IEEE’s Continued Leadership in Standardization

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IEEE is the world’s largest technical professional organization dedicated to advancing technology for the benefit of humanity. With more than 423,000 members, IEEE is a trusted voice for engineering, computing, and technology information around the globe. The IEEE Standards Association (IEEE-SA), which oversees IEEE standards development, is a leading consensus building organization that nurtures, develops, and advances global technologies. With collaborative thought leaders in more than 160 countries, IEEE-SA promotes innovation, enables the creation and expansion of international markets, and helps protect health and public safety. Its work drives the functionality, capabilities, and interoperability of a wide range of products and services that transform the way people live, work, and communicate.

Innovation at IEEE is responsible for many ubiquitous standards such as IEEE 802.11 (Wi-Fi®), IEEE 802.15 (Bluetooth®), IEEE 802.3 (Ethernet) and hundreds of other widely used standards that affect and improve our daily lives. Recently we have become aware of concerted efforts to diminish IEEE’s reputation and denounce its integrity through misinformation regarding the nature and impact of its updated standards-related patent policy. This paper will show that the arguments made are misleading and false, and demonstrate how IEEE is continuing to flourish as the world’s leading venue for innovation and standardization.

There is ample evidence that the analysis, selection, interpretation of data, and the conclusions of the report titled ‘Development of innovative new standards jeopardized by IEEE patent policy’ (subsequently called ‘the report’)³ are misinformed. The statistics regarding the increase in IEEE standards development projects belie the insinuations in the report that the 2015 update of the patent policy puts IEEE in a poor position to maintain its standardization activities⁴. In addition, the report confuses a mere voluntary recommendation made on the SSPPU (smallest selling patent-practicing unit) with the four binding principles of the updated IEEE patent policy⁵ and it misinterprets these four binding principles⁶. At a higher level, the report does not take into consideration the emergence of new technology landscapes (IoT, for instance) and the purpose of IEEE to promote technology for humanity, not for specific regions, industry sectors, or for single companies against the rest of the world. All available data show that IEEE has not ceased to be a forum for innovative standards development and achieves one historic record after the other, as we will show in this article. A flourishing standardization system with a large number and variety of market relevant standards is a boon also for patent holders, leading thus ad absurdum to the allegation that the updated patent policy is a means to ‘significantly undermine rights of patent owners’⁷ or ‘deprive them of their ability to receive adequate compensation.’⁸

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¹ Wi-Fi is a registered trademark of the Wi-Fi Alliance. All IEEE trademarks are the property of The Institute of Electrical and Electronics Engineers, Inc.
² Bluetooth is a registered trademark of the Bluetooth SIG, Inc.
⁴ Ibid at p.1 ‘the purported “clarification” is significantly jeopardizing the IEEE Standards Association as venue for development of open technology standards that include significant patented intellectual property.’
⁵ Ibid at p.1 ‘Changes...., require licensing at the smallest saleable patent practicing unit level’ as well as repeated on p.5.
⁶ Ibid at p.1 ‘disallows patent holders from receiving any value...etc.’...
⁷ Ibid at p.2
⁸ Ibid again at p.5
By background, Wise Harbor was commissioned by the IP Europe Alliance to produce the report\(^9\) attempting to illustrate the supposedly many flaws of the updated IEEE patent policy. IP Europe Alliance claims that it is the voice of IP intensive \textit{European} companies.\(^{10}\) While the descriptive part of the report puts forward the arguments of this industry association,\(^{11}\) it does little to advance the current state of substantive understanding of the question (for example there is no literature review and hardly any reference to the academic literature), and the empirical part of the report, which is not complete in its analysis, seeks only to provide statistical arguments in support of the Alliance’s position. In several instances, arguments made are inflammatory\(^{12}\) and emotional\(^{13}\) rather than reasoned, which is just another illustration of the questionable academic merits of the ’study’. Allegations against IEEE are made, which are often not substantiated by facts.\(^{14}\) The report is single-minded, incomplete in argument, and leaps to conclusions that do not necessarily seem to be accurate by academic or professional standards. The mere purpose of the report appears to be to portray IEEE as an organization that jeopardizes the development of standards, a position which the funders of the report are apparently desperate to try to establish in policy circles on both sides of the Atlantic.

Furthermore, the report itself recognizes that one cannot make an impact assessment within such a small time period since the introduction of the updated patent policy.\(^{15}\) Yet, the author consciously chose to ignore his own statement and continued to address the supposedly many consequences the updated IEEE patent policy has triggered. The author’s approach is demonstrative of the short-comings of the overall paper by offering a suspect argument with limited data and then draws sweeping and broadly based conclusions on less than three years of the updated patent policy.

