

Position Paper

No.: EE-2013001

European Electrical & Electronic Industry's Positions and Proposals on Regulatory Measures on National Standards Involving Patents (Interim) (Draft for Public Comments)

Jan, 2013

To regulate the management of national standards, to encourage innovation, to promote the rational adoption of new technologies by national standards, to protect the legitimate rights and interest of public, patentees and relevant right holders, to appropriately deal with the issues of national standards which involve patents, and to ensure the effective implementation of national standards, China Standardization Administration Committee (hereafter referred to as the 'SAC') drafted the Regulatory Measures on National Standards Involving Patents (Interim)(Draft for Public Comments) (hereafter referred to as the 'The Exposure Draft') and solicited opinions from public.

EuropElectro¹ represents the European electrical & electronics manufacturers who are both users of standards, and also willing to be active in some standards development. Our common position on 'patent inclusion in public standards' is

- China regulations on patent inclusion in China public standards shall follow the published <COMMON PATENT POLICY FOR ITU-T/ITU-R/ISO/IEC >. The RAND principle shall be adopted.
- The implementation of the Regulations shall be transparent.

From standards development view point, we summarized the European electrical & electronics manufacturers' comments and proposals on patent inclusion of national standards development in the position paper on 'The Exposure Draft'.

1

EuropElectro helps to bring Europe and China closer together in technical legislation, standardization and certification for electrical and electronic products in order to facilitate the trade with these products in both directions.

In Cooperation
with:



Orgalime - The European Engineering Industries Association, Brussels
Orgalime - 欧洲工程行业协会, 布鲁塞尔



ZVEI - German Electrical and Electronic Manufacturers' Association, Frankfurt
ZVEI - 德国电气电子行业协会, 法兰克福

I. General opinion

EuropElectro welcomes the SAC drafting 'The Exposure Draft' that makes transparency in the process of patent inclusion in standard development and welcome comments from public. We expect the follow-up work for implementation of the regulations can be carried out both transparently and openly. EuropElectro would like contribute to facilitate implementation of the international policy in China.

In general, we find out that 'The Exposure Draft' complies with <COMMON PATENT POLICY FOR ITU-T/ITU-R/ISO/IEC >.

Meanwhile, we note that, in some articles of 'The Exposure Draft', there are some additional requirements to those of <COMMON PATENT POLICY FOR ITU-T/ITU-R/ISO/IEC >.

We suggest the following,

II. Comments and Suggestions

Article 4 of Chapter Two Organizations or individuals participating in the formulation or revision of national standards shall be legally liable for their failure to follow the aforementioned requirements to disclose the essential patents held by them.

Imposing legal liability or legal sanctions for any default on disclosure obligations or disclosure requirements seems to be disproportionate. Companies with large patent portfolios meet difficulties to be permanently in perfect compliance with the disclosure requirement, because for large patent portfolios the identification of all relevant patents is a difficult task which is sometimes prone to errors. In addition to problems due to the size of patent portfolios, disclosure omissions may stem from misconstructions of patent claims. Mistakes in labelling a patent as essential for a standard may occur in the assessment by the patent owner as well as in the assessment by the standardization body. Hence, Disclosure omissions should not be subject to legal liability as long as disclosures are made in good faith.

Besides, 'legal liabilities' in this article is not defined specifically and explicitly, which will easily bring difficulty to the implementation of 'The Exposure Draft'.

Here we suggest,

- 1. Make a distinction between 'intentional failure to follow...' and 'unintentional failure to follow...' regarding 'failure to follow the aforementioned requirements to disclose the essential patents held by them';**
- 2. Clarify the corresponding 'legally liable'.**

III. Supplementary Statement

In order to make the implementation of 'The Exposure Draft' smoothly after it is enforced, we kindly suggest SAC:

- 1) For the national standards which are IDT of ISO/IEC standards, the relevant patents should be stated when the standards published. This is also applied to ISO/IEC standards.
- 2) The GB/T 'Special Procedure for the development of Standards Part 1: Standard Related to Patents' is welcome. And as this standard is the supportive document for 'The Exposure Draft', we strongly suggest a wide comment collection for the GB/T file at the same time as 'The Exposure Draft' soliciting public opinions.
- 3) To avoid ambiguity, we suggest add 'or not willing to license its patent at all' to the point 3 of Article 1 of Chapter III.
- 4) To avoid confusion, we suggest 'The Exposure Draft' shall be put into effect as of DD/MM/YY to the standardization projects to be proposed.

Contact Information:

EuropElectro – European Electrical and Electronics Industry

Add: Unit 0830/08, Landmark Tower 2, Dongsanhuan Road, Chaoyang District,
100004 Beijing, China

Tel: +86 (0) 10 . 65396717

Fax: +86 (0) 10 . 65396719

E-mail: ling.xu@europelectro.org

Website: www.europelectro.org

ORGALIME - *Speaking for European engineering, Orgalime, represents 3 industrial branches (electrical & electronic, mechanical engineering and the metal articles & metalworking) that manufacture over 28% of total EU manufacturing output and has 37 member trade federations in 22 European countries. The industry accounted for some €1,666 billion in 2011. The industry not only represents more than one quarter of the output but also a third of the exports of the EU's manufacturing industries.*

ZVEI – *the German Electrical and Electronics Industry Association is one of the world's largest electrical and electronics industry associations. ZVEI represents, with 26 product divisions and 1600 member companies, the German electrical and electronics industry with €178 billion turnover in 2011 and accounts for more than 840, 000 employees.*