

Understanding Patent Issues during Accellera Standards Development

Patented technology in Accellera standards

This guide offers information concerning Accellera's Patent Policy, which can be found at www.accelera.org/governing. Capitalized terms have the meanings set forth in The definitions set forth in the Patent Policy are incorporated herein

A complete package of patent-related materials is available at www.accelera.org/governing. This package includes all the documentation you need to comply with Accellera's Patent Policy. A flowchart with additional guidance on the methodologies used by the Accellera Patent Committee is part of this package.

If you include patented technology in your standard, then you may have incorporated an essential patent.

1. What is an Essential Patent Claim?

An Essential Patent Claim means any Patent Claim [including claims in issued patent(s) or pending patent application(s)] 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.

2. Does Accellera determine whether a patent is essential when seeking a Letter of Assurance?

No.

Call for essential patents claims at Accellera standards development meetings

3. What is a call for patents?

A call for patents is a reminder made by the chair of the Technical Subcommittee ("TSC"), or the chair's designee, at an Accellera standards development meeting. The chair or the chair's designee informs the participants 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 TSC meeting.

4. How often should a TSC chair issue a call for potential Essential Patent Claims?

A TSC chair or his or her designee shall issue the call at every TSC meeting and at every other meeting concerning the development of the [Proposed] Accellera standard. If the TSC does not meet face to face or telephonically, then the TSC should be issued a call via e-mail or letter on a regular basis. It is strongly recommended that the Accellera Patent slide set along with the Antitrust Guidelines slide set be used.

4a. Should a Call for Patents be issued at an investigative group meeting or workshop prior to the formation of a TSC?

No. However, it is recommended that the Antitrust Guidelines slide set be used in these meetings.

5. If a TSC gathers for several days during a single week, does the TSC chair have to announce the policy every day?

The TSC chair or the chair's designee shall issue the call at every TSC meeting. If a group is "meeting" for consecutive days and the attendance is substantially the same for each day of the gathering, the policy only needs to be read once. If the chair plans not to read or display the policy each day, then the chair must either (a) ensure that the policy or a URL for it has been sent out to all attendees prior to the meeting (and is available in the registration packet for any on-site registrants), or (b) announce each day that the meeting is subject to the patent policy as read or displayed on the first day. Note, though, that this rule applies separately to each "group" that is "meeting" during the week. For example, if a TSC holds a meeting during the same week as its sub-subcommittee(s), then the chair of each of those groups must read or display the policy at the beginning of that group's first day of "meeting."

5a. How does the chair determine that the participation in a group that is "meeting" for consecutive days is substantially the same?

The chair has to use his/her judgment to determine this. It could for example be done based on the attendance numbers each day. The default action is to read the Patent Policy.

6. What if a TSC meets telephonically?

If the TSC meets telephonically, the chair can send the slides in an email to the participants in advance of the call, or include a link in the meeting announcement. The chair must then ask at the start of the call whether there is anybody participating that has not read the policy. If someone says they have not, then the chair must either (a) read the policy aloud, or (b) send the policy or URL electronically and pause the call until all participants have read the policy.

7. What if the group does not meet either in person or by telephone – for example, the group "meets" only through email or chat rooms?

If the group does not meet face-to-face or telephonically, the chair of the group should issue the call for patents via e-mail or letter on a regular basis.

Letters of Assurance

8. What is a Letter of Assurance?

In general, a letter of assurance is a document stating a Submitter's position with respect to ownership, enforcement, or licensing of an Essential Patent Claim that may be incorporated into a specifically referenced [Proposed] Accellera Standard. The specific requirements for an Accellera Letter of Assurance are defined in the Patent Policy at Section 3. The only acceptable format for a Letter of Assurance is the form attached as an exhibit to the Patent Policy, which can also be found at www.accellera.org/governing.

9. When does Accellera send out a request for a Letter of Assurance?

The TSC chair or the chair's designee will send out a request for a Letter of Assurance whenever the chair is notified, at any time and by any means, that the [Proposed] Accellera Standard may require the use of a potential Essential Patent Claim.

