



2010年3月1日

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回复:知识产权所有人协会(IPO)就国家标准中涉及专利(标准编号20090445-Z-42)的处置规则(征求意见稿)征求意见的回复

知识产权所有人协会(“IPO”)谨向中国标准化研究院(“CNIS”)就国家标准中涉及专利的处置规则(征求意见稿)(“规则草案”)提出其意见。

IPO是一个国际协会,总部设于美国,超过200家企业会员和11,000名个人通过他们的企业加入本组织,或者以IPO发明人、撰写人、经理主管人员、律师事务所或律师协会会员身份加入。IPO成立于1972年,代表所有技术领域所有知识产权人的权利,很多所有人在全球各地各种正式和非正式的标准发展组织任职。此外,由IPO的会员所提出的专利申请大约占由美国国民向美国专利商标局(USPTO)提出的专利申请案的百分之三十,并占(中国)国家知识产权局(SIPO)申请的一个很大比例。许多中国顶尖的律师事务所也是IPO的会员。

IPO感谢标准化研究院提供的对规则草案发表意见的机会,同时对标准化研究院尽力就规则草案与其他国际标准开发组织取得一致的努力表示赞赏。该努力的一个例子就是提供一个合理和非歧视性的许可制度选项,同时避免提及任何强制许可制度。在对实施准则进一步定稿的过程中,IPO支持中国标准化研究院与中国标准管理委员会(SAC),进一步考虑:(一)哪些专利权项受专利许可声明的约束,(二)对于必要专利权项许可所设置的限制,以及(三)什么义务,如果有的话,可强加给那些不积极参与中国的标准制定活动的各方。我们认为,这些额外的考虑可能会对规则草案进行修改进而澄清其内容,并进一步使规则草案符合国际标准。如下是对这三个问题的概述,同时,在随附的反馈表中有详细的讨论。

必要专利和必要专利权

专利通常包含多个权项。有些权项,正如一个标准开发组织(SDO)所定义的,可能是必要的,而同一专利的其它权项可能不是必要的。当考虑一个新提出的标准时,那些成熟的标准开发组织鼓励对那些至少有一个权项被认为包含新提出的标准的专利进行披露。但是,通常任何提供专利许可的承诺只适用于那些披露了的,并且对最终采用的标准而言是必要专利的那些权项。标准开发组织(SDOs)采用这样的披露和许可政策是为了实现两个需要之间的平衡:一个需要是创造一个全面适用的标准,另一个是提供一个发明人愿意参与的过程。

因此,如果对规则草案进行澄清,以更准确地体现其他标准开发组织的政策中所采用的“更广泛的披露规则和更细化的许可规则”之间的区别,将是有益的。对于一个拟议的标准,更广泛的披露规则的目的是让成员知道那些认为有可能含有拟议标准的必要权项的专利的持有人。专利许可声明的目的是为成员提供有关认为持有有可能包含已采用标准的必要权项的专利持有人的信息,以及这些专利持有人向实施的标准采用者许可这些专利中的必要权项的意图。这种区分显示出披露和许可声明的根本目的,那就是鼓励尽早披露

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INTELLECTUAL PROPERTY OWNERS ASSOCIATION

和识别可能与正在开发的一个标准相关的专利。这样，标准发展可能会有更高的效率和可以避免潜在的专利权问题。

专利许可声明

许多完善且成功的标准开发组织（SDO）允许专利持有人提供一个表明该专利持有人愿意就必要专利权项提供许可的声明。所谓的必要权项是指那些实施一个标准会不可避免地侵犯其专利权的必要权项。这些标准开发组织（SDO）中许多都要求必要权项专利持有人提供一个专利申报或专利许可声明来表明该专利持有人或（一）将该必要专利以合理和非歧视性（RAND）的条款和条件进行许可，或（二）将该必要专利以合理，非歧视性并且免费（RAND-RF）的条款和条件进行许可，或（三）将不对该必要专利以合理和非歧视性（RAND）或合理，非歧视性并且免费（RAND-RF）的条款和条件进行许可。IPO理解标准化研究院规则草案中的许可架构和这些标准开发组织的政策是部分一致的，在反馈意见表中，IPO提出了一些修改建议以使规则草案更加符合国际标准。

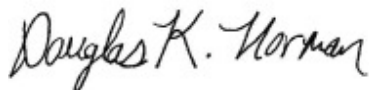
参加者和非参加者的义务

IPO明白在开发标准时，最好尽可能多地获得那些有可能成为必要专利的专利相关信息。虽然可能需要知道非参与者是否持有专利，但同样重要的是向不参与的发明人保证不会要求他们监察每个发展中的标准。我们还未发现SDO的专利实践适用于非参与者或者要求参加者进行专利检索。如果规则草案明确鼓励但并不要求非参加者披露信息，并且明确表示在任何情况下都不会要求参与者或非参与者对它们的专利组合进行检索，该规则草案将更加符合国际SDO的实践。

IPO赞赏中国标准化研究院在解决有关标准涉及专利的三个主要问题的努力，同时也赞赏其使规则草案与那些成熟的国际标准开发者一致的努力。IPO感谢有这次机会对规则草案发表意见，并恭敬地提出附件里的建议及理由。IPO的建议是基于对标准化研究院规则草案的初步审阅。随着标准化研究院规则草案的不断发展，IPO可能有更多的建议和意见，供您考虑。

附于本函的是我们基于标准化研究院的标准号20090445-Z-424通函所指定的表格而发表的意见。还附上供您参考的是一个交叉引用IPO的图表，其中包含一个我们评论所依据的非官方的英文翻译以及相应的标准化研究院文本。如果您希望讨论IPO的观点，或需要对建议和理由的进一步说明，希望您与我们联系。

此致，



史蒂芬·米勒
总裁

- 附件一：标准化研究院反馈表-英语
- 附件二：IPO的信-中文
- 附件三：标准化研究院反馈表-中文
- 附件四：IPO中英文文本对照表

国家标准《国家标准涉及专利的处置规则》(征求意见稿)

意见反馈表

姓名	史蒂芬·米勒	电话	+1.202.507.4500	传真	+1.202.507.4501	E-mail	info@ipo.org	
单位	知识产权所有人协会 (IPO)			通信地址	1501 M. Street, NW, Suite 1150, Washington, DC USA		邮编	20005
章条号	修改建议			修改理由 ¹				
1	澄清第 1 条范围			IPO 理解, 本条使用的“专利”是同第 4 条使用的“专利”具有相同的含义。如果不是这样, IPO 要求澄清。				
3.1	<p>对 3.1 的修改: 必要专利: 实施标准时, 无法通过采用另一个商业上可行的不侵权的实施方式来避免该专利的某一权利要求被侵犯的专利。【必要专利是指一个有可能包括必要权项的专利。】</p> <p>3.1 加入: 【必要权项: 必要权项是指一个专利权项, 按采用时的工艺和技术水平, 如果实施一项中国国家标准必将侵犯该专利权项。】</p>			<p>同时定义“必要专利”和“必要权项”会更加清楚。这样的澄清将鼓励专利持有人及早披露并提交许可声明。</p> <p>对必要专利 (受披露规则约束的专利), 和必要权项 (必要专利里的那些在许可声明中承诺进行许可的权项) 进行区分, 对于避免过于笼统和不必要的许可声明是重要的。在标准化过程中, 专利持有人可能不知道一个专利的全部或部分权项在标准制定后是否会事实上成为必要权项, 但这些专利持有人将愿意披露可能有这样必要权项的专利。因此, 在通常情况下披露规则适用于必要专利, 但许可声明只适用于对于最终标准是“必要”的必要权项。</p> <p>我们注意到, 在这一条中使用了术语“商业上可行的”。IPO 建议“商业上可行的”这个词, 应由标准采用时的工艺和技术水平来确定。</p>				
3.2	<p>对 3.2 的修改: 合理无歧视许可 许可方在享有互惠和防御性终止权利的前提下, 允许标准的所有实施者在合理无歧视的条件下, 以支付许可费的形式实施该标准中纳入的必要专利【必要权项】的许可方式。</p>			对这个定义的修改反映了对第 3.1 条的必要专利和必要权项定义的修改建议。				
3.3	<p>对 3.3 的修改 合理无歧视免费许可 许可方在享有互惠和防御性终止权利的前提下, 允许标准的所有实施者在合理无歧视的条件下, 以无需支付许可费的形式实施该标准中纳入的必要专利【必要权项】的许可方式。</p>			对这个定义的修改反映了对第 3.1 条的必要专利和必要权项定义的修改建议。				
4.1.1	对 4.1.1 的修改			如果要求非参与者, 审查每一个提交讨论的标准草				