Contrary to what the report sponsored by the IP Europe Alliance asserts, the IEEE-SA has not observed any decline in growth or interest in its standardization work. It furthermore maintains that the clarity provided by the updated patent policy does not devalue intellectual property. Rather, the updated patent policy elucidates some core definitions of what the FRAND (fair, reasonable and non-discriminatory) commitment for standards essential patents (SEPs)\(^{16}\) entails and in doing so, decreases transaction costs for both licensors and licensees.

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\(^9\) Ibid p.20.
\(^{10}\) https://www.iptalks.eu/; Note that the alliance includes some companies that are not domiciled in Europe.
\(^{12}\) See for example ‘IEEE standardisation is phoney’, ibid, p.4.
\(^{13}\) See for example ‘shame on IEEE.’ ibid, p. 18.
\(^{14}\) See for example ‘what it (IEEE) really wants is to undermine standard essential patent values...’ p.5, or p.2 ‘...attempts to significantly undermine rights of patent owners...’, ibid.
\(^{16}\) It should be noted that the FRAND commitment applies only to an essential patent claim, the practice of which was necessary to implement a standard, where there was no commercially and technically feasible non-infringing alternative implementation method.
Reasons for Updating the Patent Policy to Promote Technology for Humanity in the IoT Era

The IEEE-SA is one of the most complex and broad standardization ecosystems in the world. It is part of IEEE, with its 45+ technical societies and councils, covering virtually all Internet of Things fields, horizontals, and verticals. With the rise of the Internet of Things, IEEE chose to offer to its participants a broadly understandable framework within which to negotiate among themselves what is a fair expectation for reward. Failure to have done so would have made IEEE’s standardization ecosystem subject to fundamental uncertainty and speculations that would undermine the conceptual frameworks that are necessary for both contributors and implementers to engage in bona fide negotiations. This is the reason that we disagree with the approach of leaving the patent policy of our standard setting organization fundamentally ambiguous, and speculating that courts will deal with all arising problems.

A very recent assertion of the fact that there is indeed a need for a genuine patent policy reform within SDOs is given by the ‘Communication from the Commission to the Institutions on Setting out the EU approach to Standard Essential Patents’. Among other things, it identifies “unclear valuation of patented technologies reading on standards and the definition of FRAND” as one of three areas “where the SEP licensing environment could be improved”.

In the same Communication the European Commission puts the need for reform in the light of the emergence of the IoT era, by stating “There is therefore a need for a clear, balanced and reasonable policy for Standard Essential Patents in the EU with the aim of contributing to the development of the Internet of Things”; “Problems may be particularly acute when players coming from new industrial sectors who are unfamiliar with the traditional ICT business need access to standardized technologies. Disputes and delays in negotiations between technological users and holders may ultimately delay the widespread use of key standardised technologies”; concluding with “The Commission therefore considers that there is an urgent need to set out key principles that foster a balanced, smooth and predictable framework for SEPs”.

These considerations show clearly that European regulators do not believe that the current situation is viable, and that indeed a reform is needed, evidently also within SDOs themselves. This is exactly what IEEE did with its 2015 patent policy update. Beyond what the European and other regulators believe, it is common sense that if market participants operating in a technology field that relies heavily on standards do not know the rules of the game in advance, then there is an inherent risk of opportunistic behavior. Furthermore, significant transaction costs will accompany litigation if there is a lack of clarity. This harms everybody. The World Intellectual

Property Organization finds that: "... the amount in dispute (in patent infringement cases) is between $1 million and $25 million, total litigation costs average in excess of $3 million, roughly 60 percent of which is incurred during discovery. In cases where the amount in dispute exceeds $25 million, average total litigation costs roughly doubled. And in smaller cases where the amount in dispute is less than $1 million, the AIPLA (the American Intellectual Property Law Association) survey indicates that total litigation costs in some cases may exceed the amount at stake, with costs through the end of discovery remaining roughly 60 percent of the total litigation costs."  

Certainly, failing to provide further clarity on the meaning of FRAND does not mean that SEP owners and SEP users can arbitrarily choose the licensing commitment they wish to obtain. However, in the absence of sufficient clarity of what FRAND entails, definitions will need to be set afterwards, as they have not been provided ex ante. This increases transaction costs and leaves both parties no choice but to negotiate licensing terms in the shadow of an ill-defined standard essential patent policy – a situation posing business risks to everyone.