10. How will a participant know if Accellera has accepted a Letter of Assurance?

Accepted Letters of Assurance can be found on the Accellera web site at www.accellera.org/governing.

11. What happens if Accellera has not received assurances regarding all potential Essential Patent Claims incorporated in a [Proposed] Accellera Standard?

If Accellera is aware of a potential Essential Patent Claim and no corresponding Letter of Assurance has been received; the matter will be referred to the Accellera Patent Committee through the PatCom Administrator. The Accellera Patent Committee will review the circumstances and make a recommendation to the Accellera Board, such as whether to abandon, modify or take some other action with respect to further developing the [Proposed] Accellera standard in order to avoid infringing on the potential Essential Patent Claim.

12. How should TSCs handle existing Letters of Assurance provided to Accellera when developing an amendment, corrigendum, edition, or revision of the particular standard referenced in the Letter of Assurance?

An Accepted Letter of Assurance 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 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 Letter of Assurance remain Essential Patent Claims in the same Accellera Standard or revision thereof. The TSC chair shall initiate a request for a new Letter of Assurance 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 Letter of Assurance in a different [Proposed] Accellera Standard.

12a. How should TSCs handle Letters of Assurance when re-using portions of a non-Accellera standard in a [Proposed] Accellera Standard?

The TSC chair shall initiate a request for a Letter of Assurance 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 Letter of Assurance in order for it to have the possibility of becoming an Accepted Accellera Letter of Assurance.

Participants and notification to Accellera of Essential Patent Claims

13. What obligation do individual participants have to notify Accellera if they own or their employer owns potential Essential Patent Claims incorporated in a [Proposed] Accellera Standard? What if they are uncertain whether a Patent Claim they own or their employer owns is essential?

Individual participants of a call for patents are required to notify Accellera of the identity of a holder of any potential Essential Patent Claims (but not the identity of the Essential Patent Claim) where (1) the individual participant is personally aware that the holder may have a potential Essential Patent Claim; (2) the holder is the participant or an entity the participant is from, employed by, or otherwise represents; and (3) the potential Essential Patent Claim is not already the subject of any existing Letter of Assurance. If such a participant is uncertain whether the patent is essential, the participant still shall notify Accellera (or cause Accellera to be notified) of the possibility because they are personally aware of a claim that is a potential Essential Patent Claim.

13a. When is a potential Essential Patent Claim considered to be the subject of an existing Letter of Assurance?

A potential Essential Patent Claim is the subject of an existing Letter of Assurance for a particular standard (a) if there is an Accepted Letter of Assurance for the potential Essential Patent Claim or related potential Essential Patent, (b) if there is an Accepted Blanket Letter of Assurance from the holder of the potential Essential Patent Claim, or (c) an Accepted Letter of Assurance for the potential Essential Patent Claim exists under the conditions defined in Section 4.4, “Applicability of Letters of Assurance to Amendments, Corrigenda, Editions, or Revisions” (see also FAQ12).

14. How do I find out if a particular company has submitted a Letter of Assurance?

Accepted Letters of Assurance are listed on the Accellera web site at www.accellera.org/ governing. Letters of Assurance will be posted on the website as they are received.

15. What are example means by which an individual participant can notify Accellera (or cause Accellera to be notified) that his or her employer is the holder of a potential Essential Patent Claim incorporated in a [Proposed] Accellera Standard? Does the individual participant need to identify the Essential Patent Claim specifically?

An individual participant could fulfill his or her duty to Accellera by telling the TSC chair that his or her employer is the holder of a potential Essential Patent Claim. Alternatively, the participant could request that his or her employer submit a Letter of Assurance or otherwise notify Accellera that it is the holder of a potential Essential Patent Claim. In the latter case, the participant fulfills his or her duty to Accellera only if his or her employer submits a Letter of Assurance or otherwise notifies Accellera that it is the holder of a potential Essential Patent Claim. If the employer declines to submit a Letter of Assurance or otherwise notify Accellera, the participant will have to tell the TSC chair that his or her employer may be the holder of a potential Essential Patent Claim. In all cases, the duty on the participant is only to inform Accellera of the identity of the holder of a potential Essential Patent Claim and not the patent, application, or particular claim itself. The response to the call for patents only needs to be made if the response relates to a potential Essential Patent Claim that is not already the subject of any existing Letter of Assurance or request for a Letter of Assurance.

