

New Vita Patent Policy

**For: CNIS/SUN Seminar On
Open Standards, Intellectual Property Rights and
Innovation**

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What is VITA?

- **Non-profit association of 136 developers, vendors and users of real-time modular embedded computer systems.**
- **Members share interest in developing “VME” (Versa Module Europe) technology.**
- **VSO (VITA Standards Organization) is an ANSI-accredited SDO that develops open architecture standards supporting growth of competitive markets for a broad range of products employing VME technology.**
- **VITA/VSO are committed to standards development activity that enhances capabilities of VME technology while ensuring interoperability among competing and complementary VME-based products**

Background to New Policy

- **VSO working groups may consider patented solutions for standard specifications to enhance technical merits of adopted standards.**
- **But use of patented inputs is consistent with open standards objectives only if patent holders license their patents on RAND terms.**
- **Traditional reliance on generalized RAND commitments has failed to protect against patent ambush/holdup conduct due to the lack of timely disclosures regarding essential patent claims and intended license terms.**
- **Post-standards-adoption assertions of patent claims and excessive license demands have stalled implementation of final standards, threatened to exclude many parties from affected markets and thereby undermine open standards effort.**

The New Policy

■ Disclosure of Patents:

- All working group members are required to disclose at specified times during development process all patents and patent applications that are owned or controlled by the member's company and that member believes may become essential to implementation (based on good faith and reasonable inquiry).

■ RAND Commitment:

- Member must agree to grant all interested parties licenses to all essential patent claims on fair, reasonable and non-discriminatory terms.

The New Policy (continued)

■ Disclosure of License Terms:

- Member must disclose at specified times during development process its maximum royalty rate for all such patents and also either (a) provide a draft license agreement or (b) accept prescribed limits on scope of any grantbacks, nonasserts, reciprocity or defensive termination provisions.

■ No Concerted Action:

- Prohibition on any negotiation or discussion of license terms among members or with third parties at working group meetings.

■ Remedy:

- Failure to comply with disclosure requirements results in obligation to license on royalty-free basis along with prescribed limits on scope of grantbacks, nonasserts, etc.

The New Policy (continued)

- **Disputes:**

- Arbitration procedure for resolving disputes over compliance with above-mentioned requirements.

- **Enforceability:**

- Declaration containing the required disclosures includes representations of contractual enforceability against signing company and its affiliates, successors, assignees and transferees; also confirms that all prospective licensees are third-party beneficiaries entitled to enforce the provisions therein.

Anticipated Benefits

- **Enable standards participants to make informed choices among competing technology solutions available for inclusion in a proposed specification.**
- **Greater prospect that adopted standards can be implemented without risk of incurring unacceptable royalty costs or other unacceptable license terms.**
- **Rapid implementation of final standards and associated growth of new markets for members' compliant products.**

Anticipated Benefits (continued)

- **More competition among technology developers for acceptance of their proffered solutions, enhancing innovation and overall quality of VSO standards.**
- **Enables participants to consider relative costs as well as relative technical merits of competing offers.**
- **Eliminates or reduces exposure to patent ambush/holdup conduct.**

U.S. Department of Justice (DOJ) Approval Under Business Review Letter (BRL) Procedures

- **Applied for advice in June 2006**
- **Dialogue with DOJ officials throughout June – September 2006.**
- **DOJ approval in October 2006.**