

ASD-STAN Patent Policy and Guidelines

Document Reference: 2.3021 (Version April 2020)

1. Purpose

Considering that the technical experts are normally not familiar with the complex issue of patent law, the Common Patent Policy for CEN/CENELEC [1] and ISO/IEC/ITU [2] endorsed by ASD-STAN (hereafter referred to as the “Patent Policy”) was drafted in its operative part as a checklist, covering the three different cases which may arise if a Document/Standard/Technical Report of ASD-STAN requires licenses for Patents to be practiced or implemented, fully or partly. This Patent Policy refers to the CEN/CENELEC Guide 8 [1] and gives a summary of task to be performed to ensure finally a proper EN publication. This Patent Policy is intended to complement, clarify and facilitate the implementation of the CEN/CENELEC Patent Policy as well the ISO/IEC/ITU Patent Policy, a copy of which can be found at below references [1] and [2].

The Patent Policy requests stakeholders participating in ASD-STAN working groups and patent holders, to proceed the early disclosure and identification of Patents that may relate to Document/Standard/Technical Report of ASD-STAN under development at the best to their knowledge. In doing so, greater efficiency in standards development is possible and potential patent rights problems can be avoided.

ASD-STAN should not be involved in evaluating patent relevance or essentiality with regards to Document/Standard/Technical Report, interfere with licensing negotiations, or engage in settling disputes on Patents. This should be left to the parties concerned.

2. Essential Patent disclosure

Any party participating in the work of ASD-STAN is requested, from the outset and at the best of his knowledge, to draw attention to any known patent or to any known pending application on patent, either their own or of other organizations that, according to his own judgment, may be considered as an essential patent for the deliverable.

In this context, the words “from the outset” imply that such information should be disclosed as early as possible during the development of the deliverable. It is understood that disclosure might not be possible when the first draft text appears since, at this time, the text might be still too vague or subject to subsequent major modifications.

Information on essential patents should be provided in good faith and on a best effort basis, but there is no requirement for patent searches.

In addition to the above, any party not participating in technical bodies may draw the attention of both organizations to any known patent, either their own and/or of any third party that may be considered as essential for the deliverable.

When disclosing their own patents, patent holders shall use the declaration form as stated in Clause 3 of these Guidelines.

Any communication drawing the attention to any third-party patent shall be addressed to ASD-STAN in writing. The potential patent holder will then be requested by the relevant organization to submit a declaration form.

The Patent Policy and these Guidelines also apply to any Patent disclosed or drawn to the attention of ASD-STAN subsequent to the approval of a deliverable.

Whether the identification of the essential patent took place before or after the approval of the deliverable, if the patent holder is unwilling to license under Paragraph 3 of the Patent Policy, the concerned organization shall promptly advise the technical bodies responsible for the affected deliverable so that appropriate action can be taken. Such action shall include, but may not be limited to, a review of the deliverable or its draft in order to remove the potential conflict or to further examine and clarify the technical considerations causing the conflict.

3. Statement and Licensing Declaration for ASD-STAN, CEN and CENELEC Deliverable of Essential Patents and other statutory Intellectual Property Rights based on inventions

Patent holders shall use the CEN-CENELEC Declaration Form to provide the necessary information to be included in the ASD-STAN, CEN and CENELEC Patent Information databases. The CEN-CENELEC

Declaration Form is available on the website of each organization (the Declaration Form is included in Annex 1 of this document for information purposes or as Annex 2 of [Guide 8 “Standardisation and intellectual property rights \(IPR\)”](#) or following [this link](#)).

Declaration Forms must be sent to the attention of the Director of ASD-STAN. ASD-STAN will inform CEN or CENELEC during the EN transformation process. For further information see [\[1\]](#) or [here](#).

4. Conduct of meetings and duties of Chairs

Early disclosure of essential patents contributes to the efficiency of the process by which deliverables are established. Therefore, in the course of the development of a deliverable, experts participating in the technical body are requested to inform about - or to disclose if relevant - any patent that, according to their own judgment, may be considered as an essential patent for the proposed deliverable. Experts are deemed to provide such information on any known essential patents in good faith and at the best of their knowledge.

In particular, Chairmen of technical bodies will ask, at an appropriate time in each meeting, whether anyone has knowledge of essential patents, the use of which may be required to practice or implement the deliverable being considered. The fact that the question was asked shall be recorded in the meeting report, along with any affirmative responses. For further information see [\[1\]](#).