15a. Can a response to the call for patents be made via email in advance or subsequent to a meeting?

The duty on the participant is to inform Accellera of the identity of the holder of a potential Essential Patent Claim. The TSC chair can be notified at any time (in advance or subsequent to a meeting is acceptable). The declaration must be made in a recordable manner.

16. Do participants have to notify Accellera of third party patent holders?

For these purposes, “third party” means a person other than the participant or an entity the participant is from, employed by, or otherwise represents. Participants are not required to notify Accellera that they are aware of any potential Essential Patent Claims held by a third party. Participants may make such disclosure at their own discretion. Although there is no obligation to notify Accellera of third party patent holders, Accellera encourages participants to do so. This encouragement is particularly strong as the third party may not be a participant in the standards process.

17. What duty does an individual participant have to Accellera if a participant’s employer owns a potential Essential Patent Claim but the individual participant doesn’t have personal knowledge of such claim?

As noted in the answer to question 13, a participant only needs to notify Accellera of a potential Essential Patent Claim if such participant is “personally aware” that his or her employer has a potential Essential Patent Claim. There is no duty for that employee (or anyone else in his or her organization) to conduct a patent search, but Accellera does expect that participants will conduct themselves in good faith. This means that at the very least that each participant will make sufficient inquiry to satisfy him or herself that s/he is not being deliberately shielded from relevant knowledge and that the employer does not have any potential Essential Patent Claim.

18. Can an individual participate in standards development activities if his or her employer is unwilling to submit a Letter of Assurance once requested or provide the assurance indicated in the patent policy in a Letter of Assurance?

Yes. As long as the participant complies with the requirement that he or she notify Accellera that his or her employer is the holder of a potential Essential Patent Claim if the participant is personally aware that his or her employer is such a holder, the individual can continue to participate in standards development activities. See also question 15.

19. Does Accellera patent policy require participants or their employers to make an assurance or submit a Letter of Assurance?

No. Submission of a Letter of Assurance is not a precondition to participation. Participants do have a duty to inform Accellera if they or an entity they are from, employed by, or otherwise represents holds potential Essential Patent Claims. See questions 13, 16, and 18 for more information.

20. Is Accellera's patent policy a "disclosure" policy?

No. Accellera's patent policy is a policy of assurance as further described in these frequently asked questions, not a policy of disclosure.

21. What does a participant's employer need to do to determine whether it has any potential Essential Patent Claims when it receives a request from Accellera for a Letter of Assurance? Specifically,

(a) Does the employer need to do a patent search?

No. The policy expressly states that there is no duty to conduct a patent search; but the employer may do so if it wishes.

(b) Does the employer need to talk to every person they have sent to the TSC?

When the employer receives the request for a Letter of Assurance, the employer can state its licensing position with respect to any Patent Claims that might be or become Essential Patent Claims relating to the particular standard referenced in the Letter of Assurance. In the alternative, the employer can indicate that it is not aware of any Patent Claims that the employer may own, control, or have the ability to license that might be or become Essential Patent Claims, but only if the employer does a Reasonable and Good Faith Inquiry to determine the existence of any such Patent Claims. As defined in the Patent Policy, a "Reasonable and Good Faith Inquiry" includes, but is not limited to, the employer using reasonable efforts to identify and contact those individuals who are from, employed by, or otherwise represent the employer and who are known to the employer to be current or past participants in the development process of the [Proposed] Accellera Standard identified in the Letter of Assurance, 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. As described above, the employer only needs to engage in a Reasonable and Good Faith Inquiry if it wants to

avoid providing an assurance based on its assertion that it is not aware of any Patent Claims that the employer may own, control, or have the ability to license that might be or become Essential Patent Claims.

