

WI-FI ALLIANCE INTELLECTUAL PROPERTY RIGHTS POLICY

BACKGROUND

The purpose of the Wi-Fi Alliance (“WFA”) is to promote the IEEE 802.11 wireless networking standard by encouraging manufacturers of wireless networking products to achieve a high degree of interoperability among all products employing the standard and by promoting through a number of means the widespread adoption and use of products employing the IEEE 802.11 standard. At times, the activities of WFA Task Groups result in the creation of documents and other work product with newly created intellectual property rights and/or including the intellectual property rights of others. This document (the “Policy”) outlines the policy of WFA regarding the incorporation and use of the proprietary materials of others in the work product of the WFA Task Groups as identified above.

This Policy is the complete and exclusive statement of the WFA intellectual property policy, and applies to and governs all of WFA’s activity as of the effective date, except where the WFA Board of Directors (the “Board”) has determined, and has specified as part of the applicable WFA activity or Task Group, that this Policy does not apply. This Policy supersedes any and all prior documentation regarding WFA’s intellectual property policy, including, but not limited to, statements in the WFA Bylaws, any version of the WFA Intellectual Property Rights Policy for the “Getting Connected” Task Group and any other documents attempting to explain or clarify such agreements or policies.

No Member of WFA, or any other individual or entity, may participate in any Task Group governed by this Policy without agreeing to the terms and conditions in this Policy. For administrative purposes, each Member (or other individual or entity) participating in any such Task Group shall confirm in writing that it agrees to the terms of this Policy; provided, however, that participation in any Task Group governed by this Policy, even without written confirmation that the Member (or other individual or entity) accepts the terms of this Policy, will constitute the Member’s (or other individual’s or entity’s) ratification and acceptance of its terms.

ARTICLE 1. DEFINITIONS

The following definitions shall apply to this Policy:

(a) “Affiliate” or “Affiliates” shall mean an entity that directly or indirectly controls another entity via beneficial ownership of more than fifty percent (50%) of the voting power or equity in another entity (“Control”), or is Controlled by another entity, or is under common Control with another entity, so long as such Control exists.

(b) “Contribution” shall mean a submission to or for a Task Group or the Board proposing an addition to or modification of an existing Specification or a draft specification or a new Specification or portion thereof, or a submission proposing changes or modifications to reference

design documents, provided that the submission is submitted in writing (including a writing in electronic medium).

(c) “Corporation” shall mean the Wi-Fi Alliance.

(d) “Member” shall mean a member of the Corporation who so qualifies in accordance with the provisions of the Bylaws of WFA. Only Members may Participate (as defined in Section 1(f)) in WFA Task Groups.

(e) “Necessary Claims” shall mean claims of a patent or patent application throughout the world that (a) are owned or controlled by a Member or its Affiliates now or at any future time; and (b) are necessarily infringed by implementing those relevant portions of the Specification required for certification within the bounds of the Scope (as defined in Section 1(g)), wherein a claim is necessarily infringed only when it is not possible to avoid infringing the claim because there is no commercially reasonable non-infringing alternative for implementing such relevant portions of the Specification required for certification within the bounds of the Scope. Notwithstanding the foregoing sentence, Necessary Claims do not include any claims: (i) other than those set forth above even if contained in the same patent or patent application as Necessary Claims; (ii) that read solely on any implementations of any portion of the Specification that are not within the bounds of the Scope; or (iii) that, if licensed, would require consent from, and/or a payment of royalties by the licensor to unaffiliated third parties.

(f) “Participates” (and “Participated” and Participating), with respect to a Task Group, shall mean that a Member: (i) joins or joined such Task Group as a participant; or (ii) elects to participate in the review period by downloading or receiving a copy of the prospective Specification.

(g) “Scope” shall mean the protocols, signaling characteristics, connection methods, tools, test scripts, firmware descriptors and device and driver architectures and any other hardware and/or software interface technologies solely to the extent disclosed with particularity in the Specification where the sole purpose of such disclosure is to define, implement and utilize products and services to interoperate, interconnect or communicate in wireless networking as defined within the Specification. Notwithstanding the foregoing, the Scope shall not include (a) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Specification, but are not themselves expressly set forth in the Specification (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, etc.); or (b) the implementation of other published specifications developed outside of the Corporation, but referred to in the body of the Specification (for example, existing "wired" USB specifications); or (c) any portions of any product and any combinations thereof the purpose or function of which is not required for certification for compliance with the Specification.