¹ 本文的建议是基于“规则草案”的非官方英文翻译。如果由于不准确的翻译而造成任何上述建议的不准确, 请理解。如果需要对这些建议的澄清, 请联络 IPO。

	<p>专业标准化技术委员会或归口单位应鼓励所有参与 和没有参与 标准制修订的单位或个人, 在标准制修订过程中, 尽早披露 与标准有关的已知或可能专利 【任何参与者知道的必要专利】。【鼓励没有参与标准制修订的个人, 在自愿的基础上, 披露其已知的必要专利。不要求或期待非参与者审阅任何中国国家标准草案或提交表 A. 1 或 A. 3 所含的信息。】</p> <p>4. 1. 1 加入: 【本规则的任何语言都不应解释为施加一个要求进行专利检索的义务。】</p>	<p>案, 然后决定其是否需要披露必要专利, 这将是非常繁重的。此外, 要求非参与者审查中国国家标准草案来决定披露是不符合国际标准的。</p> <p>例如, 中国电子标准研究所 (CESI) 和其他国际标准开发组织 (SDO) 鼓励知情的个人参与者进行披露。例如, CESI 期望专利持有人对可能含有必要权项的专利的披露是根据其代表和共同作者的实际知识作出的。</p> <p>虽然鼓励知情的个人参与者披露是合理的, 但期望任何个人或组织进行专利检索将是沉重的负担。</p> <p>我们未发现任何 SDO 的专利政策要求参与者或非参与者进行专利检索。我们建议, 在任何同国家标准草案一起发布的关于如何提交专利披露的材料里公开明确地指出: 没有对必要专利进行检索的义务。</p> <p>例如, ISO / IEC /ITU 的共同专利政策, 第 3 条规定“本政策的任何规定不得解释为施加一个进行专利检索的义务。提交保证书并不表示发放许可。”</p>
<p>4. 1. 2</p>	<p>对 4. 1. 2 的修改: 在披露专利信息时, 应 【可】 填写专利信息披露表 (见附录 A 的表 A. 1), 【当专利持有人已经或同时提交了表 A. 3 专利许可声明, 提交表 A. 1 不是强制的。表 A. 3 会列明许可条款的选项是 (a) 合理非歧视, 还是 (b) 合理非歧视且免费。如果选择了选项 (a) 或 (b), 那么表 A. 1 的有关专利信息就不是必须的, 并且批准专利的证据或发表的专利申请也不是必须的。】</p> <p>【如果选择了表 A. 3 的许可选项 (c), 那么表 A. 1 的有关专利的所有信息都必须完成, 并将专利信息披露表与相关证明材料一起提交至所属的专业标准化技术委员会或归口单位。已授权专利的证明材料为专利证书复印件或扉页, 已公开但尚未授权的专利申请的证明材料为专利申请号】公告, 未公开的专利申请的证明材料为专利申请号和申请日期。</p>	<p>目前这条对专利和专利申请的证据的要求比其他成熟的标准开发组织, 如的 ISO / IEC /ITU 的要求都严格的多。此外, 所提出的包括未公布的专利申请的专利信息, ISO/IEC/ITU 的共同专利政策的案文中并不包括这些。在许多国家, 未公布的专利申请资料被视为机密, 因此, 规则草案不应该这样要求。</p> <p>有些公司更希望不提供具体的信息, 因为他们愿意以合理非歧视的条件许可必要权项。这会使许可的承诺更加广泛, 因为许可承诺不仅限于专利披露单中列出的专利。</p> <p>如果他们愿意以合理非歧视或合理非歧视且免费的条款和条件提供许可, 专利持有人不应被要求提供专利和专利申请的证据。只有在一个专利持有人声明不愿意以合理非歧视的条款许可时, 才应该要求具体信息。(表 A - 3, 选择 (c))。</p>

4.2.2	<p>对 4.2.2 的修改: 公布的相关信息应至少包括涉及了专利的标准草案、已知悉专利的专利清单 (见附录 A 表 A.2) 【, 专利许可声明 (见附录 A 的表 A.3)】 和专业标准化技术委员会或归口单位的联系方式。</p>	成熟的 SDO 常见的做法是除了专利清单外, 还提供许可声明。
4.3.1	<p>对 4.3.1 的修改: 在进行专利许可时, 许可方 【当专利持有人向专业标准化技术委员会或归口单位披露时, 该持有人】 应填写专利许可声明表 (见附录 A 的表 A.3)。 【表 A.3 不是对必要权项发出的许可, 而是表达专利持有人愿意发放许可的专利许可声明。】</p>	如上所述, 第 4.3 条应当修改, 以便清楚地表明只有必要权项, 会受专利许可声明的约束, 该声明中包含了由专利持有人选择的许可选项。很难肯定地知道, 在一个标准起草过程中, 或在某一专利申请过程中, 在什么时候某一权项是否最终成为必要权项。在批准的国家标准中, 专利许可声明只适用于必要权项。
4.3.2	<p>对 4.3.2 的修改: 许可方在填写专利许可声明表时, 应在以下三种方式中进行选择: a) 合理无歧视免费许可; b) 合理无歧视许可; c) 不同意按照以上两种方式 进行许可 【提供许可】。</p>	合理非歧视的许可承诺的概念本身不是一个许可, 而是一个愿意对相互可接受的合理和非歧视性的条款进行谈判来提供许可的承诺。
4.3.4	<p>对 4.3.4 的修改: 在专利权转移的情况下, 该许可方已经对某一标准作出的许可对于专利权受让人依然有效。【在专利权让与或转移的情况下, 专利持有人会通过合理的努力来通知受让人关于该专利持有人的许可声明的选项。让与或转移前签订的许可同时会被转让给新的专利所有人。】</p>	ITU - T 目前正在修订其专利政策指导文件, 要求原来的专利持有人使用合理的努力通知新的持有人关于其对 ITU 的许可承诺。对第 4.3.4 条修改的建议反映了类似的语言。
4.6	<p>国际标准或国外标准为基础制定我国标准 4.6 加入: 以国际标准或国外标准为基础制定我国标准时, 同样应按照第 5 章给出的要求处置标准中涉及的专利问题。 【为明确起见, 第 4 和第 5 条不适用于向发布国际或国外标准的国际或国外标准机构所做的技术贡献。即使该国际或国外机构的标准随后被制修订为中国国家标准, 这仍然有效。此外, 任何向国际或国外标准机构所做的专利许可声明不适用于基于该国际或国外标准的中国国家标准。】</p>	一个当事方, 当参与了一个国际或国外标准的发展, 但不参与, 也许没有意识到, 以该国际或国外标准作为基础的一个中国国家标准正在开发中, 目前还不清楚在中国国家标准发展的过程中这个当事方是否会被期待通过参照的方式或其他方式进行披露。如果该当事方不参与中国国家标准的发展, 无论其是否参与国际或国外标准的开发, 该当事方不应当被期待审阅有关的中国国家标准。我们还未发现任何 SDO 的专利政策向不参与的成员施加义务。
5.2.1	<p>对 5.2.1 的修改: 标准提案人应按照 4.1.2 的要求披露提案人及其关联者持有的 【必要】 专利。</p>	对这个定义的修改反映了对第 3.1 条的必要专利定义的修改建议。