Submitting a Letter of Assurance

22. Do the terms "potential Essential Patent Claims" and "Patent Claims that the Submitter may own, control, or have the ability to license . . ." include claims described in patent applications?

Yes. The definition of Patent Claims includes pending patent applications.

23. At what point should the Letter of Assurance be submitted?

Accellera encourages the submission of a Letter of Assurance as soon as reasonably feasible in the standards development process once a TSC has been formed.

24. Who should submit a Letter of Assurance?

Accellera will request licensing assurance on the Accellera form Letter of Assurance from any person upon being notified that a [Proposed] Accellera Standard may require the use of a potential Essential Patent Claim. Although Accellera encourages any person receiving a request for assurance to submit the Letter of Assurance, Accellera may not use any coercion in requesting the assurance. This means Accellera cannot require that a person submit a Letter of Assurance or provide a particular assurance with respect to ownership, enforcement, or licensing of an Essential Patent Claim in order to participate in an Accellera standards development activity.

Additionally, a Submitter of a Letter of Assurance is required to submit a Letter of Assurance if, after providing a Letter of Assurance to Accellera, the Submitter of the Letter of Assurance becomes aware of additional Patent Claim(s) not already covered by an existing Letter of Assurance as further described in the answer to question 26. Any person or entity that believes that it holds a potential Essential Patent Claim is encouraged to submit a Letter of Assurance, even if not specifically requested to do so.

25. Who should sign a Letter of Assurance?

Only a person who is authorized to sign and bind the Submitter and its covered Affiliates to the assurance shall sign the Letter of Assurance. Unless the Letter of Assurance is received from an individual who has clear authority for intellectual property and legal matters, the Accellera Patent Committee Administrator will take follow-up action.

26. What duty does a Submitter have to provide an additional assurance if it becomes aware of additional Essential Patent Claims not already covered by an existing Letter of Assurance?

As further described in Section 3 of the Patent Policy, the Submitter of a Letter of Assurance is required to submit a Letter of Assurance if, after providing a Letter of Assurance to Accellera, the Submitter of the Letter of Assurance becomes aware of additional Patent Claim(s) that are not already covered by an existing Letter of Assurance and that are owned, controlled, or licensable by the Submitter that may be or may become Essential Patent Claim(s) for the same Accellera Standard. The Submitter is deemed to be "aware" of such additional potential

Essential Patent Claims if any of the following individuals who are from, employed by, or otherwise represent the Submitter have personal knowledge of such claims: (a) past or present participants in the development of the [Proposed] Accellera Standard; or (b) the individual executing the previously submitted Letter of Assurance.

27. Can the Letter of Assurance form be modified?

No. Use of the Letter of Assurance form is mandatory. Completing the form is not considered a modification.

28. What happens when a Letter of Assurance is not accepted?

The Submitter will be informed by the PatCom Administrator that the Letter of Assurance was not accepted and why it was not accepted.

29. Are attachments part of the Accepted Letter of Assurance?

Yes. See also question 38 and 39.

30. Who can enforce the Accepted Letter of Assurance?

Users and implementers may seek to enforce the terms of any Accepted Letter of Assurance. In certain circumstances and at its sole discretion, Accellera may also seek to enforce the terms of an Accepted Letter of Assurance.

Affiliates

31. Who is an Affiliate?

An Affiliate is 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, or 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. For example, the parent corporation of a Submitter, any brother or sister corporation of the Submitter, and any Submitter subsidiary in which the Submitter owns more than 50% are considered Affiliates.

32. Does the Letter of Assurance bind Affiliates?

Yes, other than those Affiliates explicitly excluded in a Letter of Assurance.

Application of LOA to successors of Essential Patent Claims covered by LOA

33. What does the Submitter of a Letter of Assurance have to do if the Submitter transfers one or more Essential Patent Claims covered by the Letter of Assurance to a third party?

