



American National Standards Institute
25 West 43rd Street , 4th Floor
New York, NY
10036
United States of America

Munich, March 26, 2018

Sent by email: psa@ansi.org

Dear Mesdames and Messieurs,

**Public Comments - Proposed Revision to the ANSI Essential Requirements
Section 3.1 ANSI Patent Policy – Inclusion of Patents in American National
Standards (ExSC_027_2018 (February 16, 2018 ANSI Standards Action))**

Fraunhofer-Gesellschaft (Fraunhofer) is Europe's largest application-oriented research organisation. Its research efforts are geared entirely towards people's needs: health, security, communication, energy and the environment. Fraunhofer works with all industries across all sectors – from multinationals to SMEs to start-ups as both a research partner and an external research provider.

Fraunhofer has an active domestic, European and international role in the setting of standards¹, compliance testing with standards², and contributing to the development and adoption of technological standards³ (open source and commercial). As part of these activities, Fraunhofer is a member of various standard setting organisations, such as ITU-T, ETSI, IEEE, ANSI and DVB. The organization holds a number of standard essential patents, which are available for use through patent pools and through licence

¹ Such as safety standards.

² See for example,
<http://www.cleanmanufacturing.fraunhofer.de/en/cleanlinesscompatibility/testeddevice.html>;
Fraunhofer IFAM is a recognized "Certification Body" of the German Federal Railway Authority -
http://www.ifam.fraunhofer.de/en/Bremen/Adhesive_Bonding_Surfaces/Certification_Body_DIN_6701-2.html; ; Fraunhofer ISE is accredited to certify PV modules are tested according to IEC and European standards for design qualification and type approval -
<http://www.ise.fraunhofer.de/en/service-units/testlab-pv-modules>

³ For example, Fraunhofer participates in the Open Geospatial Consortium (OGC), an international industry consortium of 512 companies, government agencies and universities participating in a consensus process to develop publicly available interface standards. Fraunhofer also contributes to other standardization initiatives, such as those relating to video and audio digitisation.



directly with Fraunhofer. Fraunhofer has also undertaken a number of studies regarding standards and patents.⁴

Fraunhofer welcomes the opportunity to participate in the proposed revision process for the ANSI Essential Requirements and commends the IPRPC Task Force for the work that has been completed to date.

All information included in this response is public information. Fraunhofer would welcome the opportunity to discuss any part of our response with ANSI.

The **attached** document sets out Fraunhofer's public comments and addresses the proposed revision to the ANSI Essential Requirements.

Sincerely,

Stefanie Mielert
Head, Corporate Legal Governance
Fraunhofer-Gesellschaft

Enclosure:

1. Fraunhofer Public Comments - Proposed Revision to the ANSI Essential Requirements (2017 edition) Section 3.1 ANSI Patent Policy – Inclusion of Patents in American National Standards ExSC_027_2018 (February 16, 2018 ANSI Standards Action)

⁴ For example, Blind, K.; Jungmittag, A., 'The impact of patents and standards on macroeconomic growth: A panel approach covering four countries and 12 sectors, Journal of productivity analysis', 29 (2008), No.1, pp.51-60; Berger, F.; Blind, K.; Thumm, N., 'Filing behaviour regarding essential patents in industry standards', Research policy 41 (2012), Nr.1, S.216-225.

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Essential Requirement	Understanding of the proposed amendments	Summary of Fraunhofer’s Review
<p>3.1 Inclusion of Patents in American National Standards</p> <p>There is no objection in principle to drafting an American National Standard (ANS) in terms that include the use of an essential patent claim (one whose use would be required for compliance with that standard) if it is considered that technical reasons justify this approach.</p> <p>Participants in the ASD/ANSI standards development process are encouraged to bring patents with claims believed to be essential to the attention of the ANSI Accredited Standards Developer (ASD).</p> <p>If an ASD receives a notice that a proposed, <u>revised or ANS or an approved ANS</u> may require the use of such a patent claim <u>that is not already covered by an existing assurance</u>, the procedures in this clause shall be followed.</p>	<p>An updated letter of assurance is only required for revisions to an American National Standard (ANS) where there is (i) new revised text in a proposed American National Standard containing an essential patent claim; and (ii) such patent claim is not already covered by an existing assurance.</p> <p>An updated letter of assurance is not required for a reaffirmation of an existing American National Standard as no substantive changes will have occurred and there is a pre-existing letter of assurance.</p> <p>It is noted that the Essential Requirements are the minimal set of requirements for an ASD to comply with, and that an ASD always has the option to customize its own policy.</p>	<ul style="list-style-type: none"> • At the October 2016 meeting of the ANSI Intellectual Property Rights Policy Committee (IPRPC), there was a general, informal consensus that reaffirmations should probably not require new letters of Assurance, for example, as there were no new substantive changes to the original ANS. (quote from Slide 2, IPRPC Meeting May 18-19 2017, presentation entitled ‘Report on ANS Revisions/Reaffirmations TF’, Agenda Item 2.2). • The language proposed by the Task Force was notified on November 3, 2017 as having been approved by greater than super-majority of the ANSI Intellectual Property Rights Policy Committee (IPRPC) through letter ballot (LB) 546 (Yes-24, No-8, Abstain-3, Vote not cast-2). • The ANSI IPRPC ‘is responsible for drafting the "Patent Policy" for incorporation into the ANSI Essential Requirements and for formulating the Guidelines that help explain and illustrate the important and often complex policy considerations relating to these documents’. See https://www.ansi.org/about_ansi/structure_management/policy_commit_councils/intel_rights. • Fraunhofer considers that the proposed amendment reflects its intended purpose by requiring that a new LoA only be filed if a proposed, revised or approved ANS includes new text that relates to a patent claim not already covered by the relevant patent

Essential Requirement	Understanding of the proposed amendments	Summary of Fraunhofer's Review
		<p>holder's pre-existing LoA.</p> <ul style="list-style-type: none"> • The removal of any possible ambiguity relating to reaffirmations and corresponding LoAs ensures clarity in the operation of the Essential Requirements and promotes efficiency by removing exposure to unnecessary time, personnel and monetary costs associated with submitting unnecessary LoAs. • Further, the proposed amendment will also remove the risk of an organisation adhering itself to a new version of policy that was never intended for the previously submitted, irrevocable LoA. Changes to a policy are not to have retroactive effect. • Both the IPRPC ANS Revisions/Reaffirmations Task Force and the IPRPC have achieved an outcome with this proposed revision which is within and in compliance with its respective mandate. • Fraunhofer supports the Executive Standards Council ("ExSC") sending this revision of the ANSI Patent Policy and the ANSI Essential Requirements to the National Policy Committee for final approval, and its incorporation into the next edition of the ANSI Essential Requirements / Patent Policy.

End of Fraunhofer Public Comments - Proposed Revision to the ANSI Essential Requirements (2017 edition)
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