A quick look at the data helps to understand the challenges we are facing. Patents related to standards are significantly more likely to be litigated than other patents. Not only has patent litigation been continuously on the rise since the 1980s, but SEPs are litigated more frequently than non-SEPs. Small and medium sized enterprises remain ill-prepared, as they lack resources and know-how regarding how to meaningfully engage in a dispute as well as how to approach the IP question overall.

If one looks at overall litigation trends in high growth tech sectors, such as Artificial Intelligence, one can see that litigation is skyrocketing. An iRunway analysis indicates the sharp rise in patent litigation in the area of Speech Recognition, which is closely related to intelligent virtual assistants. If, and to what extent, growth rates in this sector will be inhibited by such extensive litigation remains to be seen.

What was the Substance of IEEE’s Patent Policy Update?

It is not the purpose of this article to go into the details of what were the material elements of IEEE’s patent policy update, since they are described in detail in other publications\(^2^4\),\(^2^5\). There are strong indications that IEEE did not only do the right thing in acting and assuming responsibility to provide more clarity, but that it also said the right things.

As an example, regarding what could be considered a reasonable expectation for reward for a patented technology incorporated into a standard, IEEE states that a Reasonable Rate “shall mean appropriate compensation to the patent holder for the practice of an Essential Patent Claim excluding the value, if any, resulting from the inclusion of that Essential Patent Claim’s technology in the IEEE Standard.”

The above-mentioned Communication of the European Commission states that “The Commission considers that the following IP valuation principles should be taken into account: ...Licensing terms have to bear a clear relationship to the economic value of the patented technology. That value primarily needs to focus on the technology itself and in principle should not include any element resulting from the decision to include the technology in the standard.” There is apparently a very strong affinity, down to the wording, between IEEE’s definition and the suggestions by the European regulators two and half years later.

IEEE’s Process to Obtain the Updated Patent Policy was Transparent, Fair, and Democratic

The report continuously repeats the argument that the IEEE patent policy was adopted in a questionable manner.\(^2^6\) When updating the patent policy, IEEE observed the democratic principles it profoundly believes in. Yet, in spite of such governance processes, it is falsely accused of not having operated in this manner. In fact, the criticisms became so strong that IEEE was subjected to two appeals made to ANSI (American National Standards Institute) by some of the members of the IP Europe Alliance.

In both cases, ANSI ruled that the accusations against IEEE were not warranted\(^2^7\), thus confirming the integrity of IEEE and of the process it utilized to obtain its updated patent policy which is, in fact, a provision of the Bylaws of the IEEE-SA Standards Board, one of the principal governing documents of the organization. Against this background it is incomprehensible why ‘the IP Europe report’ makes

\(^2^7\) ANSI Executive Standards Council (ExSC) Appeals Panel decision in response to the joint appeal filed by Alcatel-Lucent, Ericsson, and Qualcomm of the ExSC’s prior decision to re-accredit IEEE, 25.2.20016; Appeal filed jointly by Ericsson and Alcatel-Lucent with the ANSI Appeals Board of the ANSI Executive Standards Council’s (ExSC) Appeals Decision to uphold its Prior Decision to Reaccredit IEEE. 10.6.2016; Appeal filed by Qualcomm Incorporated with the ANSI Appeals Board of the ANSI Executive Standards Council’s (ExSC) Appeals Decision to uphold its Prior Decision to Reaccredit IEEE. 10.6.2016.
extensive reference to a document\textsuperscript{28} prepared by Criterion Economics and subsequently posted within a ‘journal’ of the sponsoring company, which does not indicate that any standard level of peer review was performed. The research question posed by such a ‘study’ confuses the process used in standards development with the approval process for an update in the governing documents of the organization itself. The entire question is mooted in light of the decisions made by ANSI, certainly the most extensive collection of IEEE’s peers. In addition, it must be noted that a ‘study’ funded by a company that filed a complaint with ANSI against IEEE on this very matter has a fundamental conflict of interest and can hardly claim to have supported a neutral piece of responsible research.

