

## ACCELLERA ORGANIZATION

### Patent Policy

#### 1. Definitions

The following terms, when capitalized, have the following meanings:

"Accepted Letter of Assurance" shall mean a Letter of Assurance that Accellera has determined is complete in all material respects and has been posted to the Accellera web site.

"Affiliate" shall mean an entity that directly or indirectly, through one or more intermediaries, controls the Submitter, is controlled by the Submitter, or is under common control with the Submitter. For the purposes of this definition, the term "control" and its derivatives, with respect to for-profit entities, means the legal, beneficial or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the capital stock (or other ownership interest, if not a corporation) of an entity ordinarily having voting rights. "Control" and its derivatives, with respect to nonprofit entities, means the power to elect or appoint more than fifty percent (50%) of the Board of Directors of an entity.

"Blanket Letter of Assurance" shall mean a Letter of Assurance that applies to all Essential Patent Claims for which a Submitter may currently or in the future (except as otherwise provided for herein) have the ability to license.

"Enabling Technology" shall mean any technology that may be necessary to make or use any product or portion thereof that complies with the [Proposed] Accellera Standard but is neither explicitly required by nor expressly set forth in the [Proposed] Accellera Standard (e.g., semiconductor manufacturing technology, compiler technology, object-oriented technology, basic operating system technology, and the like).

"Essential Patent Claim" shall mean any Patent Claim the use of which was necessary to create a compliant implementation of either mandatory or optional portions of the normative clauses of the [Proposed] Accellera Standard when, at the time of the [Proposed] Accellera Standard's approval, there was no commercially and technically feasible non-infringing alternative. An Essential Patent Claim does not include any Patent Claim that was essential only for Enabling Technology or any claim other than that set forth above even if contained in the same patent as the Essential Patent Claim.

"Letter of Assurance" and "LoA" shall mean a document, including any attachments, stating the Submitter's position regarding ownership, enforcement, or licensing of Essential Patent Claims for a specifically referenced Accellera Standard, submitted in the form attached hereto.

"Patent Claim(s)" shall mean one or more claims in issued patent(s) or pending patent application(s).

"PatCom" shall mean the Patent Committee.

"Reasonable and Good Faith Inquiry" includes, but is not limited to, a Submitter using reasonable efforts to identify and contact those individuals who are from, employed by, or otherwise represent the Submitter and who are known to the Submitter to be current or past participants in the development process of the [Proposed] Accellera Standard identified in a LoA, including, but not limited to, participation in a TSC. If the Submitter did not or does not have any participants, then a Reasonable and Good Faith Inquiry may include, but is not limited to, the Submitter using reasonable efforts to contact individuals who are from, employed by, or represent the Submitter and who the Submitter believes are most likely to have knowledge about the technology covered by the [Proposed] Accellera Standard.

"Statement of Encumbrance" shall mean a specific reference to an Accepted LoA or a general statement in the transfer or assignment agreement that the Patent Claim(s) being transferred or assigned are subject to any encumbrances that may exist as of the effective date of such agreement. An Accepted LoA is an encumbrance.

"Submitter" when used in reference to a LoA shall mean an individual or an organization that provides a completed LoA. A Submitter may or may not hold Essential Patent Claims.

"Technical Guidelines" shall mean the "Accellera Technical Committee Policies, Procedures, and Guidelines", as from time to time amended, which describes the standards-development process, including, but not limited to, the operation of the Technical Committee and Technical Subcommittees.

"TC" shall mean the Technical Committee described in Chapter 1 of the Technical Guidelines.

"TSC" shall mean any Technical Subcommittee, Technical Sub-subcommittee, working group, task force or other team that functions as primarily described in Chapters 1 and 3 of the Technical Guidelines.

## 2. **Disclosure Obligations**

In order for this Patent Policy to function efficiently, individuals participating in the standards development process:

- (a) shall inform Accellera (or cause Accellera to be informed) of the holder of any potential Essential Patent Claims of which they are personally aware and that are not already the subject of an existing LoA, owned or controlled by the participant or the entity the participant is from, employed by, or otherwise represents; and
- (b) should inform Accellera (or cause Accellera to be informed) of any other holders of such potential Essential Patent Claims that are not already the subject of an existing LoA.

## 3. **Contents of Letters of Assurance**

3.1 Accellera standards may be drafted in terms that include the use of Essential Patent Claims. If Accellera receives notice that a [Proposed] Accellera Standard may require the use of a potential Essential Patent Claim, Accellera shall request licensing assurance, on the Accellera LoA form, from the patent holder or patent applicant. Accellera shall request this assurance without coercion.

