

# Exhibit C



## THE JEDEC PATENT POLICY

JEDEC's core business is the development of open standards. Open standards by definition are free of restrictive intellectual property (or "IP") rights. The way JEDEC ensures its standards are open is through the JEDEC patent policy.<sup>1</sup> JEDEC's policy is based on similar rules followed by the American National Standards Institute (ANSI), the Electronic Industries Alliance (EIA), and many other national and international standards development organizations (SDOs).<sup>2</sup>

The patent policy has two key elements – early disclosure and written assurance. We'll look at each element in turn. Early disclosure means that all participants in the standards process, including patent owners, have a duty to disclose the existence of known patents and patent applications that are, or may be, relevant to the work of the formulating committee. Individual participants have no duty to research their companies' patent portfolios. The duty to disclose applies only to those patents and patent applications of which they have actual knowledge. It is that knowledge that triggers the duty to disclose.

Sometimes, participants ask, "How much do we need to disclose and when"? The answer is, "as much as you can, as early as you can." Known patents and patent applications should be disclosed as soon as the participant reasonably believes they are relevant to the standard. Issued patents need to be identified by patent number. Patent applications should be identified in sufficient detail so that the committee can determine how the technology relates to the standard without compromising the patent applicant's legitimate interest in confidentiality. This sometimes requires a balancing of the needs of the committee and the patent owner, but an accommodation can be reached if both sides are flexible. In addition, the participant should make a proffer of the relevance of the patent or patent application to the standard.

The reason for requiring early disclosure is to give the formulating committee as much time as possible to decide whether to include the patented technology in the standard, to work around the patented technology, or to evaluate other options. Developing a standard can take months or years. That's why disclosure needs to be made sooner rather than later.

What happens when a patent owner participates in the development of a standard and deliberately refuses to disclose the existence of a known patent or patent application? Courts have considered this question several times in the last decade. The answer is that the patent owner can lose its right to enforce the patent and could be liable in damages to the injured parties.<sup>3</sup> This problem has gained the attention of the Federal

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<sup>1</sup> The JEDEC Patent Policy can be found in the following sections of JEDEC Manual 21K: the "Notice" page, Sections 1.6.3, 3.5 and 7.3, and Annexes E, F and G. ([www.jedec.org/Home/manuals/jm21k.pdf](http://www.jedec.org/Home/manuals/jm21k.pdf)).

<sup>2</sup> For an analysis of the ANSI Patent Policy, see "Guidelines for Implementation of the ANSI Patent Policy." ([www.ansi.org/public/library/guides/ppguide.html](http://www.ansi.org/public/library/guides/ppguide.html)).

<sup>3</sup> See *Federal Trade Commission v. Dell Computer Corp.*, FTC File No. 931 0097.

Trade Commission. The agency is currently investigating the role of intellectual property in the standards development process.

The second element of the patent policy is the assurance by the patent owner to license the patented technology without charge or, more commonly, on terms that are reasonable and non-discriminatory. The assurance must be in writing, signed by the patent owner. It must repeat the language of the patent policy verbatim with no substantive modifications. It should be given to the committee chairman.

Unlike the early disclosure element which is mandatory for all participants in the process, patent owners and patent applicants are free to give the assurances or decline to give them. On the other hand, a critical factor in the committee's decision to include patented technology in a standard is the stated willingness of the patent owner to license on reasonable, non-discriminatory terms. If the assurances are refused, the committee has a variety of options to consider, including looking at non-patented alternative approaches and working around the patented technology.

Do the words of the assurance, "reasonable, non-discriminatory," really mean anything? They definitely do. Reasonable and non-discriminatory are well-established terms of art in jurisprudence.

Reasonable terms are the licensing terms that are reasonably acceptable to the parties in the context of an arms-length business negotiation. Reasonable means commercially reasonable. Non-discriminatory terms do not discriminate against any prospective licensee on the basis of corporate identity, history, demographics, etc. Non-discriminatory, in essence, means "open to all comers."

What rights do the assurances give third parties? The intent is to create legally enforceable rights, in the nature of third-party beneficiary rights, for anyone wishing to comply with the standard. What happens, then, if in a licensing negotiation the parties themselves cannot settle on "reasonable, non-discriminatory" terms? And who decides what terms are reasonable and non-discriminatory? The answer is that the parties take their differences to court and a judge or a jury decides, under all the circumstances, whether the patent owner has fulfilled its commitment to offer reasonable, non-discriminatory terms to the prospective licensee.

The patent policy is among the most important "rules of the game" in the JEDEC standards development process. Everyone who participates, or who plans to participate, in standards development is duty bound to familiarize themselves with and abide by the letter and the spirit of the patent policy. The rules are basic. They are grounded in common sense and designed to promote openness, good faith, and fair dealing in the development of standards. There are no intended "loopholes" in the patent policy. Those who seek to "game" the rules act at their own peril.

Questions relating to the JEDEC patent policy should be directed to the JEDEC Legal Department.