

December 3, 2020

VIA EMAIL

Institute of Electrical and Electronics Engineers
3 Park Avenue, 17th Floor
New York, NY 10016-5997 U.S.A.
Attn: Sophia A. Muirhead, General Counsel and Chief Compliance Officer
Email: s.muirhead@ieee.org

RE: *Support for 2015 IEEE-SA Bylaw Updates*

Dear Ms. Muirhead,

We write in support of the IEEE Standards Association's ("IEEE-SA") 2015 clarifications to its intellectual property rights policies (the "2015 Updates"). Our companies and the businesses represented by our organizations are leading innovators across a range of technologies. We include sponsors of many significant contributions to IEEE-SA standards, as well as technology developers that create and use products that implement standards created by IEEE-SA.

In February 2015, a supermajority of the IEEE Board of Directors voted to approve the 2015 Updates. The IEEE Board's vote was the culmination of a multi-year process that included supermajority votes in favor of the updates by the IEEE-SA Standards Board and Board of Governors. Those votes were taken after several years of active discussion regarding changes to the IEEE By-Laws, in which different views were expressed and fully considered. After the IEEE Board voted to approve the 2015 Updates, the Antitrust Division of the Justice Department issued a favorable business review letter ("BRL"), in which it recognized that the Updates could provide participants in IEEE-SA standards-setting processes with better information about licensing terms, potentially increasing competition among technologies for inclusion in a standard, facilitating licensing negotiations, and reducing patent infringement litigation.¹

Despite the benefits of the 2015 Updates to IEEE-SA, participants in IEEE-SA's standards development process, and implementers of IEEE-SA standards, opponents of the updates predicted that "IEEE's ability to develop cutting edge standards would suffer."² These predictions have proven inaccurate. Since the 2015 Updates were enacted, the IEEE has experienced unprecedented success – developing a record number

¹ Letter, Acting Assistant Attorney General for Antitrust Renata Hesse to Michael Lindsay (February 2, 2015) ("2015 BRL").

² www.Advancingengineering.org (site visited Nov. 23, 2020).

of new standards and generating more innovation than ever before.³ To pick one example of this record of continued success, according to a September 2020 report from the IEEE-SA New Standards Committee (NesCom), the number of new standards projects initiated at IEEE-SA each year grew 78 percent from 2016, the first full year after the 2015 Updates, to 2020 (and the 2020 figure is for a partial year).⁴ Likewise, participation in IEEE-SA's Corporate Advisory Group has grown sharply since the 2015 Updates.⁵ We are confident that IEEE-SA's unique role as a global forum for the development of technology standards will continue long into the future.

We recall that the 2015 Updates were supported by an overwhelming number of IEEE-SA participants and industry stakeholders – many of whom wrote to IEEE urging the IEEE-SA that the then-draft updates be adopted.⁶ These supporters include sponsors of the most prolific technical contributors to IEEE, and other companies that regularly commit to license patented inventions they own that are required to implement IEEE standards across a wide range of technologies. The 2015 Updates also had strong support outside of the technology industry. For example, the National Retail Foundation expressed support for the IEEE's efforts to reign in patent hold up affecting the retail industry, an important user of IEEE 802.11 for in-store data communications and a frequent target of patent assertions.

We are aware of the September 10, 2020 “supplement” (the “BRL Supplement”) to the 2015 BRL. We do not believe that the BRL Supplement accurately describes the effect of the 2015 Updates on standards development at IEEE-SA. It is difficult to reconcile statements in the BRL Supplement regarding the alleged harm the 2015 Updates could cause to standards development at IEEE-SA with the actual data and real-life experience summarized above. We likewise are concerned that the BRL Supplement deviates from the longstanding consensus that underlies the 2015 BRL regarding the potential for opportunistic behavior by owners of patents claimed to be essential to implement industry standards, behavior that can harm competition, consumers and innovation.

Our companies and organizations recognize that the implementation of the 2015 Updates has raised questions that have required discussion and resolution at the IEEE-SA Patent Committee and the Standards Board. But we are not aware of any consequences for IEEE-SA that should cause the organization to question the continued need for the

³ A series of empirical studies have documented the beneficial effect of the IPR Updates since 2015. See IPLytics, *Empirical Analysis of Technical Contributions to IEEE 802 Standards* (2019), https://www.iplytics.com/wp-content/uploads/2019/01/IEEE-contribution-anaylsis_IPLYtics-2019.pdf; IPLytics, *IEEE's Empirical Record of Success and Innovation Following Patent Policy Update* (2018), https://www.iplytics.com/wp-content/uploads/2018/04/IPLYtics_Report-on-IEEE-activities_2018.pdf; IPLytics, *Empirical study on patenting and standardization activities at IEEE* (2017), available at https://www.iplytics.com/wp-content/uploads/2018/01/IPLYtics_2017_Patenting-and-standardization-activities-at-IEEE.pdf.

⁴ NesCom Report, slide 5 (September 24, 2020).

⁵ Industry Engagement & Sector Strategies SMDC Report to the IEEE-SA BOG, slide 8 (October 2, 2020).

⁶ Companies that wrote to IEEE in support of the 2015 Updates included, for example, Aruba Networks, Broadcom, CableLabs, Cisco, Lenovo/Motorola, Intel, Marvell, Samsung, Kingston, Juniper, Apple, Dell, Hewlett-Packard, Ruckus Wireless, Microsoft, Sierra Wireless, Verizon, and Vizio.

2015 Updates to contribute to the growing success of standards development at IEEE-SA. If there are remaining issues that opponents of the 2015 Updates wish to raise with the current IEEE-SA By-Laws, they may raise their concerns through the same open, participatory process that led to the 2015 Updates.

We appreciate and support the IEEE-SA's efforts in enacting the 2015 Updates, and thank you for your ongoing support of the IEEE's mission to "foster technological innovation and excellence for the benefit of humanity."

Sincerely,

1564B	ACT The App Association
airties	Apple Inc.
BadVR	Cisco
Computerways	Computer & Communications Industry Association (CCIA)
Continental Automotive GmbH	Dell Inc.
Fresco Capital	Google
High Tech Inventors Alliance (HTIA)	Hitachi, Ltd.
HP Inc.	Intel
Juniper Networks, Inc.	Kamstrup A/S
Landis+Gyr	Layers.Studio
Lenovo	Microsoft
MotionMobs	Nordic Semiconductor

Qi-Fense

Sagemcom Broadband SAS

Samsung Electronics

Sequans

Sierra Wireless

Sky

TEEM

u-blox AG

Volkswagen Group of America, Inc.

Wellbeyond