3.2 The Submitter of the LoA may, after Reasonable and Good Faith Inquiry, indicate it is not aware of any Patent Claims that the Submitter may own, control, or have the ability to license that might be or become Essential Patent Claims. If the patent holder or patent applicant provides an assurance, it should do so as soon as reasonably feasible in the standards development process once a TSC has been established to pursue the development of a [Proposed] Accellera Standard. This assurance shall be provided prior to the submission for approval of a final draft of a [Proposed] Accellera Standard by the Accellera board as set forth in Chapter 4 of the Technical Guidelines. This assurance shall be provided prior to a reaffirmation/stabilization if Accellera receives notice of a potential Essential Patent Claim after the standard's approval or a prior reaffirmation/stabilization. An asserted potential Essential Patent Claim for which an assurance cannot be obtained (e.g., a LoA is not provided or the LoA indicates that assurance is not being provided) shall be referred to the PatCom.

3.3 A Letter of Assurance shall be either:

- a) A general disclaimer to the effect that the Submitter without conditions will not enforce any present or future Essential Patent Claims against any person or entity making, using, selling, offering to sell, importing, distributing, or implementing a compliant implementation of the standard; or
- b) A statement that a license for a compliant implementation of the standard will be made available to an unrestricted number of applicants on a worldwide basis without compensation or under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination. At its sole option, the Submitter may provide with its assurance any of the following: (i) a not-to-exceed license fee or rate commitment, (ii) a sample license agreement, or (iii) one or more material licensing terms.

3.4 The Submitter and all Affiliates (other than those Affiliates excluded in a LoA) shall not assign or otherwise transfer any rights in any Essential Patent Claims that are the subject of such LoA that they hold, control, or have the ability to license with the intent of circumventing or negating any of the representations and commitments made in such LoA.

3.5 The Submitter of a Letter of Assurance shall agree:

- (a) to provide notice of a LoA either through a Statement of Encumbrance or by binding any assignee or transferee to the terms of such LoA; and
- (b) to require its assignee or transferee to (i) agree to similarly provide such notice and (ii) to bind its assignees or transferees to agree to provide such notice as described in (a) and (b).

This assurance shall apply to the Submitter and its Affiliates except those Affiliates the Submitter specifically excludes on the relevant LoA.

3.6 If, after providing a LoA to Accellera, the Submitter becomes aware of additional Patent Claim(s) not already covered by an existing LoA that are owned, controlled, or licensable by the Submitter that may be or become Essential Patent Claim(s) for the same [Proposed] Accellera Standard but are not the subject of an existing LoA, then such Submitter shall submit a LoA stating its position regarding enforcement or licensing of such Patent Claims. For the purposes of this commitment, the Submitter is deemed to be aware if any of

the following individuals who are from, employed by, or otherwise represent the Submitter have personal knowledge of additional potential Essential Patent Claims, owned or controlled by the Submitter, related to a [Proposed] Accellera Standard and not already the subject of a previously submitted LoA: (a) past or present participants in the development of the [Proposed] Accellera Standard, or (b) the individual executing the previously submitted LoA.

Notwithstanding the transfer or other provision of the standard to the IEEE, the assurance is irrevocable once submitted and accepted and shall apply, at a minimum, from the date of the standard's approval to the date of the standard's withdrawal.

3.7 Accellera is not responsible for identifying Essential Patent Claims for which a license may be required, for conducting inquiries into the legal validity or scope of those Patent Claims, or for determining whether any licensing terms or conditions provided in connection with submission of a LoA, if any, or in any licensing agreements are reasonable or non-discriminatory.

3.8 Nothing in this policy shall be interpreted as giving rise to a duty to conduct a patent search. No license is implied by the submission of a LoA.

#### 4. **Procedures Governing Letters of Assurance**

##### 4.1 **Call For Patents**

The TSC chair (or that chair's delegate) shall be responsible for informing the participants at a meeting that if any individual believes that Patent Claims might be Essential Patent Claims, that fact should be made known to the entire TSC and duly recorded in the minutes of the meeting. This request shall occur at every standards-development meeting, including, but not limited to TSC meetings, once the Accellera board has approved the formation of a TSC to pursue development of a [Proposed] Accellera Standard.

The TSC chair (or that chair's delegate) shall ask any patent holder or patent applicant of a Patent Claim that might be or become an Essential Patent Claim to complete and submit a LoA. Information about the draft standard will be made available upon request.