The Submitter of a Letter of Assurance is required to provide notice of the Letter of Assurance to any assignee or transferee of any Essential Patent Claims covered by the Letter of Assurance. That notice can be provided by notifying the assignee or transferee that the Essential Patent

Claims are subject to an Accepted Letter of Assurance or by a general statement in the transfer or assignment agreement that the Essential Patent Claims being transferred or assigned are subject to any encumbrances that may exist as of the effective date or such agreement. For example, a Submitter could include a provision like the following in its purchase agreement: “One or more of the assets being transferred are subject to encumbrances that may exist as of the Effective Date of the Purchase Agreement.”

In addition, the Submitter shall require that the assignee or transferee agree to provide the same notice to any subsequent assignees or transferees and require its subsequent assignees or transferees to do the same.

Hypothetical: Company A submits a Letter of Assurance for an Essential Patent Claim for Accellera Standard X which is accepted by Accellera. Two years after submitting the Letter of Assurance, Company A sells all of its assets to Company B, including the Essential Patent Claim. Three years later, Company B sells the Essential Patent Claim to Company C. Subsequently, Company C sells the Essential Patent Claim to Company D but does not provide the required notice to Company D.

(a) Company A’s Obligations

Company A can fulfill its obligations to Accellera in one of two ways:

- ✓ Company A can notify Company B that the Essential Patent Claim is subject to an Accepted Letter of Assurance; or
- ✓ Company A can provide a statement in its purchase agreement with Company B that one or more of the assets being transferred may be subject to any encumbrances that may exist as of the effective date of such agreement.

Regardless of which path it takes, Company A also must require that Company B agree to provide the same notice to its assignees or transferees and to bind those assignees or transferees to provide the same notice.

(b) Company B’s Obligations

Company B can fulfill its obligations to Accellera one of two ways:

- ✓ Company B can notify Company C that the Essential Patent Claim is subject to an Accepted Letter of Assurance; or
- ✓ Company B can provide a statement in its purchase agreement with Company C that one or more of the assets being transferred may be subject to any encumbrances that may exist as of the effective date of such agreement.

Regardless of which path it takes, Company B also must require that Company C agree to provide the same notice to its assignees or transferees and to bind those assignees or transferees to provide the same notice.

(c) Company C’s Obligations

Company C must agree to provide the same notice to its assignees or transferees and to bind those assignees or transferees to provide the same notice as described in (a) and (b) above. In this case, Company C did not provide the required notice to Company D in breach of its agreement with Company B. However, as long as Company B required that Company C provide the required notice to Company D, Company B has fulfilled its commitment under the Letter of Assurance. Although Company B may decide not seek to enforce its agreement with Company C, users and implementers could themselves seek to enforce Company C's agreement to provide required notice to Company D.

34. If a Submitter transfers one or more Essential Patent Claims that may be covered by a Letter of Assurance, what commitment does it need to get from the transferee regarding the Letter of Assurance?

See answer to question 33.

35. Does the Submitter have any responsibility to ensure that its assignees and transferees provide notice of the Letter of Assurance to subsequent transferees?

No. As long as the Submitter provides the required notice to its assignees and transferees and requires that its assignees and transferees agree to provide the required notice and bind its assignees and transferees to the same, the Submitter is not responsible for the actions of any downstream assignees and transferees.

Licensing terms provided with Letters of Assurance

36. A Submitter of a Letter of Assurance is permitted to provide a not-to-exceed license fee or rate commitment. What is the purpose of permitting a Submitter to provide a not-to-exceed license fee or rate commitment?

The purpose of the policy is to facilitate the development of standards that will serve the interests of industry, government, and the public. Relative costs of implementation for different proposed technical approaches in comparison with the relative technical performance increases or decreases of those proposals is a legitimate topic for discussion and a legitimate basis for decision-making in the standards development process. Accellera's Patent Policy attempts to provide participants with greater certainty and precision in their understanding of relative costs.

37. Is a Submitter of a Letter of Assurance required to provide a not-to-exceed license fee or rate commitment?

No. Accellera permits, but does not require, the Submitter to provide not-to-exceed royalty rates or other terms.