### Assuring the Openness of Standardization is Core to IEEE

Contrary to what the report asserts\textsuperscript{29}, the openness of the process and the continuous growth of standardization activities are high priorities for IEEE. In addition, IEEE looks at patents from a standards development organization’s (SDO’s) perspective and is thus primarily concerned with assuring the openness and accessibility of standards incorporating the best technology available for a particular purpose, and the standard’s ultimate adoption by various parties around the world. The updated patent policy also reflects concerns raised by the European Commission, which argues that one needs to avoid “jeopardizing the adoption of the standard and undermining the standardization process by creating uncertainty.”\textsuperscript{30}

Further, the gloomy scenarios the report is trying to portray are refuted by the objective fact that the IEEE-SA, the part of IEEE that deals with standardization, observes continuous growth, as the numbers below demonstrate. Overall, the popularity of IEEE has continuously increased. In fact, the positive feedback it has obtained across all areas of social media is exceptionally encouraging. Since the update of the IEEE patent policy in 2015, positive feedback in the public domain has nearly doubled.\textsuperscript{31}

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<td>Likes across All Social Media</td>
<td>1,055,000</td>
<td>4,122,000</td>
<td>5,220,000</td>
<td>9,000,000</td>
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*Source: Annual Reports of IEEE*


\textsuperscript{31} See IEEE Annual Reports, [https://www.ieee.org/about/corporate/annual_report.html](https://www.ieee.org/about/corporate/annual_report.html).
If one looks at IEEE membership numbers, they have been steadily in a range between 421,000 and 430,000 members worldwide. In particular, since the introduction of the updated IEEE patent policy in 2015, IEEE-SA’s membership has also been increasing in both individual and entity (company, university, and other organization) members. Individual IEEE-SA membership increased from 6,821 in 2013 to 7,114 in 2017, and entity IEEE-SA membership increased from 200 in 2013 to 208 in 2017.32

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<td>430,000</td>
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*Source: Annual Reports of IEEE*

When one looks at the revenues and profit margins associated with IEEE's standardization activities, one can observe encouraging growth trends. Revenues from standardization activities have continuously increased since 2012.33

IEEE standardization work is a continuous success and none of the doomsday scenarios the report is projecting are supported by data. An important indicator in this respect is PARs (Project Authorization Requests), which are used to initiate standards projects. In 2017, IEEE had 198 such new work items, compared to 154 in 2015 and 136 in 2014.34 This represents an approximately 25% increase in new work items for standardization since the initiation of the updated IEEE patent policy.

In addition, in 2017 IEEE approved 139 standards for publication. There were 108 in 2015 and 101 in 2014. So, also here one sees a clear increase in growth. In fact, for 2017, the number of new work items approved to begin and the number of standards approved for publication were both the highest number ever recorded for any given year in IEEE’s history.35

The report argues that approval of new work items for standardization is not a good indicator to measure future success.36 Admittedly, predicting the future is not an easy task, but it is quite intuitive, as well as statistical, that – at least for an SDO – there is a relationship between exponentially increasing growth rates of standardization work and success in the market place. This is a sounder indicator than the alleged and speculative effects of blanket LOAs.

In an attempt to explain why hard facts should be ignored, the report argues that the data put forth in the past is primarily based on new work items for standardization where licensing of patented technology is unlikely to be an issue;

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32 Internal Program Management IEEE.
33 See IEEE Annual Reports, [https://www.ieee.org/about/corporate/annual_report.html](https://www.ieee.org/about/corporate/annual_report.html).
34 IEEE internal analysis. The titles of documents can also be viewed via a search at [http://standards.ieee.org/develop/project/status.html](http://standards.ieee.org/develop/project/status.html).
35 Ibid.
thus, participants will be indifferent to the patent policy. This hypothesis is analyzed below.

Considering only the work of the IEEE Computer Society/LAN-MAN Standards Committee (C/LM or IEEE 802\textsuperscript{®}), one finds that the number of new work items remained consistent with a total of 113 PARs and an average of 23 PARs approved annually during the years 2012-2016, with a total of 77 standards approved for publication and an average of 15 standards annually approved for publication during the same period. In fact, the number of standards approved for publication increased after the 2015 update to the IEEE patent policy from 13 in 2015 to 20 in 2016.\textsuperscript{38} Contrary to assertions in the report, the numbers indicate continued and increased interest and support for IEEE.

The statistics for IEEE’s standards development program consistently show that the program is robust. As to standardization in technology areas that may be more affected by the patent policy than others, the data also does not support the argument the report posits.