##### 4.2 **Submission of Letters Of Assurance**

LoAs are to be e-mailed, faxed, or mailed to Accellera (to the attention of the PatCom Administrator). The PatCom Administrator shall accept each LoA that is complete and is received from an individual within the issuing organization whose title suggests authority for intellectual property and legal matters. The PatCom Administrator's duties with regard to Letters of Assurance shall be purely ministerial (i.e., without regard to or exercise of the PatCom Administrator's discretion regarding the content of the Letters of Assurance received). For each Accepted LoA, the PatCom Administrator shall record the date on the signed LoA and the date upon which Accellera accepted such. The TSC chair (or the chair's delegate) shall request a LoA from Affiliates specifically excluded on an Accepted LoA.

Accepted Letters of Assurance and their attachments shall be posted on the Accellera website.

Copies of an Accepted LoA may be provided to the TSC but, in accordance with Section 5 hereof, shall not be discussed at any standards-development meeting.

### 4.3 Multiple Letters Of Assurance and Blanket Letters Of Assurance

4.3.1 A Submitter may provide Accellera with a Blanket LoA for a specific [Proposed] Accellera Standard that covers all Essential Patent Claims the Submitter may currently or in the future have the ability to license. A Submitter may submit separate Letters of Assurance providing different licensing positions for different potential Essential Patent Claims.

Over time, a Submitter may also provide multiple assurances for a given Patent Claim by submitting multiple LoAs for such claim. For Essential Patent Claims, each such LoA shall be binding on the Submitter. Each potential licensee may choose to invoke the terms of any applicable LoA accepted by Accellera, with one exception: If a Submitter has signed and submitted a LoA specifically identifying a Patent Claim before or concurrently with signing and submitting a Blanket LoA, the Blanket LoA cannot be invoked as to the specified Patent Claim. (The Submitter, however, may submit a separate specific LoA offering the Blanket LoA terms for the specified Patent Claim.) The intention of this paragraph is to permit the Submitter to offer alternative assurances, and to permit the potential licensee to choose from among the alternative assurances offered.

4.3.2 If, after providing a Blanket LoA, the Submitter acquires an Essential Patent Claim or a controlling interest in an entity that owns or controls an Essential Patent Claim, the existing Submitter's Blanket LoA shall apply to such acquired Essential Patent Claims unless the acquired entity or the prior holder of the acquired Essential Patent Claim has submitted a LoA before the acquisition. Any Blanket LoA submitted by the acquired entity or the prior holder of the acquired Essential Patent Claim before the acquisition shall continue to apply to acquired Essential Patent Claims covered by such assurance (but not to the acquirer's Essential Patent Claims). Letters of Assurance covering specified Essential Patent Claims shall continue to apply to specified Essential Patent Claims, whether acquired in the acquisition or held by the acquirer before the acquisition. Nothing in this paragraph shall prevent an acquiring party from asking a seller of an acquired Essential Patent Claim or an acquired entity to submit additional Letters of Assurance before closing of the acquisition.

### 4.4 Applicability of Letters of Assurance to Amendments, Corrigenda, Editions, or Revisions

An Accepted LoA referencing an existing standard, amendment, corrigendum, edition, or revision will remain in force for the application of the Essential Patent Claim(s) to the technology specified in another amendment, corrigendum, edition, or revision of the same Accellera Standard (including where that standard has been provided to the IEEE) but only if:

- (a) the application of the technology required by the amendment, corrigendum, edition, or revision of the same Accellera Standard has not changed from its previous usage, and
- (b) the same Essential Patent Claims covered by the prior Accepted LoA remain Essential Patent Claims in the same Accellera Standard or revision thereof.

The chair of the appropriate TSC shall initiate a request for a new LoA from a known Submitter when re-using portions of, or technologies specified in, an existing [Proposed] Accellera Standard, amendment, corrigendum, edition, or revision referenced in an Accepted LoA in a different [Proposed] Accellera Standard. The TSC chair shall also initiate a request for a LoA from holders of potential Essential Patent Claims when re-using portions of an existing non-

Accellera standard in a [Proposed] Accellera Standard. Any patent letters of assurance (or patent declarations) given to the developer of the non-Accellera standard cannot be stated to also apply to the [Proposed] Accellera Standard. In addition, there are specific requirements that must be incorporated into an Accellera LoA in order for it to have the possibility of becoming an Accepted LoA.

#### 4.5 Withdrawn Standards

All active Accellera standards (including those that have been provided to the IEEE) are subject to periodic review for reaffirmation, revision, withdrawal, and stabilization by, as the case may be, Accellera or the IEEE. Thus, any standard that incorporates patented technology may at some point in time be withdrawn. Section 3 sets forth policies concerning the period of validity for any LoA received from a party regarding an Essential Patent Claim.