38. Does Accellera make a judgment about whether any terms provided with the Letter of Assurance are reasonable or non-discriminatory?

No. 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 Essential Patent Claims, or for 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. Acceptance of a Letter of Assurance does not imply that Accellera has made any determination of the reasonableness of the foregoing.

39. What is the meaning of "reasonable rates" and "reasonable terms and conditions"?

As noted in the answer to question 38, Accellera takes no position on, and has no responsibility for determining, the reasonableness of disclosed royalty rates or other licensing terms and conditions. Accellera's acceptance of a Letter of Assurance does not imply any finding that the disclosed not-to-exceed terms are or are not reasonable. Accellera's approval of a standard does not imply any finding (in the case of a standard for which not-to-exceed terms have been disclosed) that such terms are or are not reasonable or any finding (in the case of a standard for which not-to-exceed terms were not disclosed) that reasonable terms would be greater or less than the disclosed maximum terms (if any) for any other technology.

40. The policy says that "copies of an Accepted Letter of Assurance may be provided to the TSC but shall not be discussed at any standards-development meeting."

a) Can copies of Accepted Letters of Assurance be handed out at a standards development meeting?

Yes. A participant may provide an Accepted Letter of Assurance to other participants by handing out paper copies of an Accepted Letter of Assurance (including a copy of the accepted license or material licensing terms, if provided as part of the Letter of Assurance) or a data file with an image of the Accepted Letter of Assurance as it resides on the Accellera website.

b) Can the link to the Accellera website for an accepted Letter of Assurance be provided?

Providing or displaying the Accellera URL for an Accepted Letter of Assurance is also acceptable.

c) Can the actual Accepted Letter of Assurance be displayed on a screen?

Yes, but it is not recommended. The Letter of Assurance consists of three pages of often very small type. Therefore, the display is not going to be legible except in the smallest of rooms. The lack of legibility may lead to impermissible questions or discussion. Nevertheless, displaying the Accepted Letter of Assurance as it resides on the Accellera website is not a violation of the patent policy provided a participant does not read aloud, present, or answer questions about the displayed Letter of Assurance.

d) Can a participant make a presentation or answer questions about the not-to-exceed license fee or rate, material licensing terms, sample license agreement?

No, except that using one or more not-to-exceed rates as components in a presentation comparing relative costs is acceptable. Further information can be found in "What You Need to Know about Accellera's Antitrust and Competition Policy."

e) What can standards development groups discuss about Letters of Assurance or submitted license terms?

Nothing, other than distribution of the Letter of Assurance as described in FAQ 40(a) above. In addition, using one or more not-to-exceed rates as components in a presentation comparing relative costs is acceptable. Further information can be found in "Promoting Competition and Innovation: What You Need to Know about the Accellera Standards Association's Antitrust and Competition Policy".

f) Doesn't it make sense to discuss license terms as part of an overall evaluation of a proposed technology?

Accellera standards development meetings consist primarily of engineers who are there primarily to discuss the technical merits of competing solutions. Some knowledge of relative cost is entirely appropriate, and the policy provides for exactly that. But licensing issues can be complex and involve not just technical issues but legal and business issues as well, and those discussions can require a different set of people than are present for the technical meetings.

g) What do I do if the standards development group launches into a discussion of patent licensing terms?

A participant should object to, and a TSC chair shall close down, any discussion that is not permitted under Accellera's policies.

h) What should the chair do if a participant wants to modify the terms of an Accepted Letter of Assurance during the meeting?

An Accepted Letter of Assurance cannot be modified, either in the meeting or elsewhere. Anyone who wishes to submit an additional Letter of Assurance may do so (although any previous Accepted Letters of Assurance will continue to be available). The chair should instruct the individual to submit a new Letter of Assurance as provided in the Patent Policy. See also question 43.

i) What about conversations in the hallway? Can participants discuss the particulars of license terms there?