<p>5.3.1</p>	<p>对 5.3.1 的修改: 【希望】标准制定工作组的所有 成员 【参与的个人】 应按 4.1.2 的要求披露其所知的本人、 成员 【其】 所在单位及其关联者持有的 【必要】 专利。</p>	<p>第 5.3.1 条规定的是标准制定组织的成员披露与标准相关的他们自己的专利, 以及他们各自的雇主拥有的专利。这些要求披露的专利应该是必要专利, 而不是目前草案的 “相关的” 专利。另外, 个人很难知道其雇主拥有的所有的专利。在某些情况下, 雇主可能拥有数千个专利和专利申请。如果个人需要 “知道” 所有雇主的专利, 在许多情况下, 他们将无法参与或帮助标准的开发工作。</p>
<p>5.3.2</p>	<p>对 5.3.2 的修改: 不属于标准制定工作组, 但 【不管他们是否正在参与标准制定工作组,】 向正在制修订的标准 【为该工作组】 提供技术贡献的所有单位或个人应按 4.1.2 的要求披露本单位或个人持有的 【对其技术贡献来说是必要的必要专利。】</p>	<p>要求组织或个人披露其拥有的、并且对于其专属的且形成书面材料的技术贡献来说是 “必要” 的必要专利, 是合理的。</p>
<p>5.3.5</p>	<p>对 5.3.5 的修改: 如果专业标准化技术委员会或归口单位在规定的期限内未收到必要专利的专利权人签署的专利许可声明表, 或必要专利的专利权人选择了 4.3.2c) 的许可方式, 则标准 不应包含基于此项专利技术的条款 【应交还给相关的技术委员会来决定: 是否可以修改该标准, 或者有其他的技术可以选择, 或者应放弃该标准。】 具体的期限由专业标准化技术委员会或归口单位自行规定。</p>	<p>当收到选择许可选项 (c) 的专利授权声明时, 第 5.3.5 条指出: “提议的标准不得含有基于这些专利技术的规定”。这里没有关于如果专利持有人选中选项 (c) 那么可采取什么行动方案的描述。如果加入类似提议的 “将标准返还给相关的技术委员会来提供一个其将采用的行动方案” 的语言将会有帮助。例如, 标准技术委员会应确定是否有其他可供选择的技术, 或者应该放弃该标准。如果有替代技术的话, 只要收到的专利许可的声明选择授权方案 (a) 或 (b), 修改后的标准仍可能会被批准。</p>
<p>5.4.1</p>	<p>对 5.4.1 的修改: 涉及 【必要】 专利的国家标准在征求意见时, 应按 4.2 的要求公布标准相关信息, 并注明鼓励社会公众按 4.1.2 的要求披露所知晓的 【必要】 专利。【不提供前述的自愿披露并不会受到处罚。如果有公众通知技术委员会可能有第三人持有必要专利, 标准制定机关会联系该第三人来了解其是否愿意进行自愿的披露。】</p> <p>5.4.1 加入: 【本规则的任何语言都不应解释为施加一个要求进行专利检索的义务。】</p>	<p>第 5.4.1 条规定, 标准草案应鼓励公众披露他们个人知道的专利。因此, 参加者需要披露其或第三方持有或控制的专利 (即使他们没有参与标准化过程)。这样的规定有问题, 因为没有参加者会承认该标准的实施将侵犯他人的专利, 因为这种声明可能与自己的利益冲突。此外, 不应鼓励公众提供违背自己的利益的声明。参与人或公众当然可以提供关于第三方专利的信息, 然而, 应当询问该第三方: 是否认为持有必要专利。这一过程符合其他一些知名的专利政策, 例如: ETSI 和 ANSI 的。</p> <p>理由见 4.1.1</p>
<p>5.4.2</p>	<p>对 5.4.2 的修改: 【鼓励】负责标准的专业标准化技术委员会的委员 应在征求意见截止时间前, 按 4.1.2 的要求披露本人、委员所在单位及其关联者持有的与标准征求意见稿内容有关的专利。 【在制定和修改该标准的过程中, 尽快对参与人员已知的必要专利按 4.1.2 的要求披露。】</p>	<p>现在这条符合上面的第 4.1.1 条。</p>

5.4.4	<p>对 5.4.2 的修改:</p> <p>标准制定工作组提交的标准草案送审【检查】材料中应包括专利信息披露表和证明材料、【必要】专利清单和必要专利的专利许可声明表。</p>	<p>目前尚不清楚“送审”在标准化过程的这个阶段含义。“检查 (Review)”一词似乎更合适,因为它意味着对文件的行政性的检查 (表 A.1 - A.3)。</p> <p>IPO 理解这种“检查”不包括对信息中所包含的专利的范围,有效性,或必要性进行判断。</p>
5.5	<p>审查阶段 需要澄清</p>	<p>目前尚不清楚“审查”一词,在标准开发过程的这个阶段含义。然而,我们的理解是,正如 GB 1.1-2009 附件 C 所述,标准组织不应就有关的这一专利权的证据,有效性,以及该专利的权利范围采取任何立场。此外,ITU/ISO / IEC 指出,“该组织不应该在推荐 交付有关的方面参与评估专利的相关性或必要性,或干涉许可谈判,或进行关于专利的纠纷处理。像过去一样,这应该留给有关各方”。</p> <p>此外,技术委员会通常配备的是工程师和其他专业技术人员,没有专利律师。解读专利和评估其必要性,有效性或可执行性,不应完全留给技术人员。</p>
5.6	<p>批准阶段 需要澄清</p>	<p>目前尚不清楚“检查完整性”在标准化过程的这个阶段含义。</p> <p>比“检查完整性”更适当的可能是“检查”,因为它可能意味着对文件的行政性的检查 (表 A.1 - A.3)</p> <p>IPO 理解这种“检查完整性”不包括对信息中所包含的专利的范围,有效性,或必要性进行判断。</p>
5.8	<p>复审阶段 需要澄清</p>	<p>目前还不清楚第 5.8 条“涉及专利的国家标准”的复审是什么含义。</p> <p>正如 GB/T 1.1-2009 附件 C 所述,我们的理解是该标准组织不应就有关的证据,有效性,以及该专利的权利范围采取任何立场。此外,ITU/ISO / IEC 指出,“该组织不应该在推荐 交付有关的方面参与评估专利的相关性或必要性,或干涉许可谈判,或进行关于专利的纠纷处理。像过去一样,这应该留给有关各方”。</p> <p>IPO 建议对本条进一步澄清并提供评论的机会。IPO 还没有在其他 SDO 的政策里看到类似规定,因此不能在此提供有意义的评论。</p>
5.9	<p>5.9 加入 废止阶段</p> <p>一旦标准被废止,与该标准有关的专利许可声明失效。【然而,标准被废止本身对废止前根据专利许可声明所达成的许可并没有影响。】</p>	<p>虽然标准机构能够废止一个标准并指出专利许可声明不再有效,许可证是许可人和被许可人签订的,终止该许可不属于标准机构的职权范围。</p>

<p>A. 1</p>	<p>修改: “涉及专利的标准条款(章、条编号)”和“专利主要技术内容介绍及其与标准内容相关性说明(可另加附页))” 栏为: “涉及专利的标准条款(章、条编号)【<i>如果 A. 3 表中选择了 (a) 或 (b) 项, 这一栏是非必须的</i>】”和“专利主要技术内容介绍及其与标准内容相关性说明(可另加附页))【<i>如果 A. 3 表中选择了 (a) 或 (b) 项, 这一栏是非必须的</i>】”</p>	<p>此修改是为了与第 4. 1. 2 条的修改一致。第 4. 1. 2 条“专利信息披露”包含几个关于专利信息方面的修改, 如果被接受, 将影响本表的几个栏。建议对指定的栏进行修改, 以反映第 4. 1. 2 条的任何变化, 并指出哪些信息是非必须的。</p>
<p>A. 3</p>	<p>增加: 【<i>许可选项的选择只适用于现在和将来一直是必要权项的权项。</i>】 【<i>表 A. 3 不是对必要权项发放许可, 而是表达专利持有人愿意提供许可的专利许可声明。</i>】</p>	<p>此修改是为了与第 4. 3. 2 条的修改一致。强烈建议对“必要专利授权声明” 的语言进行修改, 以符合该条规定。 该专利授权声明本身不是许可, 而是一个愿意对相互可接受的合理和非歧视性的条款进行谈判来提供许可的承诺。建议修改澄清这一点。</p>

