

EE Times:

IEEE patent policy passes trust bar at Justice

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The Justice Department said last week it will not oppose on antitrust grounds the IEEE's proposed policy for disclosing patents in standards deliberations.

The IEEE policy would allow patent holders to publicly agree to specific restrictions on future licensing terms and conditions for intellectual property considered essential to an IEEE standard.

In a legal opinion sought by the IEEE known as a "business review letter," the Justice Department's Antitrust Division said "the proposed policy may enable IEEE to make better-informed decisions when formulating standards that will benefit consumers."

The IEEE Standards Association (Piscataway, N.J.) said in a statement that changes to its patent disclosure policy would take effect immediately. The group added that its new policy "encourages the optional disclosure of royalty rates and other license terms of a potentially essential patented technology early in the development of a draft standard." Patent holders "may provide a not-to-exceed license fee or rate commitment, a sample license agreement or one or more material licensing terms," the association added.

"Our new policy encourages voluntary disclosure of maximum royalty rates and other licensing terms and allows IEEE standards working groups to include these in their comparison of relative costs for the technology alternatives they consider for a standard," said Judy Gorman, managing director of the IEEE Standards Association. "As a result, our working groups will make choices based on more-informed cost-performance evaluations."

The Justice Department issued a similar letter last fall in response to a request by VITA, which sets standards for embedded systems in aircraft, satellites and other mission-critical applications. VITA has implemented a mandatory patent disclosure policy for new standards.

IEEE's voluntary patent disclosure policy would: allow patent holders to choose not to provide licensing information; state that its patents are not essential to an IEEE standard; declare that it will not assert patent claims against those implementing an IEEE standard; or commit to license its essential patent claims under the legal standard of reasonable and nondiscriminatory terms.

Justice and Federal Trade Commission antitrust enforcers have stressed that they will apply the antitrust "rule of reason" to determine whether a standards group is operating within U.S. antitrust laws.

Generally speaking, the antitrust "rule of reason" serves as a primary means for weighing pro- and anti-competitive effects.