(h) “Specification” shall mean any of the following once adopted and approved for release by the Corporation’s Board of Directors: (a) technical specification, (b) test tool, (c) test plan, and (d) certification program.

(i) “Task Group” shall mean a group created by authorization of the Board to undertake certain specific defined tasks. “Task Group” shall be used to refer to task groups, subcommittees, and Specification development committees governed by this Policy.

ARTICLE 2. DISCLOSURE OF INFORMATION

SECTION 2.1. LIMITATION ON THE SCOPE OF DISCLOSED INFORMATION

The Members acknowledge that they will not, prior to the publication of a draft specification containing information of another, disclose or exchange such information other than as part of Corporation activities among themselves or third parties and when such disclosure is necessary to further the goals set out in the purpose of the Corporation; provided, however, that disclosure of such information to third parties shall additionally be subject to prior approval by the Board.

SECTION 2.2. CORPORATION INFORMATION

All public disclosures regarding the existence, membership and activities of the Corporation must be approved by the Board. Public disclosure of any version or revision of a WFA Specification, or another specification or other related materials of the Corporation, shall be subject to the approval by the Board pursuant to the terms hereof. However, the Corporation’s general policy shall be to disclose fully, at the agreed-upon time, all information relating to the Corporation and its activities.

ARTICLE 3. INTELLECTUAL PROPERTY LICENSING

SECTION 3.1. SPECIFICATION NOTICE, REVIEW AND MEMBER WITHDRAWAL

(1) Notice of Review Period. The Corporation shall provide all Members with not less than thirty (30) days’ prior notice of the proposed adoption of a new or revised specification. Such notice shall include a complete draft of the specification as approved by the Board and state the effective date when the Specification (if approved), and all Necessary Claims therein, shall be subject to the licensing provisions of Section 3.2.

(2) Review of Specification. Upon receipt of such notice and the draft specification, the Member, on behalf of itself and its Affiliates, may review the same for any of its Necessary Claims that may be contained therein. While there is no requirement for a Member to review or search its patent portfolio for Necessary Claims, a Member who Participated in the draft specification under review is put on notice that, in order to avoid a licensing obligation for non-contributed Necessary Claims in the Specification, it must, prior to the end of the review period, either: (a) withdraw from the Task Group (or the Corporation) in accordance with the provisions of Section 3.1(3), in which case such Member shall not be obligated to license its non-contributed Necessary Claims in the Specification other than such of its non-contributed Necessary Claims that it previously disclosed and for which it declared a commitment to license; or (b) declare, in accordance with the provisions of Sections 4.2(1)(c) and 4.1(2), its intention not to license non-contributed Necessary Claims in the Specification; provided, however, any non-contributed Necessary Claims for which there is no declaration by the end of the review period

shall be subject to the reasonable and nondiscriminatory license obligation set forth in Section 3.2. For the avoidance of doubt, this commitment to license applies to all of a Member's undisclosed Necessary Claims, despite lack of knowledge thereof by individuals Participating on behalf of such Member.

(3) Withdrawal.

(a) At any time, a Member may withdraw from the Corporation as a whole, or may withdraw from a particular Task Group without withdrawing from the Corporation as a whole. In either circumstance, the Member shall provide reasonable notice of its intent to withdraw as of a specified date in writing to Wi-Fi Alliance Management at joinnow@wi-fi.org. Such withdrawal shall become effective as of the specified date upon the receipt of such written notice by Wi-Fi Alliance Management.

(b) A Member that Participated and then withdraws before the end of the review period specified in Section 3.1(1) for a draft specification being developed by that Task Group, shall be obligated to disclose all its patent rights that include Necessary Claims related to such draft specification known by the individuals Participating on behalf of such Member. Specifically, if an individual Participating believes that he or she, or the Member on whose behalf the individual is acting (or its Affiliate), owns or controls patent rights including Necessary Claims relating to such draft specification, then the individual or Member shall give notice to Wi-Fi Alliance Management at joinnow@wi-fi.org in a writing as soon as reasonably possible. Disclosure under this Section 3.1(3)(b) shall (i) include the minimum contents of disclosure set forth in Section 4.1(2); and (ii) be based on a participant's own actual and personal knowledge, and no knowledge of the Member on whose behalf the participant is acting (or its employees) regarding patent information will be imputed to such participant. However, a Member is prohibited from intentionally isolating a participant from potentially relevant patent information within the Member organization so as to avoid the terms of this Section 3.1(3)(b).