请加盖单位公章

(纸幅不够, 请附页)

Disposition Rules for the Inclusion of Patents in National Standards¹

国家标准涉及专利的处置规则

Draft Translation (Source: USITO)	CNIS DRAFT RULES (Chinese)	MODIFICATION PROPOSED* (Article No.) *Proposed deletions are shown in red font with strikethrough marks, i.e. text ; proposed additions are shown in blue font and bracketed, i.e. [text].	RATIONALE
Foreword	前言		
<p>This standard was drafted according to rules set out in GB/T 1.1-2009.</p> <p>This standard was proposed by and is under the jurisdiction of China National Institute of Standardization.</p> <p>This standard was drafted by: Key drafters of this standard:</p>	<p>本标准按照GB/T 1.1-2009给出的规则起草。</p> <p>《涉及专利的国家标准制修订管理规定（暂行）》响应国家有关政策的要求，提供操作层面的技术支持</p> <p>本标准从具体操作层面出发，为规范参与涉及专利的国家标准制修订的各利益相关方的行为提供了指南。</p> <p>本标准由中国标准化研究院提出并归口。本标准起草单位： 本标准主要起草人：</p>		

¹ These comments are based on an unofficial English translation of the Draft Rules. If any of the prepared comments is not accurate as a result of inaccurate translation, we request your understanding. If further clarification of the comments is needed, please contact IPO.

Attachment Four: IPO Cross Reference Chart of English and Chinese text-- Letter to China National Institute of Standardization (March 1, 2010)

Introduction	引言		
<p>With the development and upgrading of technologies, the inclusion of patents in national standards is increasing. Currently, various standardization technical committees are not aware of rules for disposition of patents in national standards when formulating or revising them, leading to improper disposition of the inclusion of patents in standards. This standard is thus formulated with a view to unifying and standardizing the rules for formulation and revision of patent-related national standards. The formulation and implementation of this standard will play positive roles in promoting the adoption of new technologies in national standards, protecting the interests of the public and patent rights holder, and strengthening the management and coordination over the formulation of standards.</p>	<p>由于技术的发展和更新，国家标准涉及专利的现象越来越多。当前，各专业标准化技术委员会制修订国家标准时对专利处置方法不清楚，导致专利纳入标准的处置不规范。为统一规范制定涉及专利的国家标准制修订规则，特制定本标准。</p> <p>本标准的制定和实施将对促进国家标准采用新技术、保护社会公众和专利权人的利益以及加强我国标准制定工作的管理与协调起到积极的作用。</p>		

Attachment Four: IPO Cross Reference Chart of English and Chinese text-- Letter to China National Institute of Standardization (March 1, 2010)

<p>1 Scope</p> <p>This standard specifies the requirements and procedures for the disposition of patent issues during the formulation and revision of national standards. This standard applies to the formulation and revision of national standards, and can be followed during the formulation and revision of industry standards and local standards. Patents referred to herein include patents whose applications have been accepted by the administrative department of patent under the State Council and which have been granted and are holding.</p>	<p>1 范围</p> <p>本标准规定了国家标准制定和修订过程中专利问题的处置要求和程序。本标准适用于国家标准的制修订工作，行业标准和地方标准的制修订可参照使用。</p> <p>本标准所称专利包括由国务院专利行政部门受理的专利申请和已经获得授权并处于有效状态的专利。</p> <p>Add:</p> <p>本章界定了本标准的标准化对象、适用范围及本标准中所称“专利”的范围。</p>		<p>IPO understands that the term patents as used in this Article has the same meaning as the way the term patents is used in Article 4. If this is not the intended use, IPO requests clarification.</p>
<p>2 Normative Reference</p> <p>The following normative documents are indispensable to the application of this standard. For dated references, only the edition bearing such date applies to this standard. For undated references, the latest edition of the normative document referred to (including all the amendments) applies. GB/T 1.1-2009 Directives for standardization – Part 1: The structure and drafting of standards</p>	<p>2 规范性引用文件</p> <p>下列文件对于本文件的应用是必不可少的。凡是注日期的引用文件，仅所注日期的版本适用于本文件。凡是不注日期的引用文件，其最新版本（包括所有的修改单）适用于本文件。</p> <p>GB/T 1.1—2009 标准化工作导则 第1部分：标准的结构和编写</p>		

Attachment Four: IPO Cross Reference Chart of English and Chinese text-- Letter to China National Institute of Standardization (March 1, 2010)

3 Terms and Definitions	3 术语和定义		
The following terms and definitions apply to this standard.	下列术语和定义适用于本标准		
3.1 Essential Patent	3.1 必要专利		
<p>A patent which is not possible to use another commercially feasible non-infringing implementation mode to avoid infringing a certain claim of such patent when a standard is implemented.</p>	<p>实施标准时，无法通过采用另一个商业上可行的不侵权的实施方式来避免该专利的某一权利要求被侵犯的专利。</p>	<p>Modification to Article 3.1 Essential Patent <i>A patent which is not possible to use another commercially feasible non-infringing implementation mode to avoid infringing a certain claim of such patent when a standard is implemented.</i> <i>[Essential Patent refers to a patent that is likely to include an Essential Claim.]</i></p> <p>Add to Article 3.1 [Essential Claim] <i>Essential Claim is a patent claim that is unavoidably infringed by an implementation of a Chinese National Standard given the state of the art and technology at the time of the adoption of the standard.]</i></p>	<p>It would be clearer to define both an “Essential Patent” and an “Essential Claim.” Such clarification would encourage patent holders to disclose early and submit Licensing Statements.</p> <p>Distinguishing between Essential Patents (which are those patents subject to the disclosure rules), and Essential Claims (which are those claims within an Essential Patent that are the subject of commitments to offer a license made in Licensing Statements), is important to avoid overly broad and unnecessary licensing statements. During the standardization process, patent holders reasonably may not know whether or not all or some claims of a patent will actually be Essential Claims when the standard is finalized, but these patent holders would be willing to disclose a patent likely to have such Essential Claims. So typically the disclosure rules apply to Essential Patents, but the licensing statement only applies to the Essential Claims that are essential to the final version of the standard.</p> <p>We note that the term “commercially feasible” is used in the Article. IPO suggests this term “commercially feasible” should be determined with respect to the state of the art and technology at the time of adoption of the standard.</p>

Attachment Four: IPO Cross Reference Chart of English and Chinese text-- Letter to China National Institute of Standardization (March 1, 2010)

3.2 Reasonable non-discriminatory licensing	3.2 合理无歧视许可		
Refers to the licensing option specified by the licensor, subject to the rights of reciprocity or defensive suspension, allowing all implementers of a given standard, to implement Essential Patents included in such standard on reasonable and non-discriminatory basis, with royalty payment.	许可方在享有互惠和防御性终止权利的前提下，允许标准的所有实施者在合理无歧视的条件下，以支付许可费的形式实施该标准中纳入的必要专利的许可方式。	Modification to Article 3.2 <i>Refers to the licensing option specified by the licensor, subject to the rights of reciprocity or defensive suspension, allowing all implementers of a given standard, to implement Essential Patents [Essential Claims] included in such standard on reasonable and non-discriminatory basis, with royalty payment.</i>	This modified definition reflects the proposed modifications to the Definition for Essential Patent and Essential Claim in Article 3.1.
3.3 Reasonable non-discriminatory licensing without royalty	3.3 合理无歧视免费许可		
Refers to the licensing option selected by the licensor, subject to the rights of reciprocity or defensive suspension, allowing all implementers of a given standard, to implement Essential Patents included in such standard on reasonable and non-discriminatory basis, without royalty payment.	许可方在享有互惠和防御性终止权利的前提下，允许标准的所有实施者在合理无歧视的条件下，以无需支付许可费的形式实施该标准中纳入的必要专利的许可方式。	Modification to Article 3.3 <i>Refers to the licensing option selected by the licensor, subject to the rights of reciprocity or defensive suspension, allowing all implementers of a given standard, to implement Essential Patents [Essential Claims] included in such standard on reasonable and non-discriminatory basis, without royalty payment.</i>	This modified definition reflects the proposed modifications to the Definition for Essential Patent and Essential Claim in Article 3.1.
3.4 Affiliate	3.4 关联者		
Refers to a legal entity which, directly or indirectly, controls another legal entity, or is under its control, or together with such legal entity, is under control of another legal entity.	直接或间接控制其他法律实体，或受其控制，或与其共同受控于另一个法律实体的法律实体。		