5. Patent Information list

In order to facilitate both the standards-making process and the implementation of deliverables, ASD-STAN, CEN and CENELEC make available to the public a common Patent Information list composed of the information that was communicated to the organizations by the means of Declaration Forms. The Patent Information list may contain information on specific patents or may contain information about compliance with the Patent Policy for a particular deliverable.

The common Patent Information list is not certified to be either accurate or complete, but it only reflects the information that has been communicated to the organizations.

For further information see [\[1\]](#).

6. Specific provisions

a) Consultations on draft Deliverables

All drafts submitted for comment shall include on the cover page the following text:

“Recipients of this draft are invited to submit, with their comments, notification of any relevant patent rights of which they are aware and to provide supporting documentation.”

b) Notification

A published deliverable for which no patent rights have been identified during the preparation thereof shall contain the following notice in the Foreword:

“Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights. [ASD-STAN, CEN and CENELEC] shall not be held responsible for identifying any or all such patent rights.”

A published deliverable for which patent rights have been identified during the preparation thereof, shall include the following notice in the introduction:

“ASD-STAN draws attention to the fact that it is claimed that compliance with this document may involve the use of a patent concerning (...subject matter...) given in (...sub clause...).

ASD-STAN takes no position concerning the evidence, validity and scope of this patent right.

The holder of this patent right has assured ASD-STAN that he/she is willing to negotiate licenses under reasonable and non-discriminatory terms and conditions with applicants throughout the world. In this respect, the statement of the holder of this patent right is registered with [ASD-STAN, CEN and CENELEC].

Information may be obtained from:

Name of holder of patent right:

Address:

Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights other than those identified above. [ASD-STAN, CEN and CENELEC] shall not be held responsible for identifying any or all such patent rights.”

- c) Irrevocable licensing declarations on Essential Patent and transfer of ownership to third parties

To the extent the patent remains essential for the deliverable, the terms of licensing included in the Declaration Form are deemed to be irrevocable, so as to preserve clarity and transparency in the use of such deliverable.

In the event the patent holder of a declared essential patent transfers his patent ownership to a third party, his licensing declaration made in accordance with the Patent Declaration form in Annex 1 of this Guide (or Annex 2 of CEN-CENELEC Guide 8) shall be interpreted as encumbrances that bind all successors-in-interest as to the transferred Patents.

Recognizing that this interpretation may not apply in all jurisdictions, any patent holder who has submitted a licensing declaration according to this Guide - be it selected as option 1 or 2 on the Patent Declaration form - who transfers ownership of a Patent that is subject to such licensing declaration, shall include appropriate provisions in the relevant transfer documents to ensure that, as to such transferred Patent, the licensing declaration is binding on the transferee and that the transferee will similarly include appropriate provisions in the event of future transfers with the goal of binding all successors-in-interest.

REFERENCES

[1] [CEN-CENELEC Guide 8:2019](#), see [CEN-CENELEC IPR & Patents Page](#)

[2] [Guidelines for implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC- Rev. November 2018](#), see [ISO Standards and Patents Page](#)

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Patent Declaration
Form-Annex 2 of CEN

Annex 1

Statement and Licensing Declaration for ASD-STAN, CEN and CENELEC Deliverable
(pages 13-15 of the Annex 2 of CEN-CENELEC Guide 8)



Annex 2



**Statement and Licensing Declaration for
CEN and CENELEC Deliverable**

**on Essential Patents and other statutory Intellectual Property Rights based
on inventions**

This declaration does not represent an actual grant of a licence

Please return to the relevant organisation(s) as instructed below per document type by
email at production@cencenelec.eu and by post:

CEN deliverable: Director Standards
CEN
Rue de la Science, 23
B – 1040 Brussels
Belgium

CENELEC deliverable: Director Standards
CENELEC
Rue de la Science, 23
B – 1040 Brussels
Belgium

Patent, or other Intellectual Property Right (IPR) holder:

Legal Name _____

Contact for licence application:

Name & Department _____

Address _____

Tel. _____

Fax _____

E-mail _____

URL (optional) _____

Document type:

☐ CEN deliverable (*) ☐ CENELEC deliverable (*)