(4) No IP Search Required. Nothing in this Section or this Policy imposes any duty or obligation on any participant, Member or prospective member to perform a patent search or other search of intellectual property portfolios.

SECTION 3.2. LICENSING OF MEMBER INTELLECTUAL PROPERTY RIGHTS

(1) Any Member (or its Affiliate) who: (a) makes a Contribution to a Specification; or (b) Participates hereby agrees that, upon request and subject to Sections 3.2(2), 3.8, and 4.2(1)(c), it will grant to other Members, their Affiliates and any implementers of the Specification, under reasonable and nondiscriminatory terms (and on a royalty-free basis if the Member has so indicated under Section 4.2(1)(a)), a nonexclusive, nontransferable (except to a successor in interest of all or the relevant part of the business of such other Members, their Affiliates and any implementers), non-sublicensable, worldwide license under its Necessary Claims to allow such Members, their Affiliates and implementers to make, have made, use, import, offer to sell, lease, sell and otherwise distribute implementations compliant with all relevant required portions of such Specification. It is acknowledged that references in this Policy

to a license agreement containing reasonable and nondiscriminatory terms may include a license agreement with reasonable defensive suspension provisions. For the avoidance of doubt, this Section shall not apply to a Member (or its Affiliate) that reviews and/or approves the work of a Task Group solely in the course of its duties as a member of the Board (i.e., such Board member does not make a Contribution to the Specification, or Participate (as defined in Section 1(f)(i)).

(2) Each Member agrees that it will not transfer, and has not transferred, patents or patent applications having Necessary Claims for the purpose of circumventing this Section 3.2. In the event of a transfer of patents or patent applications having Necessary Claims, the Member agrees to provide notice to the transferee of the patent disclosure and licensing declaration under Article 4 and to provide notice to the Corporation of the transfer.

SECTION 3.3. RECIPROCITY

The provisions of Section 3.2 shall not be effective as to any other Member or that other Member's Affiliates or to any implementer of the Specification, if that Member, its Affiliates or other implementer, does not, in fact and practice, make the patent license grant of Section 3.2 available to the other Members, their Affiliates and any implementers.

SECTION 3.4. NO OTHER LICENSE

The Members agree that no patent license, immunity or other right is granted under this Policy by any Member or its Affiliates to any other Members, their Affiliates, non-members or to the Corporation, either directly or by implication, estoppel or otherwise, other than the agreements to grant licenses expressly set forth in this Policy.

SECTION 3.5. TRANSFER OF NECESSARY CLAIMS

Any transfer by a Member or its Affiliates to a third party of a patent having Necessary Claims shall be subject to: (a) the terms and conditions of this Policy; and (b) the agreement to grant licenses by the Member and its Affiliates to other Members, their Affiliates and implementers of the Specification, pursuant to Section 3.2 and Section 3.3 of this Policy.

SECTION 3.6. COPYRIGHTS

(1) The Members grant to the Corporation a worldwide, irrevocable, nonexclusive, nontransferable, royalty-free copyright license to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform the Contributions of the granting Member solely for the purposes of developing, publishing and distributing Specifications and related materials, as well as products based on such documents to Members, implementers and the public.

(2) The Corporation shall own the copyright in draft specifications and published Specifications, subject to the underlying copyright rights of the contributing Members and other copyright owners. Any publication of a Specification shall contain an appropriate copyright notice in the name of the Corporation. The Corporation may exercise any and all rights of copyright

ownership in the Specification and will be authorized to license such rights to implementers of the Specification.

SECTION 3.7. TRADEMARKS

In the event that the Corporation proposes to adopt any other name or logo as a trademark or trade name (collectively “Trademarks”), the Corporation shall notify the Members in writing of the proposal. The Corporation shall take such steps as the Board deems necessary and proper to protect its rights under such Trademarks adopted for use by the Corporation. In furtherance thereof, the Board shall establish and disseminate reasonable and nondiscriminatory terms and conditions and procedures for the licensing and use of such Trademarks among the Members.