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3.5 Control	3.5 控制		
Refers to the case where a legal entity, directly or indirectly, owns more than 50% of voting share in another legal entity, or has the right to make decisions when having no voting share.	一个法律实体在另一个法律实体中直接或间接拥有超过50%的有选举权的股份，或者在没有选举权股份的情况下，拥有决策权。		
3.6 Technical Contribution	3.6 技术贡献		
Refers to technical documents or technical proposals submitted in writing or by electronic means to the standards setting working group during the standards setting process.	在标准制定过程中，通过书面或电子媒介的形式向标准制定工作组正式提交的技术材料或技术建议。		
4 Requirements for Disposition of Patents	4 专利处置要求		
4.1 Disclosure of Patent Information	4.1 专利信息的披露		
4.1.1 The standardization technical committee or the organization in charge shall encourage all the organizations or individuals participating in the formulation or revision of a standard, as well as those not participating, to disclose known patents or possible patents included in a standard as soon as possible during the formulation or revision of such standard.	4.1.1 专业标准化技术委员会或归口单位应鼓励所有参与和没有参与标准制修订的单位或个人，在标准制修订过程中，尽早披露与标准有关的已知或可能专利	Modification to Articles 4.1.1 <i>The standardization technical committee or the organization in charge shall encourage all the organizations or individuals participating in the formulation or revision of a standard, as well as those not participating, to disclose known patents or possible patents included in a standard [any Essential Patents that are known to the participating individual] as soon as possible during the formulation or revision of such standard. Individuals who are not participating in the formulation or revision of a standard are encouraged to disclose, on a voluntary basis, any</i>	It would be extraordinarily onerous for non-participants to review every draft standard that is made available for comment and then determine whether or not it might have essential patents to disclose. In addition, requiring non-participants to review draft Chinese National Standards for disclosure purposes is inconsistent with international criteria. For example, the China Electronics Standards Institute (CESI) and other international SDOs encourage disclosure by individual participants who have knowledge. For example, CESI expects patent holders to

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		<p><i>Essential Patents that are known to the non-participating individual. Non-participants are not required or expected to review any draft Chinese National Standards or submit information contained in Tables A.1 or A.3.]</i></p> <p>Add to Article 4.1.1 <i>[Nothing in these rules shall be interpreted as giving rise to a duty to conduct a patent search.]</i></p>	<p>disclose patents likely to contain essential claims to be made based on the actual knowledge of its representatives and authors of contributions.</p> <p>While it is reasonable to encourage individual participants who have knowledge to make a disclosure, it would be onerous to expect any individual or organization to conduct a patent search.</p> <p>We are unaware of any SDO patent policy that requires a patent search by participants or non-participants. We recommend that any information published with a draft Chinese National Standard describing how to submit a patent disclosure expressly state that there is no obligation to search for Essential Patents.</p> <p>For example, ISO/IEC/ITU Common Patent Policy, Section 3 states “Nothing in this policy shall be interpreted as giving rise to a duty to conduct a patent search. No license is implied by the submission of a Letter of Assurance.”</p>
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<p>4.1.2 When disclosing patent information, a patent information disclosure form (refer to Table A.1 in Annex A) shall be completed, and submitted together with relevant evidence to the standardization technical committee or the organization in charge. Evidence of a granted patent shall be a copy of the title page of the patent certificate. Evidence of a published patent application but not granted shall be an publication of the patent application. Evidence of an unpublished patent application shall be the number of the patent application and date of application.</p>	<p>4.1.2 在披露专利信息时，应填写专利信息披露表（见附录A的表A.1），并将专利信息披露表与相关证明材料一起提交至所属的专业标准化技术委员会或归口单位。已授权专利的证明材料为专利证书复印件或扉页，已公开但尚未授权的专利申请的证明材料为专利申请公告，未公开的专利申请的证明材料为专利申请号和申请日期。</p>	<p>Modification to Article 4.1.2 <i>When disclosing patent information, a patent information disclosure form (refer to Table A.1 in Annex A) shall[may] be completed. [Submittal of Table A.1 is optional when a patent holder has already submitted or simultaneously submits a Patent Licensing Statement, Table A.3, which indicates the licensing option selected is option a) RAND or option b) RAND-RF. If licensing option a) or b) is selected, then completion of all fields regarding related patent information in the standard in Table A.1 is optional, and evidence of granted patents or published patent applications is optional.]</i></p> <p><i>[If licensing option c) is selected in Table A.3, then all fields regarding related patent information in Table A.1 shall be completed and submitted together with relevant evidence to the standardization technical committee or the organization in charge. Evidence of a granted patent shall be a copy of the title page of the patent certificate. Evidence of a published patent application but not granted] shall be an publication of [the number of the] patent application [and the date of application.] Evidence of an unpublished patent application shall be the number of the patent application.</i></p>	<p>The current Article is far more stringent in its requirements for evidence of patents and patent applications than that of other well-established SDO practices such as ISO/IEC/ITU. Additionally, the proposed scope of patent information includes unpublished patent applications, which is not included in the text of the common patent policy of ISO/IEC/ITU. In many jurisdictions, the information regarding unpublished patent applications is considered confidential, thus, should not be required as part of the Draft Rules.</p> <p>Some companies prefer to not supply specific information because they are willing to license Essential Claims on RAND terms. This results in a broader licensing commitment because the licensing commitment is not limited to the patents listed on the patent disclosure form.</p> <p>Patent holders should not be required to provide evidence of patents and patent applications if they are willing to offer a license on RAND or RAND-RF terms and conditions. Specific information should only be required if a patent holder states it is unwilling to license on RAND terms (Table A-3, option (c)).</p>
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4.2 Announcement of relevant information	4.2 相关信息的公布		
4.2.1 The administrative department of standardization, standardization technical committees or organizations in charge shall announce the information of patents included in standards on the website of the administrative department of standardization, and the website of the standardization technical committee in charge or the state-level periodicals.	4.2.1 国家标准化行政主管部门、专业标准化技术委员会或归口单位应通过国家标准化行政主管部门网站、专业标准化技术委员会网站或国家级期刊公布标准中涉及专利的信息。		
4.2.2 Relevant information announced includes at least the draft standard including patents, a list of known patents (refer to Table A.2 in Annex A) and contact information of the standardization technical committee or the organization in charge.	4.2.2 公布的相关信息应至少包括涉及了专利的标准草案、已知悉专利的专利清单（见附录A表A.2）和专业标准化技术委员会或归口单位的联系方式。	Modification to 4.2.2 <i>Relevant information announced includes at least the draft standard including patents, a list of known patents (refer to Table A.2 in Annex A)[, patent licensing statements (refer to Table A.3 in Annex A),] and contact information of the standardization technical committee or the organization in charge.</i>	It is common practice for well-established SDOs to provide licensing statements in addition to a list of patents.
4.3 Patent licensing	4.3 专利许可		
4.3.1 When granting a patent license, the licensor shall fill in a patent licensing statement (refer to Table A.3 in Annex A).	4.3.1 在进行专利许可时，许可方应填写专利许可声明表（见附录A的表A.3）。	Modification to 4.3.1 When granting a patent license, the licensor <i>[When a patent holder makes a disclosure to the standardization technical committee or organization in charge, the patent holder] shall fill in a patent licensing statement (refer to Table A.3 in Annex A). [Table A.3 is not a grant of a license to Essential Claims but rather a patent licensing statement expressing the patent holder's willingness to offer a</i>	As discussed above, Section 4.3 should be modified so that it is clear that only Essential Claims will be subject to the patent licensing statement, which contains the licensing option selected by the patent holder. It is difficult to know for sure when a standard is in draft form or when claims of a patent are still pending whether or not the claims will ultimately be essential. The patent licensing statement only applies to Essential Claims in connection with the approved national standard.

