

LES Standards Committee Charter Document

FRAND Licensing Standard Committee

September 20, 2018

Scope

The FRAND Licensing Standard Committee (the “Committee”) will create an industry-wide, consensus-based, voluntary business process standard (the “Standard”) for businesses and professionals who engage as principals or agents in the practice of licensing standard essential patents (SEPs) on fair, reasonable and non-discriminatory (FRAND) terms to help guide negotiations. While there is no “one-size-fits-all” approach to FRAND negotiations, the Standard will be based on the consensus developed by participating stakeholders. This Standard is not offered as legal advice, and compliance with the Standard does not serve as a guarantee that an adopter will be found to have complied with any legal obligations in connection with FRAND or SEP licensing. Neither LES nor any participant shall have any legal liability to any third party in connection with the Standard.

The Standard is intended to:

- Enhance the business processes and management surrounding SEP licensing transactions on FRAND terms;
- Assist all parties engaged in SEP licensing negotiations on FRAND terms, including sectors and verticals past the Information and Communications Technology (ICT) sector;
- Protect the reasonable interests of all parties, including SEP owners, users and downstream consumers, via balanced licensing practices;
- Improve the efficiency of SEP licensing transactions on FRAND terms through use of agreed-on practices;
- Assist parties by providing reference documents and forms that they may wish to use to facilitate their FRAND negotiations; and
- Reduce transactional costs and management expenses related to SEP licensing on FRAND terms.
- Identify relevant legal materials describing the background and context to FRAND negotiations.

The Committee believes that consensus-based SEP FRAND negotiation practices can be standardized so as to facilitate negotiations and assist parties and stakeholders, serving as a flexible and scalable framework.

The Committee aims to develop a Standard establishing durable approaches in the SEP licensing ecosystem, while remaining a versatile framework that can serve the needs of SEP licensors and licensees; and accommodate FRAND terms, the needs of particular transactions and evolving laws, regulations, industry practices, standard setting organizations’ (SSOs’) / standard defining organizations’ (SDOs’) policies and court opinions. The goal, in developing the Standard, is to provide effective industry

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negotiation practices that promote licensing of SEPs in a way that benefits all stakeholders— whether they be licensors or licensees of SEPs, individual inventors or innovating businesses, internal practitioners or outside professionals – and consumers alike. The Standard will include requirements for enterprise management in SEP licensing, negotiation protocols, and participating-stakeholder supported business practices. The Committee will develop a Standard that applies across the SEP licensing ecosystem. The focus will be on observable business processes and negotiation practices that are documented and applicable across different vertical industries.

Work Products

The Committee envisions developing the following components:

1. The Standard, to be submitted for approval by ANSI – this primary document will outline business processes, practices and frameworks for use in FRAND licensing negotiations. Categories may include, among others:
 - Due diligence practices
 - The possible use of confidentiality practices and non-disclosure agreements
 - Notice practices with respect to SEPs available for license
 - Negotiation processes, practices and requirements for adopters, including both licensors and licensees
 - FRAND offer and counteroffer practices
 - Transparency/disclosure practices
 - Assertion practices
2. Secondary, model documentation resources. This set of documents will be non-mandatory checklists or templates for common transaction-related matters, which will serve as a helpful resource and reference, and may or may not be developed jointly with other LES Committees.

Type of Standard

The Committee envisions the primary Standard to describe a framework that can form a basis of reference for entities and professionals engaged in FRAND-assured SEP licensing discussions.

Timeline

This section will be updated periodically.

