

The InterNational Committee for Information Technology Standards INCITS

INCITS Patent Policy Slides For Meetings

Approved April 2008
Updated June 2021



Instructions for the Chair

At each meeting, the Chair shall:

1. Show slides #1, #2 and #3 of this presentation (Note that this is slide #0).
2. No interpretation or explanation of the INCITS patent policy is to be provided. Questions about the policy should be referred to the participant's legal counsel or the ANSI General Counsel.
3. No interpretation or explanation of the ISO/IEC/ITU patent policy is to be provided.
4. Instruct the IOE Secretary to record in the minutes of the relevant meeting:
 - That the foregoing advice was provided, and the following three slides were shown.

INCITS Patent Policy

1. The INCITS patent policy (slides 2 & 3) is exactly the ANSI patent policy as described in the 2021 version of the ANSI Essential Requirements
2. Early disclosure of patents claims which may be essential for the implementation of standards under development is encouraged
3. Disclosures made of such patent claims may not be exhaustive of all patents that may be essential for the use of standards under development, and that neither INCITS, the IOE, nor the IOE Chair ensure the accuracy or completeness of any disclosure or whether any disclosure is of a patent that, in fact, may be essential for the use of standards under development
4. Patent statements shall be provided to the INCITS Secretariat. The form is available at: (www.incits.org/upload/patdec-form.docx)
5. Additional information is available in the “Guidelines for Implementation of the ANSI Patent Policy” at share.ansi.org/Shared%20Documents/Standards%20Activities/American%20National%20Standards/Procedures%2C%20Guides%2C%20and%20Forms/ANSI%20Patent%20Policy%20Guidelines%202019.pdf
6. Participants should regularly review the INCITS Antitrust Guidelines available from www.incits.org/standards-information/legal-info www.incits.org/inatrust.htm.
7. Participants in projects expecting to become international standards should review the ISO/IEC/ITU Patent Policy information available at: (isotc.iso.org/livelink/livelink/fetch/2000/2122/3770791/Common_Policy.htm)

INCITS Patent Policy

3.0 Normative American National Standards Policies

Every ANSI-Accredited Standards Developer (ASD) shall comply with the normative policies contained in this section. The ASD may choose to: 1) include the text that follows, as appropriate, in its accredited procedures along with any additional information as required; or 2) submit to ANSI a written statement of full compliance with these policies in addition to policy statements that satisfy the requirements set-forth in this section.

3.1 ANSI patent policy - Inclusion of Patents in American National Standards

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.

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).

If an ASD receives a notice that a proposed, revised or approved ANS may require the use of such a patent claim that is not already covered by an existing assurance, the procedures in this clause shall be followed.

3.1.1 Statement from patent holder

The ASD shall receive from the patent holder, or a party authorized to make assurances on its behalf, in written or electronic form, either:

- a) assurance in the form of a general disclaimer to the effect that such party does not hold and does not currently intend holding any essential patent claim(s); or
- b) assurance that a license to such essential patent claim(s) will be made available to applicants desiring to utilize the license for the purpose of implementing the standard either:
 - i. under reasonable terms and conditions that are demonstrably free of any unfair discrimination; or
 - ii. without compensation and under reasonable terms and conditions that are demonstrably free of any unfair discrimination.

Note: In the context of the Patent Policy, references to ANSI-accredited Standards Developer or ASD shall be interpreted to be INCITS.

INCITS Patent Policy

Such assurance shall indicate that the patent holder (or third party authorized to make assurances on its behalf) will include in any documents transferring ownership of patents subject to the assurance, provisions sufficient to ensure that the commitments in the assurance are binding on the transferee, and that the transferee will similarly include appropriate provisions in the event of future transfers with the goal of binding each successor-in-interest. The assurance shall also indicate that it is intended to be binding on successors-in-interest regardless of whether such provisions are included in the relevant transfer documents.

3.1.2 Record of statement

A record of the patent holder's statement shall be retained in the files of the ASD and shall be made publicly available (at the ASD's election, either on the ASD's website or ANSI's LOA repository).

3.1.3 Notice

When the ASD receives from a patent holder, the assurance set forth in 3.1.1 b above, the standard shall include a note substantially as follows:

NOTE – The user's attention is called to the possibility that compliance with this standard may require use of an invention covered by patent rights.

By publication of this standard, no position is taken with respect to the validity of any such claim(s) or of any patent rights in connection therewith. If a patent holder has filed a statement of willingness to grant a license under these rights on reasonable and nondiscriminatory terms and conditions to applicants desiring to obtain such a license, then details may be obtained from the standards developer.

3.1.4 Responsibility for identifying patents

Neither the ASD nor ANSI is responsible for identifying patents for which a license may be required by an American National Standard or for conducting inquiries into the legal validity or scope of those patents that are brought to their attention.

Note: In the context of the Patent Policy, references to ANSI-accredited Standards Developer or ASD shall be interpreted to be INCITS.