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<p>4.3.2 The licensor, when completing a patent licensing statement, shall select any one of the following options: a) Reasonable and non-discriminatory licensing without royalty payment; b) Reasonable and non-discriminatory licensing with royalty payment; or c) Unwilling to license patent under one of the two above options.</p>	<p>4.3.2 许可方在填写专利许可声明表时，应在以下三种方式中进行选择： a) 合理无歧视免费许可； b) 合理无歧视许可； c) 不同意按照以上两种方式进行许可。</p>	<p><i>license.]</i> Modification to 4.3.2 <i>The licensor, when completing a patent licensing statement, shall select any one of the following options:</i> <i>a) Reasonable and non-discriminatory licensing without royalty payment;</i> <i>b) Reasonable and non-discriminatory licensing with royalty payment; or</i> <i>c). Unwilling to license patent [offer a license] under one of the two above options.</i></p>	<p>The concept of a RAND licensing commitment is not itself a license but rather a commitment to make licenses available through a willingness to enter into negotiation of mutually acceptable terms and conditions that are reasonable and non-discriminatory.</p>
<p>4.3.3 The licensing option, upon submission, is irrevocable until such standard is withdrawn or the patent licensed is no longer an Essential Patent of such standard due to revision of a part of such standard. Only when the patent licensing statement submitted at a later date provides more generous and preferential conditions for the implementers of the standard, can the previous patent licensing statement be superseded</p>	<p>4.3.3 选择的许可方式一经提交就不可撤销，直到该标准被废止或标准的相关部分由于修订导致被许可的专利不再是该标准的必要专利；只有后提交的许可声明对标准实施者而言更宽松、更优惠时，才可取代在先的许可声明。</p>		

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<p>4.3.4 In case of transfer of patent rights, the licensing option selected by such licensor for a standard still remains valid for the assignee.</p>	<p>4.3.4 在专利权转移的情况下，该许可方已经对某一标准作出的许可对于专利权受让人依然有效。</p>	<p>Modification to 4.3.4 <i>In case of transfer of patent rights, the licensing option selected by such licensor for a standard still remains valid for the assignee. [In case of assignment or transfer of patent rights, the patent holder will make a reasonable effort to notify the assignee or transferee of the licensing statement option selected by such patent holder for the standard. Licenses executed prior to assignment or transfer of a patent will also be assigned to the new patent owner.]</i></p>	<p>The ITU-T currently is revising its patent policy guidelines to provide that the original patent holder should use reasonable efforts to notify the new patent owner of the prior owner's licensing commitment to the ITU. The proposed modification to 4.3.4 reflects similar language.</p>
<p>4.4 Requirements for meetings</p>	<p>4.4 会议要求</p>		
<p>At each meeting held during the formulation or revision of a standard, the person presiding over the meeting shall check whether the draft standard includes new patents, and whether the patent information disclosure forms received contain essential patents for which a patent licensing statement must be obtained, and record the results into the summary of meeting minutes.</p>	<p>在标准制修订过程中的每次会议期间，会议主持人都应询问标准草案是否涉及新的专利，收到的专利信息披露表中是否存在必须获得许可声明的必要专利，并将结果记录在会议纪要中。</p>		
<p>4.5 Requirements of Documents</p>	<p>4.5 文件要求</p>		
<p>The cover pages of the draft standard for discussion, draft standard for comment and draft standard for approval completed by the working group shall bear the information indicating that</p>	<p>在工作组讨论稿、征求意见稿、送审稿的封面上应给出征集专利的信息。在标准制修订过程中的任何阶段，一旦识别出标准的技术内容涉及了专利并进行了相应的处置（见第5章），应</p>		

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<p>patents are to be solicited. Once it is discovered that the technical content of a standard includes a patent and disposition measures have been taken (refer to Chapter 5) at any stage of the standards formulation or revision process, relevant descriptions shall be available in the introduction in the draft standard completed at that and subsequent stages and in the formally published edition of the National Standard. In case of failure to identify such included patents during the formulation or revision of such standard, relevant descriptions shall be available in the foreword of the draft standard for approval and the formally published edition of the National Standard. The patent-related descriptions on the cover page and in the introduction and foreword shall be consistent with the statements in Appendix C of GB/T 1.1-2009</p>	<p>在相关阶段以及其后的所有阶段的标准草案直至正式出版的国家标准的引言中给出相应的说明。如果标准的制修订过程中没有识别出标准的技术内容涉及专利，应在标准报批稿和正式出版的国家标准的前言中给出相应的说明。封面、引言和前言中与专利有关的内容应与GB/T1.1-2009附录C中给出的表述相符合。</p>		
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4.6 Formulate National Standards Based on International or Foreign Standards	4.6 国际标准或国外标准为基础制定我国标准		
When formulating national standards on basis of international or foreign standards, the Chapter 5 requirements shall be met in disposing the inclusion of patents in standards.	以国际标准或国外标准为基础制定我国标准时，同样应按照第5章给出的要求处置标准中涉及的专利问题。	Add to Article 4.6 <i>When formulating national standards on basis of international or foreign standards, the Chapter 5 requirements shall be met in disposing the inclusion of patents in standards. [For purposes of clarification, Articles 4 and 5 do not apply to technical contributions made to an international or foreign standards body issuing an international or foreign standard. And this remains true even if the standard of the international or foreign body is subsequently formulated or revised as a Chinese National Standard. In addition, any patent licensing statement made to the international or foreign standards body does not apply to a Chinese National Standard that is based on the international or foreign standard.]</i>	It is unclear whether a party that participated in the development of an international or foreign standard but is not participating and perhaps has no knowledge that such international or foreign standard is the basis of a Chinese National Standard, whether by reference or otherwise, would be expected to make disclosures in connection with the development of the Chinese National Standard. Regardless of a party's participation in the development of an international or foreign standard, such party should not be expected to review related Chinese National Standards if such party is not participating in the development of the Chinese National Standard. We are unaware of any SDO patent policy that places obligations on non-members who are not participants.
5. Procedures for Disposition of Patents	5 专利处置程序		
5.1 Preliminary Stage	5.1 预研阶段		
Proposers of a standard shall collect as much information on patents included in such draft standard as possible.	标准提案人应尽可能广泛地收集标准提案中涉及的专利信息。		

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5.2 Proposal Stage	5.2 立项阶段		
5.2.1 The proposers of a standard shall disclose the patents held by themselves and relevant affiliates according to the 4.1.2 requirements.	5.2.1 标准提案人应按照4.1.2的要求披露提案人及其关联者持有的专利。	Modification to Article 5.2.1 <i>The proposers of a standard shall disclose the patents[Essential Patents] held by themselves and relevant affiliates according to the 4.1.2 requirements</i>	This modified definition reflects the proposed modification to the Definition for Essential Patent in Article 3.1.
5.2.2 When the standardization technical committee or organization in charge submits a national standards project proposal to the administrative department of standardization, the patent information disclosure forms, list of patents and the patent licensing statements obtained shall be submitted concurrently (refer to Annex A).	5.2.2 专业标准化技术委员会或归口单位在向国家标准化行政主管部门上报国家标准项目建议书时，应同时报送专利信息披露表、专利清单和已获得的专利许可声明表（见附录A）。		
5.2.3 When the administrative department of standardization announces the national standards project for soliciting comments, the proposal of national standards project including patents and list of patents shall be made public concurrently.	5.2.3 国家标准化行政主管部门在公示标准项目时，应同时公布涉及专利的国家标准项目建议书和专利清单。		