Steps	Date
Charter draft completed	August 2018 for Submittal to ANSI as part of LES Accreditation Application

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Committee recruitment	On-going
Publication of PINS in ANSI Standards Action	
First draft of the Standard published to the committee for review	
Initial comments from the committee submitted to committee or subcommittee leadership for review	
Second draft of the standard published to the committee for review	
Final comments from the committee submitted to the committee or subcommittee leadership for review	
Committee voting on the draft standard	
Submission date to the LES Standards Board of Directors for review	
Approval by the LES Standards Board of Directors to submit the draft standard to ANSI for public review	
Publication of draft document announced in ANSI Standards Action for public review	
Draft document balloted to consensus body members for vote	
Submission of comments to the draft standard by the public review complete	
Voting complete	
Resolution of and response to public review comments completed by the committee	
Publication of public review comments and the publication of the committee's response	
Submission of final draft standard to the LES USA & Canada board for review prior to recirculation for consensus body member vote	
Recirculation to consensus body members to respond, reaffirm, or change their vote	
Voting complete	
Appeals process concluded	
Submission of the final draft standard and associated documentation to ANSI for approval as an ANS	
Publication as a new ANSI Standard	

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Structure of the Committee

The Committee will have two Co-Chairs and two co-Secretaries, which will be voted on and approved by the larger Committee once the Committee is constituted.

Committee Recruitment

The Committee believes that it will be critical to have broad, open participation by a diverse group of participants. The input of licensors and licensees of patent rights in a variety of settings, a variety of vertical industries, and employing a variety of business models will be critical to developing a Standard that is considered beneficial and pragmatic, with the intention of achieving wide recognition / adoption.

Committee Leadership

- Matteo Sabattini, Committee Member, Co-Chair
- Brian Scarpelli, Committee Member, Co-Chair
- Dave Djavaheerian, Committee Member, Co-Secretary
- Chris Dubuc, Committee Member, Co-Secretary

Committee Members

- Matteo Sabattini, Director IP Policy, Ericsson (matteo.sabattini@ericsson.com)
- Brian Scarpelli, ACT | The App Association (bscarpelli@actonline.com)
- Dave Djavaheerian, PacTech Law, P.C. (ddjavaheerian@pactechlaw.com)
- Chris Dubuc, Longhorn IP (chris@longhornip.com)

Current Committee Membership

Beginning in Q1 2018, to be considered an active member of any standards committee, a company or individual will have to be recognized as a dues paying member.

Membership

The Committee leadership and members will participate in the active recruitment of a diverse array of members to assist in the development of the Standard. The initial membership should reflect the broad SEP licensing community and a variety of key stakeholders. Members must be willing to sign up to the LES Standards By-Laws and IP Agreement, as well as an annual membership fee currently set at \$500.

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The fee structure for participation in the LES Standards Development is available on the LES website at: <http://www.lesusacanada.org/les-standards>

In addition to the FRAND Licensing Standard Committee, seven other areas of IP management standards development have been established as committees and others are contemplated:

- IP Valuation
- Intangible Assets in the Boardroom
- IP Protections Supply Chain
- IP Licensing
- IP Brokerage
- ISO/TC 279 Innovation Management
- IP Guidelines for Start Ups

The Committee envisions active collaboration and communication across all eight committees. The Committee may potentially coordinate with other Committees to establish joint documents or reference materials.

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ANSI PINS

Title of Standard

FRAND Licensing

Project Intent

Develop ANS to assist parties participating in FRAND licensing negotiations and guide discussions.

Project Need

Create an industry-wide, consensus-based, voluntary business process standard for businesses and professionals who engage as principals or agents in the practice of licensing SEPs on FRAND terms to help guide negotiations.

Identify Stakeholders

Small and large businesses, owners or purchasers of SEPs, users of standardized technologies, individual inventors or innovating businesses, including but not limited to: practicing and non-practicing entities (NPEs), academics interested in SEP issues, consumer and public policy representatives, legal professionals and practitioners, trade and industry associations, patent assertion entities (PAEs), universities, R&D centers and laboratories, patent aggregators, patent pool participants and administrators – internal practitioners or outside, in-house and outside licensing professionals.

Scope summary

A Standard addressing processes for FRAND Licensing negotiations to assist stakeholders throughout the SEP licensing ecosystem, while remaining a flexible, scalable, and versatile management framework that can serve the needs of any SEP licensor or licensee. The developed standard applies to those who own, use and regularly engage in licensing SEPs, whether or not they also manufacture standard-compliant articles, products or services.

Notes

Request an Announcement in Standards Action to Solicit New Consensus Body Members: Yes