802* develops and maintains networking standards and recommended practices for local, metropolitan, and other area networks, using an open and accredited process, and advocates them on a global basis.

I am particularly writing to you about a situation that first arose in late 2021 in relation to the proposed approval of an amendment to *IEEE 802.11* (also known as *Wi-Fi*), *IEEE 802.11ax* (which is known in the marketplace as *Wi-Fi 6* and *Wi-Fi 6E*), as an “international” standard. The issue is still open today, more than three years later. I am hoping that your <name of addressee’s employer> can assist *IEEE 802* in resolving the issue as soon as possible.

*IEEE 802* standards are used by billions of devices every day around the world. Despite this wide use, *IEEE 802* standards are not recognised by some countries and organizations as “international”. This can cause practical difficulties in some markets. For example, *IEEE 802* standards cannot be used as normative references in certain European standards, which has made market access in Europe more complex in some cases.

*IEEE 802* has dealt with the missing “international” recognition pragmatically, by working with *ISO* to have *IEEE 802* standards approved as *ISO/IEC/IEEE 8802* series “international” standards. This approach has worked, using various processes, successfully for more than twenty years. Over that period more than one hundred *IEEE 802* series standards (or amendments) have been approved and published as *ISO/IEC/IEEE 8802* series standards.

In late 2021, the process for the approval of *IEEE 802.11ax* as an *ISO/IEC/IEEE 8802* series standard was blocked as a result of an IPR related issue that was highlighted by multiple *ISO National Bodies* during an *ISO* ballot. In particular, four *ISO National Bodies* noted that six companies (including <name of addressee’s employer>) had made [IPR declarations to *IEEE SA*](https://standards.ieee.org/wp-content/uploads/import/governance/patcom/xls-files/ieee-802.11-amendments.xlsx) that they would not provide free or RAND licences under conditions defined by the *IEEE SA Patent Policy* for certain technologies that were claimed to be essential for *IEEE 802.11ax*.

*ISO* reasonably used this information as a hint that these same companies might also not provide free or RAND licences for these technologies under the different conditions defined by the [*ISO Patent Policy*](https://www.iso.org/home.isoDocumentsDownload.do?t=wb3vnyyk4mNCnmLxOrJKrnqU_CPEUQ4MARB03WwKXHFHXsfUtdjNKENDxGuMLhSV&CSRFTOKEN=0JRW-CBUB-B292-DLLG-ZQ5Y-QFWX-IMRZ-TNVX). I note that the *ISO Patent Policy* requires that free or RAND licences, under conditions defined by *ISO Patent Policy*, be available for all *ISO* standards. The unavailability of such licences will stop the standardisation of *IEEE 802.11ax* as an *ISO/IEC/IEEE 8802* series “international” standard.

*ISO* then apparently wrote to the six companies, requesting that they make an IPR declaration in relation to *IEEE 802.11ax* using *ISO*’s [*Patent Statement and Licensing Declaration Form*](https://www.iso.org/sd/fetch/iVx8VvrOieNvmnNYaOXTfS33f-gQ707i3o-CbobJ1KOZ_I9FvuI3mggjdGD-d9Vw). I understand none of the six companies have completed the form in the last three years. Certainly, no declarations have been uploaded to the [*ISO patent declaration database*](https://www.iso.org/home.isoDocumentsDownload.do?t=NuFRx8z5hG2ZGpOC9KNxEpOwxRAMywE648EDM8H9ewwQul6WYmNvIl4FLbtK7St3&CSRFTOKEN=0JRW-CBUB-B292-DLLG-ZQ5Y-QFWX-IMRZ-TNVX).

