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To: PSA Department <PSA@ansi.org>

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Subject: [EXTERNAL] Fraunhofer USA Response to Call for Public Comments – Proposed Revisions to ANSI Essential Requirements (ANSI Standards Action, October 7, 2022)

Dear Madam/Sir,

On behalf of Fraunhofer USA, below is submitted in response to the above Call for Public Comments regarding the proposed revisions to Section 5.0 of the ANSI Essential Requirements.

Fraunhofer USA is a scientific 501(c) not for profit organization, located in the United States, dedicated to the advancement of applied science, and conducts research and development in conjunction with universities, government and industry. Fraunhofer USA's research centers in the United States and the Fraunhofer institutes of Fraunhofer-Gesellschaft in Germany work together and have a strong participation in international technical standards development in ISO, IEC and other international, regional and national standard development bodies.

Fraunhofer USA focuses on industrial innovation in the USA, operating seven Research Centers of Excellence with Universities such as Boston and Michigan State. It also has strong relationships with US Departments and Agencies, for example, the US Department of Energy, NASA and DARPA, and agencies of economic development in several States.

The aim of Fraunhofer when undertaking applied research with its cooperation partners is to increase the competitiveness and relevance of local industry, thereby assisting in job creation. This includes undertaking activities as a developer and holder of all types of intellectual property, including standard essential patents and other forms of intellectual property which have the potential for global adoption. From these activities, Fraunhofer has participated in many licensing programs developed to implement world-class, global technology solutions to ultimately serve societal benefit and advancement.

- General Comments

The key instruments relied upon for assessing the proposed amendments to the ANSI ERs are the WTO Agreement on Technical Barriers to Trade (WTO TBT Agreement), the Standards Development Organization Advancement Act of 2004 (SDOAA), OMB Circular A-119 and the United States Standards Strategy. In its previous comments and submissions, Fraunhofer USA has placed emphasis on the guiding principles enshrined therein.

- Substantive Comments

- 5.3 Maintenance of Audited Designator Status

It would appear that the reference to the ANSI Patent Policy should refer to the ASD's patent policy patent.

Lines 108 to 111 (inclusive) in the draft amendment should perhaps read as follows:

108 m) comply with ANSIASD's patent policy, including the following:

109 - Any patent holder's statements or letters of assurances (LoAs) received will comply with ANSI's

110 (and the ASD's) Patent Policy (See 3.1) and will be made publicly available either on the ASD's

111 website or on ANSI's LOA repository.

If the heading for m) is not changed, then 'patent policy' should be written as 'Patent Policy'.

Fraunhofer USA welcomes the addition of the following text:

5.3 Maintenance of Audited Designator Status

The developer Audited Designator shall:

[...]

m) comply with ANSI's patent policy, including the following:

- Any patent holder's statements or letters of assurances (LoAs) received will comply with ANSI's (and the ASD's) Patent Policy (See 3.1) and will be made publicly available either on the ASD's website or on ANSI's LOA repository.

- Any negative LoAs (i.e., those indicating the patent holder is unwilling to license essential patent claims) received will be provided directly to the Secretary of the ExSC within 30 days of receipt'.

[...]

The insertion of the above ensures consistency between the ANSI Essential Requirements with the certification criteria listed in the ANSI BSR-9 Form and Annex 3 of the WTO TBT Agreement, specifically the principle of transparency.

We hope that our feedback is of assistance to your consultation process. We are happy to respond to any questions you may have regarding the comments and remain in dialogue with the ANSI on these important issues.

Regards,

Sebastian Wicklein

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