The Many Flaws of the Wise Harbor Report

The purpose of the report has nothing to do with any scientific or objective research question. It is little more than an apparent lobbyist argument largely based on a cherry-picked sample of just two standards and looks only at one indicator (LOAs – Letters of Assurance). Moreover, one cannot consider LOAs to be a valid performance indicator for a standards development program. LOAs are statements of licensing intentions should the published standard contain an essential patent; however, it must be noted that IEEE is not responsible for identifying Essential Patent Claims for which a license may be required; determining the validity, essentiality, or interpretation of Patent Claims; or determining whether any licensing terms or conditions provided in connection with submission of a Letter of Assurance, if any, or in any licensing agreements are reasonable or non-discriminatory.

It is methodologically a seriously flawed approach to argue, on one hand, that LOAs under the 2007 patent policy are equivalent to LOAs under the 2015 patent policy, while at the same time arguing, on the other hand for a different specific point, that LOAs under the 2007 patent policy are substantively different from LOAs under the 2015 patent policy. This 'logic' fails, as only one premise (2007 LOA commitment = 2015 LOA commitment) or (2007 LOA commitment ≠ 2015 LOA commitment) can be true, at least in conventional logic systems.

In the absence of assurances supported by LOAs, participants in the IEEE standardization process may decide to consider alternative technologies. Moreover, should it be determined that market implementation is being hindered by the assertion of potential SEPs in the absence of an Accepted LOA, IEEE could withdraw a standard and ask the owning Technical Committee to revise the document.

\textsuperscript{38} IEEE internal analysis, \url{http://grouper.ieee.org/groups/802/}; Titles of documents can also be found via a search at \url{http://standards.ieee.org/develop/project/status.html}; \url{https://www.lifewire.com/wireless-standards-802-11a-802-11b-q-n-and-802-11ac-816553}. 
Nowhere in the analysis of the report is this argument considered. The fact is also ignored that if a company has issued an LOA in the past, it is not obliged to reissue an LOA for a future version of the standard addressing the same SEPs, thus making these types of statistics unreliable in predicting the behavior of the players.

**Duplicative Charts with Little Information Value and Unexplained Data**

Charts 5 and 6 in the report could be summarized in one single chart as the message is the same. These charts claim as their source a study undertaken by Mr. Katznelson; however, the data offered is not even commensurate with that of the underlying cited source. One important data point is entirely omitted, leading hence to a very different statistical result. The reasoning for making such a fundamental change is not explained. No effort is made to discuss the underlying statistical method used and its adequacy for the type of argument the report is attempting to make. Equally, there is no underlying data disclosed in this so-called analysis, which makes it impossible to fully verify the validity of the findings.

The document prepared by Mr. Katznelson is just a series of slides. The key slide in this document is the one providing information on the Mann-Whitney test for Two Independent Samples (which in the Wise Harbor document is referenced in the Annex). The Mann-Whitney test is used as an alternative to a t-test when the data are not normally distributed. The test can detect differences in shape and spread as well as t differences in medians. Differences in population medians are often accompanied by equally important differences in shape. Important limitations persist however as any results obtained are at risk whenever one's samples are drawn from two populations with the same average but with different variances. In this type of situation, it is largely more reliable to use the t-test which gives a possibility for the samples to come from distributions with different variances. The alpha (α) error or type I is to reject the null (H0). This error is thus amplified when Mann-Whitney U is applied in a situation of heteroscedasticity or distinct variances. In addition, some solutions exist in this situation. The Mann-Whitney U test can be considered only if the data "passes" four assumptions that are required for a Mann-Whitney U test to give a valid result. The variable should be measured at the ordinal or continuous level; the variable should consist of two categorical, independent groups; there should be independence of observations, which means that there is no relationship between the observations in each group or between the groups themselves and, finally, a Mann-Whitney U test can be used when the two variables are not normally distributed. Whether these important assumptions are met in the Katznelson study cannot be verified as the author has failed to disclose the underlying data. Hence, the analysis is not transparent and the results are unreliable, as it is not known if important assumptions of the Mann-Whitney tests have been met.

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Footnote 20, p.11 was verified and the underlying source quoted cannot be retrieved. The document that can be retrieved is entitled ‘The IEEE controversial policy on standard essential patents – the empirical record since adoption.’ October 2016, available at https://works.bepress.com/rkatznelson/80/ p.11 is based on 5 observation points in the columns ‘After March-15-2015’ in the section ‘All LOAs’ and Product/System Co. LOAs. However in the Wise Harbor report the same chart refers only to four data points, offering hence significantly different results than those of the source it aimed to apparently quote.
Also, the sample size chosen is small. Not more than four data points in the Wise Harbor report and five data points in the original document form the baseline of an analysis that leads both authors to the conclusion that IEEE prevents innovative standard setting. Small sample size such as 5 data points can be used for this test. However the result is statistically insignificant and cannot be generalized across a population. This result would pertain only to the sample considered for study and cannot be applied to a larger data set.