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5.3 Drafting Stage	5.3 起草阶段		
5.3.1 All the members of the standards setting working group shall disclose the patents held by themselves, organizations where they are employed, and of relevant stakeholders according to the 4.1.2 requirements.	5.3.1 标准制定工作组的所有成员应按4.1.2的要求披露本人、成员所在单位及其关联者持有的专利	<p>Modification to Article 5.3.1 <i>All the members of [individual participants in] the standards setting working group shall disclose the patents [are encouraged to disclose Essential Patents that are known to the participating individual] held by themselves, organizations where they are employed, and of relevant stakeholders according to the 4.1.2 requirements.</i></p> <p>Add to Article 5.3.1 <i>[Nothing in these rules shall be interpreted as giving rise to a duty to conduct a patent search.]</i></p>	Article 5.3.1 requires members of standards setting organizations to disclose patents related to the standard that they own as well as such patents owned by their respective employers. The patents that should be subject to any disclosure are Essential Patents, not “related” patents as indicated in the current Draft. Also, it is difficult for individuals to know of all the patents owned by their employers. In some cases, employers may own thousands of patents and patent applications. If individuals are required to “know about” all of their employers patents, in many cases, they will be unable to participate or contribute to the standards development effort.
5.3.2 All the organizations or individuals which are not members of the standards setting working group but make technical contributions during the formulation and revision of a standard shall, according to the 4.1.2 requirements, disclose the patents that are held by such organizations or individuals and associated with the technical contributions.	5.3.2 不属于标准制定工作组，但向正在制修订的标准提供技术贡献的所有单位或个人应按4.1.2的要求披露本单位或个人持有的与技术贡献有关的专利。	<p>Modification to Article 5.3.2 <i>All the organizations or individuals, which are not members of the standards setting working group but [whether or not they are participating in the standards setting working group, who] make technical contributions [to that working group] during the formulation and revision of a standard shall, according to the 4.1.2 requirements, disclose the patents [Essential Patents] that are held by such organization or individual [that are essential in connection with their technical contribution.]</i></p>	It is not unreasonable to require an organization or individual to disclose the Essential Patents that they own that are essential with regard to the specific, written technical contribution being made by such organization or individual.

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<p>5.3.3 The standardization technical committee or organization in charge shall contact the patent rights holder of essential patents in order to obtain the required patent licensing statements in writing.</p>	<p>5.3.3 专业标准化技术委员会或归口单位应联系必要专利的专利权人，以便获取书面许可声明。</p>		
<p>5.3.4 The standardization technical committee or organization in charge shall timely inform the standards setting working group of the receipt of the patent information disclosure forms, proofs and patent licensing statements.</p>	<p>5.3.4 专业标准化技术委员会或归口单位应将收到的专利信息披露表、证明材料和专利许可声明表及时通知标准制定工作组</p>		
<p>5.3.5 In case the standardization technical committee or organization in charge fails to receive the patent licensing statement signed by the patent rights holder of an essential patent within the specified time limit, or the holder selects the licensing option specified in 4.3.2 c), the proposed standard shall not contain the provisions based on such patented technology. The specific time limit can be determined by the standardization technical committee or organization in charge.</p>	<p>5.3.5 如果专业标准化技术委员会或归口单位在规定的期限内未收到必要专利的专利权人签署的专利许可声明表，或必要专利的专利权人选择了4.3.2c)的许可方式，则标准不应包含基于此项专利技术的条款。具体的期限由专业标准化技术委员会或归口单位自行规定。</p>	<p>Modify Article 5.3.5 <i>In case the standardization technical committee or organization in charge fails to receive the patent licensing statement signed by the patent rights holder of an Essential Patent within the specified time limit, or the holder selects the licensing option specified in 4.3.2 c), the proposed standard shall not contain the provisions based on such patented technology [be returned to the relevant technical committee to determine whether the standard can be modified, other technical options are available, or the standard should be abandoned.] The specific time limit can be determined by the standardization technical committee or organization in charge.</i></p>	<p>When a patent licensing statement is received with licensing option (c) selected, Article 5.3.5 states that the “proposed standard shall not contain the provisions based on such patented technology.” There is no description of what actions can be taken when option (c) is selected by the patent holder. It would be helpful to add language to state that the proposed standard will be returned to the standards technical committee and to provide a description of the actions that the standards technical committee may take. For example, the standards technical committee should determine whether other technical options are available or if the standard should be abandoned. If technical alternatives are available, the modified standard may be approved so long as patent licensing statements received have selected licensing option (a) or (b).</p>

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<p>5.4 Soliciting comments Stage</p>	<p>5.4 征求意见阶段</p>		
<p>5.4.1 When soliciting comments on a draft national standard including patents, relevant patent information of such standard shall be published according to the 4.2 requirements, bearing the words stating that the public is encouraged to disclose the patents they are aware of according to the 4.1.2 requirements.</p>	<p>5.4.1 涉及专利的国家标准在征求意见时，应按4.2的要求公布标准相关信息，并注明鼓励社会公众按4.1.2的要求披露所知晓的专利。</p>	<p>Modification to Article 5.4.1 <i>When soliciting comments on a draft national standard including patents [Essential Patents], relevant patent information of such standard shall be published according to the 4.2 requirements, bearing the words stating that the public is encouraged on a voluntary basis to notify the relevant technical committee that they disclose the patents [Essential Patents] they have knowledge of according to the 4.1.2 requirements. [There is no penalty for a failure to make such a voluntary disclosure. If a member of the public notifies the technical committee of a possible Essential Patent that is held by a third party, then the standards authority will contact that third party to see if it is willing to make a disclosure on a voluntary basis.]</i></p> <p>Add to Article 5.4.1 <i>[Nothing in these rules shall be interpreted as giving rise to a duty to conduct a patent search.]</i></p>	<p>Article 5.4.1 states that the draft standards shall encourage the public to disclose patents they have personal knowledge of. As such, participants are required to disclose patents that are held or controlled by themselves (even if they are not participating in the standardization process) and by third parties. Such requirements are problematic because no participant will want to admit that the implementation of the standard would infringe another’s patents as such a statement could be against its own interests. In addition the public should not be encouraged to make statements against their own interests. There is no objection in allowing a participant or the public to provide information regarding a third party’s patent, however, the third party should be asked if it believes it holds any Essential Patents. Such a process is consistent with other well-known patent policies, e.g. ETSI and ANSI.</p> <p>See 4.1.1 for rationale</p>

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<p>5.4.2 Members of the standardization technical committee or the organization in charge shall, before the deadline for soliciting the comments, disclose the patents that are held by themselves, organizations where they are employed, and relevant stakeholders, and associated with the draft standard for comments, according to the 4.1.2 requirements.</p>	<p>5.4.2 专业标准化技术委员会的委员应在征求意见截止时间前，按4.1.2的要求披露本人、委员所在单位及其关联者持有的与标准征求意见稿内容有关的专利。</p>	<p>Modification to Article 5.4.2 <i>Members of the standardization technical committee or organization in charge shall, before the deadline for soliciting the comments, disclose the patents that are held by themselves, organizations where they are employed, and relevant stakeholders, and associated with the draft standard for comments; [responsible for the standard are encouraged to disclose any Essential Patents that are known to the participating individual as soon as possible during the formulation or revision of such standard], according to the 4.1.2 requirements.</i></p>	<p>This is now consistent with section 4.1.1 above.</p>
<p>5.4.3 The patent information disclosure forms, evidence and patent licensing statements received during the process of soliciting comments shall be treated according to the 5.3.3 – 5.3.5 requirements.</p>	<p>5.4.3 征求意见过程中新收到的专利信息披露表、证明材料和专利许可声明表应按照5.3.3至5.3.5的要求处置。</p>		
<p>5.4.4 The documents supporting the draft standard submitted by the standards setting working group for examination shall include patent information disclosure forms, evidence, list of patents and patent licensing statements for essential patents.</p>	<p>5.4.4 标准制定工作组提交的标准草案送审材料中应包括专利信息披露表和证明材料、专利清单和必要专利的专利许可声明表。</p>	<p>Modification of 5.4.4 <i>The documents supporting the draft standard submitted by the standards setting working group for examination [review] shall include patent information disclosure forms, evidence [and] list of patents [for Essential Patents] and patent licensing statements for essential patents [Essential Claims].</i></p>	<p>It is unclear what the word “examination” means in this stage of the standardization process. The word “review” seems to be more appropriate, where review indicates an administrative review of the documents (Tables A.1 - A.3).</p> <p>IPO understands this action of “review” does not include determination of the scope, validity, or essentiality of the patents contained in the information.</p>