SECTION 3.8. SURVIVAL OF AGREEMENT TO GRANT LICENSE

(1) Notwithstanding the dissolution of the Corporation or a Member’s termination, expiration or withdrawal of its membership in the Corporation (or its withdrawal from a particular Task Group) and except (as applicable) as provided in Section 3.2(2), or 4.2(1)(c), a Member or former Member’s agreement to grant a license as provided in Sections 3.2 and 3.3 shall remain in full force and effect for: (a) any of its Necessary Claims in a Contribution made by such Member or former Member (or its Affiliate) that is incorporated into a Specification to which such Contribution was offered; (b) any non-contributed Necessary Claims in a Specification adopted by the Corporation for which the review period noticed in Section 3.1(1) ended before the effective date of dissolution or before the effective date of a Member’s termination, expiration or withdrawal of membership; and (c) any Necessary Claims to a Specification adopted by the Corporation after the effective date of the Member’s termination, expiration or withdrawal of membership that (i) are necessary for the later-adopted Specification to be backwards compatible with the prior Specification(s), and (ii) are used in a substantially similar manner and to a substantially similar extent with a substantially similar result as the same Necessary Claims were used in a prior Specification for which the former Member is obligated to grant licenses. In no event is a former Member obligated to license any additional Necessary Claims under this Policy (and thus, for example, a Member that withdraws before the end of the review period for a draft specification has no obligation to license its non-contributed Necessary Claims in the Specification, once adopted, other than such of its non-contributed Necessary Claims that it previously disclosed and for which it declared a commitment to license). A former Member shall remain entitled to reciprocity pursuant to Section 3.3 so long as that former Member remains obligated to license any Necessary Claims under this Policy. This agreement to the survival of reciprocal licensing shall extend to all Members and all implementers of the Specification, including entities that become Members, and third parties who become implementers, after the effective date of the former Member’s termination, expiration or withdrawal.

(2) Dissolution of the Corporation or a Member’s termination, expiration or withdrawal of its membership in the Corporation (or its withdrawal from a particular Task Group) shall not have any impact on a Member’s or former Member’s licenses with other Members, their Affiliates and

implementers of the Specification that existed prior to such termination, expiration or withdrawal, other than in accordance with the individual terms of such pre-existing licenses.

ARTICLE 4. PATENT DISCLOSURE AND LICENSING DECLARATION

SECTION 4.1. DISCLOSURE STANDARD

(1) General Disclosure Standard. All individuals Participating (both Contributors to a Specification and non-contributors) are strongly encouraged on an ongoing basis to disclose certain patent rights held by themselves or their represented Members where such patent rights include Necessary Claims related to a draft specification. Specifically, if an individual Participating believes that he or she, or the Member on whose behalf the individual is acting (or its Affiliate), owns or controls patent rights including Necessary Claims relating to such draft specification, then the individual or Member is encouraged to give notice to Wi-Fi Alliance Management at joinnow@wi-fi.org in a writing pursuant to Section 4.1(2), as soon as reasonably possible. All chairpersons of Task Groups shall remind participants of this encouragement of early disclosure at the beginning of each meeting and shall provide a copy of this Policy to any requesting party. Disclosure under this Section 4.1(1) is based on a participant's own actual and personal knowledge, and no knowledge of the Member on whose behalf the participant is acting (or its employees) regarding patent information will be imputed to such participant. However, a Member is prohibited from intentionally isolating a participant from potentially relevant patent information within the Member organization so as to avoid the terms of this Section 4.1(1).

(2) Minimum Contents of Disclosure. Where disclosure is required (e.g., Sections 3.1(3)(b) (withdrawing Member) and 4.2(2) ("no license" option)), the following minimum information shall be provided. With respect to issued patents and published pending patent applications, disclosure must include the identity of the patent rights holder and/or applicant and the patent number or application number of the patent rights. With respect to unpublished pending patent applications, such disclosure must include the existence of the application containing the asserted Necessary Claims, but need not disclose identifying information (e.g., application number, contents) of the patent rights. However, if a party is unwilling to allow the use of its Necessary Claims in any of its unpublished pending patent applications as provided by Section 4.2(1)(c), such party must also identify the section(s) of the specification to which the party's asserted Necessary Claim(s) contained in such unpublished pending patent application relate(s). Nothing herein precludes broader disclosure of unpublished pending patent applications on a voluntary basis or pursuant to a non-disclosure agreement. Once an unpublished pending patent application that has been disclosed is published, the Member must disclose the additional identifying information about the published application as specified above.