Accellera regulates what goes on in forums that Accellera provides, such as meeting rooms and email reflectors. Accellera has no ability to regulate purely private conduct of its participants. There are some topics that participants should not discuss regardless of where they are (such as prices that each of them as competitors will charge for compliant products). There are other topics that participants shall not discuss in Accellera forums and shall not discuss in immediately adjacent spaces that might reasonably lead outside observers to believe it is just a continuation of the formal meeting. Further information can be found in "Promoting Competition and Innovation: What You Need to Know about the Accellera Standards Association's Antitrust and Competition Policy".

j) If a Letter of Assurance is submitted without the Submitter's having exercised the option of providing a not-to-exceed license fee or rate commitment or other license terms, is it okay for a TSC participant to request or encourage the Submitter to file an additional Letter of Assurance to provide that information?

No. Although relative cost comparisons can certainly note the absence of cost information, participants shall not request license fees, terms, or conditions during technical standards-development meetings or in other Accellera forums for technical discussions (such as email reflectors).

k) What can be discussed about patents in a standards development group meeting or in an Accellera email reflector?

You can discuss the technical merits of using the technology included even if it is included within a potential Essential Patent Claim. You can discuss and compare the relative costs of technology claimed in potential Essential Patent Claims. You must not discuss subjects such as how a patent should be licensed, or essentiality, validity, or interpretation of a patent claim. These are not appropriate topics for discussion in a standards development committee.

41. Can someone submit a different Letter of Assurance for different Essential Patent Claims within the same standard?

Yes. A Submitter may submit separate Letters of Assurance providing different licensing positions for different potential Essential Patent Claims.

42. If a person submits a Letter of Assurance but doesn't identify a specific Essential Patent Claim covered by the Letter of Assurance, are the assurances binding on all of the Essential Patent Claims owned by the Submitter's company?

Yes.

43. Can a Submitter change the terms of the assurance it has given after it has been accepted by Accellera? For example, what if the Submitter decided to lower the not-to-exceed price it would offer to license for an Essential Patent Claim?

A Letter of 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. Thus, a Submitter cannot change the terms of the Letter of Assurance for a particular Essential Patent Claim once it is accepted. However, over time, a Submitter may provide multiple assurances for a given Essential Patent Claim by submitting multiple Letters of Assurance for such claim, each of which shall be binding on the Submitter. Each potential licensee may choose to invoke the terms of any applicable Letter of Assurance accepted by Accellera. Thus, the Submitter desiring to lower the not-to-exceed price the Submitter would offer to license for an Essential Patent Claim can submit an additional Letter of Assurance with the revised not-to-exceed price and each potential licensee may choose to invoke the terms of either Letter of Assurance.

Blanket Letter of Assurance

44. What is a "Blanket Letter of Assurance"?

A Blanket Letter of Assurance is a Letter of Assurance referencing a standard or project that applies to all Essential Patent Claims for which a Submitter may currently or in the future (except as otherwise provided for in the Accellera Patent Policy) have the ability to license. See Section 4.3 of the Patent Policy.

45. What happens if the Submitter submits a Blanket Letter of Assurance after previously offering a specific Letter of Assurance?

If a Submitter has signed and submitted a Letter of Assurance specifically identifying an Essential Patent Claim before or concurrently with signing and submitting a Blanket Letter of Assurance, the Blanket Letter of Assurance cannot be invoked as to the specified Patent Claim.

46. Does a Blanket Letter of Assurance apply to Essential Patent Claims that my company acquires after submitting the Letter of Assurance?

Yes, unless the acquired entity or the prior holder of the acquired Essential Patent Claim has submitted a Letter of Assurance before the acquisition. Any Blanket Letter of Assurance 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). An acquiring party can ask a seller of an acquired Essential Patent Claim or an acquired entity to submit additional Letters of Assurance before closing of the acquisition.

Implementation of new policy

47. What is the effective date of the Accellera Patent Policy?

The effective date of the patent policy set forth is the date on which it is approved by the Accellera Board and will apply to existing standards development projects currently underway as well as new standards development projects.