



# Department of Justice

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## **DEPARTMENT OF JUSTICE WILL NOT CHALLENGE STANDARDS-SETTING ORGANIZATION'S PROPOSAL TO UPDATE PATENT POLICY**

WASHINGTON – The Department of Justice announced today that it will not challenge a proposal by the Institute of Electrical and Electronics Engineers, Inc. (IEEE) to update the IEEE Standards Association's (IEEE-SA) patent policy. That policy governs the incorporation of patented technology in IEEE standards and explains the terms under which holders of patents essential to IEEE standards commit to make licenses available for use in implementing IEEE standards.

The department's position was stated in a business review letter to counsel for IEEE and IEEE-SA from Renata B. Hesse, Acting Assistant Attorney General for the Antitrust Division for this matter.

IEEE requested a business review letter from the Antitrust Division expressing its enforcement intentions regarding a proposed update to its patent policy. According to representations made by the applicant, the update revises the policy's provisions regarding commitments from parties holding patent claims that are essential to IEEE-SA standards to license those claims on reasonable and non-discriminatory (RAND) terms. The update addresses the availability of injunctive relief, the meaning of a reasonable licensing rate, permissible requests for reciprocal licensing, and the production levels to which the commitment applies.

Standards can offer significant procompetitive benefits. For example, they may facilitate product interoperability, lower costs, foster innovation and efficiency, and increase competition among technologies for inclusion in standards. The stated purpose of the IEEE's update is to add clarity to the commitment patent holders voluntarily make regarding the licensing of patent claims essential to IEEE standards on RAND terms.

"The department supports standards setting organizations' efforts to clarify their patent licensing policies," said Acting Assistant Attorney General Hesse. "IEEE's decision to update its policy, if adopted by the IEEE Board, has the potential to help patent holders and standards implementers to reach mutually beneficial licensing agreements and to facilitate the adoption of pro-competitive standards. Where, as here, the department does not believe that adoption of a policy change is likely to result in harm to competition, IEEE and other standards setting organizations are free to adopt those modifications to their policies that they believe will benefit

their standards setting activities. The U.S. government does not dictate patent policy choices to private standards setting organizations."

The department issued similar guidance to [VITA](#) in 2006 and to [IEEE](#) in 2007 regarding changes to their patent policies that allowed patent holders to commit publicly to specific restrictions on their future licensing terms and conditions for the use of essential patents.

Under the department's business review procedure, an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the division currently intends to challenge the action under the antitrust laws based on the information provided. The department reserves the right to challenge the proposed action under the antitrust laws if it produces anticompetitive effects.

A file containing the business review request and the department's response may be examined in the Antitrust Documents Group of the Antitrust Division, U.S. Department of Justice, 450 Fifth Street, N.W., Suite 1010, Washington, D.C. 20530. After a 30-day waiting period, the documents supporting the business review will be added to the file, unless a basis for their exclusion for reasons of confidentiality has been established under the business review procedure.

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