SECTION 4.2. LICENSING DECLARATIONS

(1) At the same time as a disclosure is made under Section 4.1, or as soon as practical thereafter, the participant shall also submit a written statement from a person authorized to represent the

patent rights holder to Wi-Fi Alliance Management at joinnow@wi-fi.org declaring with regard to any Necessary Claims, pursuant to the terms of Section 3.2, that: (a) it will grant a license on royalty-free and other reasonable and nondiscriminatory terms and conditions; or (b) it will grant a license on reasonable and nondiscriminatory terms and conditions that may include a reasonable royalty or fee; or (c) its intention is to not license its Necessary Claims, if permitted under Section 4.2(2). As used herein, “royalty-free” means that the licensee need not pay a royalty, license fee, or other monetary compensation of any kind to the licensor.

(2) A Member is only permitted to declare its intention not to license its Necessary Claims in a Specification pursuant to Section 4.2(1)(c) if such Necessary Claims are included in the Specification other than by such Member’s own Contribution (i.e., non-contributed Necessary Claims), and if, prior to the end of the review period specified in Section 3.1(1) for such Specification, such Member discloses, pursuant to Section 4.1(2), its patent rights including such non-contributed Necessary Claims. If this “no license” option is selected, or in a situation where a party alleged to have Necessary Claims refuses to provide a licensing declaration, the WFA Task Group developing the affected specification will, in consultation with the Board, determine how best to proceed, such as by attempting to develop a revised version of the specification that works around the potentially blocking patent rights that the patent rights holder has declined to license to all implementers.

ARTICLE 5. MEMBER DISCLAIMERS

SECTION 5.1. NO REPRESENTATIONS OR WARRANTIES

EACH MEMBER HEREBY AGREES AND ACKNOWLEDGES THAT: (A) THE CORPORATION AND EACH MEMBER, INCLUDING TASK GROUP REPRESENTATIVES AND TASK GROUP CHAIRS, TAKE NO POSITION AS TO WHETHER ANY INTELLECTUAL PROPERTY RIGHTS EXIST IN ANY DRAFT OR FINAL SPECIFICATIONS; (B) THE SPECIFICATIONS AND ANY CONTRIBUTIONS THERETO ARE ALL PROVIDED “AS IS” AND “WITH ALL FAULTS”; (C) THE CORPORATION AND EACH MEMBER, INCLUDING TASK GROUP REPRESENTATIVES AND TASK GROUP CHAIRS, MAKE NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SPECIFICATIONS OR ANY CONTRIBUTIONS THERETO, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OF REASONABLE CARE OR WORKMANLIKE EFFORT, OR RESULTS OR OF LACK OF NEGLIGENCE; AND (D) NEITHER THE CORPORATION NOR ANY OF ITS MEMBERS, INCLUDING TASK GROUP REPRESENTATIVES AND TASK GROUP CHAIRS, HAS UNDERTAKEN ON BEHALF OF THE CORPORATION OR ITS MEMBERS, ANY PATENT SEARCH WITH RESPECT TO THE SPECIFICATIONS. NOTHING HEREIN SHALL, HOWEVER, BE CONSTRUED AS A RESTRICTION ON ANY MEMBER CONDUCTING ITS OWN DUE DILIGENCE OR OTHER TECHNOLOGY SEARCH OR SCREENING WITH RESPECT TO THE SPECIFICATIONS.

SECTION 5.2. LIMITATION OF LIABILITY

IN NO EVENT SHALL THE CORPORATION OR ANY MEMBER BE LIABLE TO ANY OTHER MEMBER OR THIRD PARTY FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RESULTING UNDER THIS POLICY, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, OR LOSS OF DATA.

ARTICLE 6. REVISIONS TO THIS POLICY.

Any revisions or other amendments to this Policy will become effective only upon approval by a two-thirds (2/3) vote of the Board in accordance with the WFA Bylaws, and only after: (a) the Board takes reasonable measures to notify all Members in writing (such as by e-mail) of such revisions; (b) a clear and conspicuous link to the revised Policy (with the revisions highlighted) is posted on the home page of the WFA Web site (currently www.wifi.org); and (c) Members are afforded at least thirty (30) days from the date of receiving notice of such revisions to withdraw from WFA; provided, however, that ministerial changes to this Policy (such as proofreading corrections or formatting changes) may be unilaterally executed by the Board, so long as the Board takes reasonable measures to communicate all such changes to all Members. Any Member that withdraws from WFA prior to the end of this thirty (30)-day period will be subject to the surviving provisions of the Policy in accordance with their terms, but will not be subject to terms of the revised or amended Policy.

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