*ISO*’s[*Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC*](https://www.iso.org/files/live/sites/isoorg/files/developing_standards/resources/docs/20221216_Guidelines_for_Implementation_of_the_Common_Patent_Policy.pdf) specifies that anyone claiming to own IPR relevant to a proposed standard *has to provide a written statement* using the appropriate form. This form, *ISO*’s *Patent Statement and Licensing Declaration Form*, requires IPR holders to select from one of three options:

* *Option 1*: willing to provide a free licence
* *Option 2*: willing to provide a RAND licence, under conditions defined by the *ISO Patent Policy*
* *Option 3*: not willing to licence; in this case detailed information is also required on any necessary patents and how they apply to the proposed standards

Unfortunately, *ISO TPM* (Technical Program Management) staff have decided[[1]](#footnote-1) that a refusal by email or no response from a possible IPR holder is equivalent to *Option 3*, despite this position appearing to conflict with ISO’s *Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC*. This decision by *ISO TPM* staff has effectively blocked the standardisation of *IEEE 802.11ax* as an *ISO/IEC/IEEE 8802* series “international” standard. I hope that this conflict on the implementation of *ISO*’s rules can be resolved by future discussions between *IEEE SA* and *ISO*.

In the meantime, *IEEE 802* would like to find a way to restart the process, sooner rather than later, for the approval of *IEEE 802.11ax* as an *ISO/IEC/IEEE 8802* series “international” standard. One obvious mechanism is for all six companies with possible necessary IPR to provide *ISO* with IPR declarations on *ISO*’s *Patent Statement and Licensing Declaration Form*. If all the IPR declarations are for *Option 1* or *Option 2* then the approval process for *IEEE 802.11ax* can restart immediately. If any of the IPR declarations are *Option 3* then *IEEE 802* will at least have an opportunity to consider removing the claimed IPR, using the detail required as part of an *Option 3* declaration. In this case, the approval process for *IEEE 802.11ax* can restart once the relevant IPR has been removed, albeit a longer process.

My request to you is for you to arrange for <name of addressee’s employer> to submit complete IPR declarations to ISO on the *ISO*’s *Patent Statement and Licensing Declaration Form* relating to any IPR that you may hold that is relevant to IEEE 802.11ax, and especially any of IPR alluded to in <name of addressee’s employer>’s previous IPR declarations to IEEE SA.

There are multiple benefits to <name of addressee’s employer> that derive from making such IPR declarations to *ISO*:

* It means <name of addressee’s employer> clearly satisfies the requirement for IPR declarationsin *ISO*’s *Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC*, despite any ongoing debate about the enforcement of this requirement
* It allows <name of addressee’s employer> to make *Option 1* or *Option 2* declarations under the conditions specified by the *ISO Patent Policy*. This provides a special opportunity to substitute the normal *IEEE SA Patent Policy* conditions on *IEEE 80*2 standards with the different conditions, which some IPR holders prefer, in the *ISO Patent Policy*
* It enables <name of addressee’s employer> to clearly specify the claimed IPR in the case it chooses to make an *Option 3* declaration
* It mitigates any negative perceptions or other concerns by other stakeholders that <name of addressee’s employer> is unreasonably holding up the “international” standardisation of *IEEE 802.11ax*.

I note the *IEEE 802* has no position on the validity or otherwise of any claimed IPR. *IEEE 802* also has no position on whether <name of addressee’s employer> should make an *Option 1*, *Option 2* or *Option 3* declaration to *ISO*, although I will observe an *Option 1* or *Option 2* declaration will enable the fastest path to the “international” standardisation of *IEEE 802.11ax*.

I would appreciate your acknowledgement of this letter as soon as you receive it, including an indication of whether you are the correct addressee at <name of addressee’s employer>.

Further, I would appreciate <name of addressee’s employer> submitting any IPR declarations to *ISO* in relation to IEEE 802.11ax to *ISO* in time for consideration of their contents at the next meeting of the *IEEE 802 JTC1 Standing Committee* on 15 January 2025. Alternatively, if <name of addressee’s employer> decides not to make any declarations to *ISO*, I would also appreciate an indication to that effect, also by 15 January 2025.

Yours sincerely,

<IEEE 802 Chair>

1. See Document 6N18159 submitted to ISO JTC1/SC6, dated Dec 2023 [↑](#footnote-ref-1)