#### 4.6 Public Notice

The following notice shall appear when Accellera receives assurance from a claimed patent holder or patent applicant prior to the time of publication that a license will be made available to all applicants either without compensation or under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination:

Attention is called to the possibility that implementation of this standard may require use of subject matter covered by patent rights. By publication of this standard, no position is taken with respect to the existence or validity of any patent rights in connection therewith. A patent holder or patent applicant has filed a statement of assurance that it will grant licenses under these rights without compensation or under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination to applicants desiring to obtain such licenses. Other Essential Patent Claims may exist for which a statement of assurance has not been received. Accellera is not responsible for identifying Essential Patent Claims for which a license may be required, for conducting inquiries into the legal validity or scope of Patent Claims, or determining whether any licensing terms or conditions provided in connection with submission of a Letter of Assurance, if any, or in any licensing agreements are reasonable or non-discriminatory. Users of this standard are expressly advised that determination of the validity of any patent rights, and the risk of infringement of such rights, is entirely their own responsibility. Further information may be obtained from the Accellera Patent Committee.

If Accellera has not received Letters of Assurance prior to the time of publication, the following notice shall appear:

Attention is called to the possibility that implementation of this standard may require use of subject matter covered by patent rights. By publication of this standard, no position is taken with respect to the existence or validity of any patent rights in connection therewith. Accellera is not responsible for identifying Essential Patent Claims for which a license may be required, for conducting inquiries into the legal validity or scope of Patent Claims or determining whether any licensing terms or conditions provided in connection with submission of a Letter of Assurance, if any, or in any licensing agreements are reasonable or non-discriminatory. Users of this

standard are expressly advised that determination of the validity of any patent rights, and the risk of infringement of such rights, is entirely their own responsibility. Further information may be obtained from the Accellera Patent Committee.

#### 4.7 Patent Committee

PatCom shall provide oversight for the use of any patents and patent information in Accellera standards. This committee shall review any patent information submitted to Accellera to determine conformity with patent procedures and guidelines.

PatCom shall be comprised of at least [four] but not more than [six] voting members and one non-voting Administrator. The voting members shall include one or more members of the Accellera board and the chair of the TC. Additional voting members shall be drawn from other members of the TC and the chairs of the active TSCs, The chair of the Accellera board shall appoint the voting members and the Administrator for a term to be determined within his/her discretion.

### 5. Legal Compliance And Other Issues

#### 5.1 Compliance With Laws

All Accellera meetings shall be conducted in compliance with all applicable laws, including antitrust and competition laws. In the course of Accellera standards development, participants shall not engage in fixing product prices, allocating customers, dividing sales markets, or other conduct that violates antitrust or competition laws.

#### 5.2 Discussion Of Litigation, Patents, and Licensing

No discussions or other communications regarding the following topics shall occur during TSC or TC meetings or other duly authorized Accellera standards-development technical activities:

- The status or substance of ongoing or threatened litigation;
- The essentiality, interpretation, or validity of patent claims;
- Desirable versus undesirable terms of patent licenses;
- Specific patent license terms or other intellectual property rights, other than distribution of Accepted Letters of Assurance as permitted under this Patent Policy.

#### 5.3 Discussion Of Relative Cost/Benefit Analyses

When comparing different technical approaches in Accellera standards development technical activities, participants may discuss the relative costs (in terms, for example, of percentage increases or decreases) of different proposed technical approaches in comparison with the relative technical performance increases or decreases of those proposals. The relative costs may include any potentially Essential Patent Claims, but not the price at which compliant products may or will be sold. Technical considerations should be the main focus of discussions in Accellera standards development technical activities.

### 6. Interpretations of Accellera's Patent Policy

#### 6.1 Source and Permission for Use

The Accellera Intellectual Property Rights and Patent Policies, along with all ancillary documents, have been closely adapted to the corresponding IEEE policies and documents with permission from the IEEE.

#### 6.2 Conformity With IEEE-SA Patent Policy And U.S. Department Of Justice Guidelines

Accellera's Patent Policy is intended to conform to the Patent Policy adopted by the IEEE Standards Association (effective May 1, 2007). All questions concerning the interpretation of this Patent Policy shall be resolved, to the extent feasible, by reference to the interpretive guidelines and informational materials provided with respect to the IEEE-SA Patent Policy by the IEEE-SA and by the DOJ, including, but not limited to, the Business Review Letter issued by DOJ to the IEEE-SA dated April 30, 2007, which documents are deemed to be authoritative.

#### 6.3 Requests For Interpretations

Requests for interpretations of this document shall be directed to the Secretary of the Accellera board, who shall acknowledge the request within 30 days of receipt. Such response shall indicate a specified time limit when such an interpretation will be forthcoming. The time limit shall be no longer than is reasonable to allow consideration of and recommendations on the issue by, for example, the Accellera board, PatCom, and/or Accellera Legal Counsel after due consideration has been given to the documents referred to in Section 6.1.