(please return the form to the relevant organisation)

☐ Dual logo CEN/CENELEC deliverable (*)

(for CEN/CENELEC deliverables, please return the form to both CEN and CENELEC)

(*)Number, _____

and/or

(*)Title _____

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and

(*)Relevant clause(s) of the deliverable: _____

Licensing declaration:

The patent or other IPR holder believes that it holds granted and/or pending applications for intellectual property rights such as Patents, utility models or semiconductor topographies, the use of which would be *essential* to implement the above document and hereby declares, in accordance with the Common Patent Policy adopted by CEN and CENELEC, that (check one box only):

- ☐ 1. The patent (or other IPR) holder is prepared to grant an irrevocable free of charge licence to an unrestricted number of applicants on a worldwide, non-discriminatory basis and under other reasonable terms and conditions to make, use, and sell implementations of the above document.

Negotiations are left to the parties concerned and are performed outside CEN or CENELEC.

- Also mark here ☐ if the patent holder's willingness to license is conditioned on reciprocity for the above document.
- Also mark here ☐ if the patent holder reserves the right to license on reasonable terms and conditions (but not free of charge) to applicants who are only willing to license their patent claims, whose use would be required to implement the above document, on reasonable terms and conditions (but not free of charge).

- ☐ 2. The patent (or other IPR) holder is prepared to grant an irrevocable licence to an unrestricted number of applicants on a worldwide, non-discriminatory basis and on fair, reasonable terms and conditions to make, use and sell implementations of the above document.

Negotiations are left to the parties concerned and are performed outside CEN or CENELEC.

- Also mark here ☐ if the patent holder's willingness to license is conditioned on reciprocity for the above document.

- ☐ 3. The patent (or other IPR) holder is unwilling to grant licences in accordance with provisions of either 1 or 2 above.

In this case, the following information is *requested* by CEN and CENELEC as part of this declaration:

- a. Granted patent number, patent application number (if pending), or registration number;
- b. An indication of which portions of the above document are affected;
- c. A description of the claims covering the above document.

Free of charge: it refers to monetary compensation; i.e. that the patent (or other IPR) holder will not seek any monetary compensation as part of the licensing arrangement (whether such compensation is called a royalty, a one-time licensing fee, etc.). However, while the patent (or other IPR) holder in this situation is committing to not charging any monetary amount, the patent (or other IPR) holder is still entitled to require that the implementer of the above document sign a licence agreement that contains other reasonable terms and conditions such as those relating to

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governing law, field of use, reciprocity, warranties, etc.

Reciprocity: As used herein, indicates that the patent (or other IPR) holder shall only be required to license any prospective licensee if such prospective licensee will commit to license its essential patent(s) or essential patent claim(s) for implementation of the same above document free of charge or under reasonable terms and conditions.

Irrevocability: To the extent the patent remain essential for the CEN and/or CENELEC deliverable, the terms of licensing included in this Declaration Form are deemed to be irrevocable, so as to preserve clarity and transparency in the use of such Deliverable.

Assignment/transfer of Patent rights: Licensing declarations made pursuant option 1 or 2 of this Patent Declaration form shall be interpreted as encumbrances that bind all successors-in-interest as to the transferred Patents. While CEN and CENELEC recognize that this interpretation may not apply in all jurisdictions, the patent holder who transfers ownership of a patent that is subject to such licensing declaration shall include appropriate provisions in the relevant transfer documents to ensure that, as to such transferred patent, the licensing declaration is binding on the transferee and that the transferee will similarly include appropriate provisions in the event of future transfers with the goal of binding all successors-in-interest.

Patent Information

No.	Status [granted/pending]	Country	Granted Patent Number, Application Number (if pending) or Registration Number (please include link to relevant patent databases)	Title	Relevant ADR or court decision(s)
1					
2					
3					
4					
5					

Further information is provided on additional pages: ☐ yes - ☐ no

(check as appropriate)

The Patent or other IPR holder undertakes to inform CEN and/or CENELEC for any update or change of the above information. By signing this Declaration the Patent or other IPR holder agrees that the information therein will be made publicly available to the CEN-CENELEC list of patent declarations.

Signature:

Patent or other IPR Holder _____

Name of authorised person _____

Title of authorised person _____

Signature _____

Place, Date _____

(Form CEN-CENELEC Guide 8:2019)