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<p>5.5 Review Stage</p> <p>The standardization technical committee or the organization in charge, when reviewing a draft standard including patents, shall call a meeting to review the document, and provide review opinions on the included patents.</p>	<p>5.5 审查阶段</p> <p>专业标准化技术委员会在对涉及专利的标准进行审查时，应采用会议审查的方式，并应对涉及的专利情况给出审查意见</p>	<p>Clarification of Article 5.5</p>	<p>It is unclear what the word “review” means in this stage in the standards development process. However, it is our understanding that as stated in Annex C of GB/T 1.1-2009, the standards body should take no position concerning the evidence, validity, and scope of this patent right. In addition, ITU/ISO/IEC states, “The Organizations should not be involved in evaluating patent relevance or essentiality with regards to Recommendations Deliverables, interfere with licensing negotiations, or engage in settling disputes on Patents; this should be left - as in the past - to the parties concerned.”</p> <p>In addition, technical committees are usually staffed with engineers and other technical professionals, not patent attorneys. Interpreting patents and evaluating their essentiality, validity, or enforceability should not be left solely to technical personnel.</p>
<p>5.6 Approval Stage</p> <p>5.6.1 The administrative department of standardization shall check the integrity of the patent information disclosure forms, evidence, list of patents and patent licensing statements and the compliance with the disposition procedures. In case of failure to comply with the requirements, such documents shall be returned to the</p>	<p>5.6 批准阶段</p> <p>5.6.1 国家标准化行政主管部门应对专利信息披露表、证明材料、专利清单和专利许可声明表的完备性，以及处置程序的符合性进行审核。对不符合报批要求的，应退回专业标准化技术委员会或归口单位，限时解决问题后再行报批。</p>	<p>Clarification of Article 5.6</p>	<p>It is unclear what “check the integrity” means in this stage of the standardization process.</p> <p>Rather than “check the integrity,” the more appropriate action might be “review,” which could indicate an administrative review of the documents (Tables A.1-A.3).</p> <p>IPO understands “check the integrity” in Article 5.6 does not include determination of the scope, validity, or essentiality of the</p>

Appendix: IPO Detailed Comments to CNIS regarding Draft Rules-English

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<p>standardization technical committee or organization in charge, and can be resubmitted for approval only when the problems are addressed within a specified time limit.</p>			<p>patents contained in the information.</p>
<p>5.6.2 The administrative department of standardization shall publish the information of patents included in a standard according to the 4.2 requirements.</p>	<p>5.6.2 国家标准行政主管部门应按4.2的要求公布标准中涉及专利的信息。</p>		
<p>5.6.3 In case the standardization technical committee or organization in charge discovers a new essential patent before a standard is approved, an application shall be filed for terminating the procedures for approving the draft standard. After the new patent included in the standard is properly processed, the draft standard can be re-submitted for approval.</p>	<p>5.6.3 在标准批准之前，专业标准化技术委员会或归口单位如果发现了新的必要专利，应申请终止标准报批稿的批准程序，并对新涉及的专利进行处置，然后再行报批。</p>		
<p>5.7 Publication Stage</p>	<p>5.7 出版阶段</p>		
<p>The approved standard shall be published according to the 4.5 requirements.</p>	<p>标准文件按4.5的要求出版。</p>		

<p>5.8 Reaffirmation stage</p>	<p>5.8 复审阶段</p>	<p>Clarification of Article 5.8 is needed.</p>	<p>It is unclear what is meant in section 5.8 by reaffirmation of “a national standard including patents.”</p> <p>It is our understanding that as stated in Annex C of GB/T 1.1-2009, the standards body should take no position concerning the evidence, validity, and scope of this patent right. In addition, ITU/ISO/IEC states, “The Organizations should not be involved in evaluating patent relevance or essentiality with regards to Recommendations Deliverables, interfere with licensing negotiations, or engage in settling disputes on Patents; this should be left - as in the past - to the parties concerned.”</p> <p>IPO recommends that this section be clarified with further opportunity to comment. IPO has not seen a provision similar to this in other SDO practices and therefore is unable to provide helpful commentary at this time.</p>
<p>5.8.1 The cycle for reaffirmation of a national standard including patents shall not exceed three years.</p>	<p>5.8.1 涉及专利的国家标准的复审周期不应超过三年。</p>		
<p>5.8.2 At the time of reaffirmation, the standardization technical committee or organization in charge shall again review the specific patents included in a standard.</p>	<p>5.8.2 复审时，专业标准化技术委员会或归口单位应专门对标准中所涉及的专利进行复审。</p>		

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<p>5.8.3 The patent disposition results generated during the reaffirmation stage shall be included in the reaffirmation report.</p>	<p>5.8.3 复审过程中的专利处置结果应记录在复审报告中。</p>		
<p>5.9 Withdrawal Stage</p>	<p>5.9 废止阶段</p>		
<p>Once a standard is withdrawn, the patent licensing statement associated with such standard will no longer be in effect.</p>	<p>一旦标准被废止，与该标准有关的专利许可声明失效。</p>	<p>Addition to Article 5.9 Once a standard is withdrawn, the patent licensing statement associated with such standard will no longer be in effect. <i>[However, the action of withdrawal of a standard, alone, has no effect on licenses entered into pursuant to those patent licensing statements prior to such withdrawal.]</i></p>	<p>While the standards body has the ability to withdraw a standard and to indicate that the patent licensing statement is no longer in effect, licenses that are entered into between licensor and licensee are not within the standards body’s purview to terminate.</p>
<p>ANNEX A (Normative)</p>	<p>附录 A (规范性附录)</p>		
<p>Table A.1 – Table A.3 provide forms to be used when the patents included in a standard are disclosed, announced and licensed. Table A.1 is to be used for disclosure of patent information, Table A.2 is to be used to list patents when patent information is made public, and Table A.3 is to be used to indicate a licensing option for a patent included in a standard.</p>	<p>标准制修订过程中处置涉及的专利所使用的表格格式 表A.1至A.3给出了标准中所涉及的专利在进行披露、公布和许可时所使用的表格格式。表A.1用于专利信息的披露，表A.2是专利信息进行公布时所使用的专利清单，表A.3用于专利的许可。 下列表格均可根据实际需要增加表格行。</p>		
<p>Table A.1 is to be used for disclosure of patent information</p>	<p>表A.1 专利信息披露表</p>	<p>Modification to Table A.1 Modify the column titles for “Clauses in standard related to patents (Chapter, Section No.)“ and “Brief overview of technical content of patent, and description of its relevance to standard (additional pages allowed)” as follows:</p>	<p>This modification is to be consistent with modifications to Article 4.1.2. Article 4.1.2, Disclosure of Patent Information, contains several proposed modifications regarding patent information, which if accepted would affect several columns of this Table. It is recommended that the columns specified be</p>

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		<p>Substitute the following for the titles of the last two columns in Table A.1 <i>[Clauses in standard related to patents (Chapter, Section No.). This section is optional if option (a) or (b) is selected on Table A.3.]</i></p> <p><i>[Brief overview of technical content of patent, and description of its relevance to standard (additional pages allowed). This section is optional if option (a) or (b) is selected on Table A.3.]</i></p>	<p>modified to reflect any changes in 4.1.2 and to indicate which information is optional.</p>
<p>Table A.2 is to be used to list patents when patent information is made public</p>	<p>表A.2 专利清单</p>		
<p>Table A.3 is to be used to indicate a licensing option for a patent included in a standard.</p>	<p>表A.3 专利许可声明表</p>	<p>Add within Table A.3 <i>[The licensing option selected applies only to claims that are and remain Essential Claims.]</i></p> <p><i>[Table A.3 is not a grant of a license to Essential Claims but rather a patent licensing statement expressing the patent holder’s willingness to offer a license.]</i></p>	<p>This modification is to be consistent with modifications to Article 4.3.2. It is strongly recommended that the language regarding “Essential patent licensing statement” be modified to be consistent with that Article. The patent licensing statement is not itself a license but rather a commitment to make licenses available through a willingness to enter into negotiation of mutually acceptable terms and conditions that are reasonable and non-discriminatory. The proposed modification makes this clarification.</p>