Furthermore, the sample period is only vaguely defined, with the first sample period pertaining vaguely speaking to somewhere before March 15, 2015 (as of when exactly is not further explained) and the second sample period pertaining to a period described as ‘after March 15, 2015’ (again the exact limitation of the time period is not given.)

However, the samples are not independent of each other and are dependent before and after the time period. Hence, it becomes questionable whether it is appropriate to use the Mann-Whitney U test for the analysis at all. Also, the sample size of 4 considered after March 15 2015 is based on the Count of LOA types after adjustment. There has been an adjustment done to LOA counts in the paper: "making legitimate adjustments to the counts of LOAs, there has been a statistically significant reduction in total LOAs ever since introduction of the new patent policy in March 2015". This adjustment is explained for overall LOAs applied, but is not explained for different company types such as Product Co. or Semiconductor Co. or Others.

It is imperative for any scholarly work that the data used should be adequately discussed and more importantly, disclosed. More comprehensive statistical tests should be used if the report is meant to be anything more than a passionate advocacy and lobbying tool. In particular, the underlying sample characteristics and how they are interpreted through the Mann-Whitney test are unconvincing. Legitimate policy conclusions cannot be drawn on the basis of an exceptionally small cherry-picked sample size. Also, it may not be sufficient to simply just report a P value. Differences in spread can be just as important as other differences. The important limitations of the application of the Mann-Whitney test in the context of this specific work need to be made explicit to the reader. Hence, it remains unclear why this specific data is supposed to provide insights on the future of IEEE’s standardization system.

Charts 7-9 all convey more or less the same message, namely that several of the companies which are members of the IP Europe Alliance (and very few others) have negative, missing, or not applicable LOAs. In doing so, no effort is made to provide further details, however, as to whether LOAs are indeed actually negative, missing, or not applicable. The value proposition of those charts is hard to grasp. Further, Charts 8 and 12, pertaining to blanket LOAs, and the strongly simplified conclusions therein are not commensurate with the findings of Bekkers et al. 40

With respect to the blanket licensing of LOAs, an academic study undertaken on behalf of the European Commission and prepared among others by now Chief Economist of the European Patent Office, Prof. Yann Meniere, suggests that out of 15 standards setting organizations only 9 have an IP policy that allows for blanket disclosure. Another 5 such organizations have, according to the research, policies that do not even allow for blanket disclosures. In fact, that same study suggests that the larger a firm’s patent portfolio, the less likely it is to make blanket disclosures under *ceteris paribus* conditions. However, the authors remain reluctant to make further conclusions on the reasons why firms choose to issue a blanket license or not. Their research suggests that this may have something to do with a firm’s business model, but they are reluctant to speculate on such conclusions.

This interesting finding suggests that even researchers that have significant panel data at hand are reluctant to jump to conclusions with respect to the meaning and significance of blanket disclosures, which are one form of a LOA. If anything, they argue that it is very difficult to draw conclusions on the basis of the data they have at hand. This stands in strong contrast to the report, which suggests that IEEE’s patent policy is a fatal mistake solely based on one rather vague indicator, the issuance of LOAs.

**Take Away**

IEEE has not observed any decline in growth or interest in its standardization work. To the contrary, since 2015, the year the updated patent policy was implemented, IEEE has experienced significant growth. IEEE’s overall popularity remains strong, and global membership is increasing. Across all social media, an ever increasing community expresses its strong support and appreciation for IEEE. Moreover, internal analysis shows that even the players who are strongly criticizing the reform are continuing to engage with the same intensity, both in terms of participation and technical contributions.

Against this background, the suggested takeaway of the IP Europe Alliance sponsored report lacks adequate evidence to inform policy makers. It is hinged on one single indicator (Letters of Assurance) carefully selected for a cherry-picked sample. Key statistical methods are erroneously lifted from another study without giving any further explanation on the value proposition for the use of such methods. The reasons for making licensing commitments can be multifold and are difficult to explain on the grounds of quantitative analysis alone, as the research of Prof. Meniere and others suggests. Letters of Assurance are not an indicator to measure the success of a standards development organization, but simply statements of licensing intention by potential SEP holders.

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41 Ibid.
42 Ibid, Table 19, p. 45.
Against this background, it is not understandable why throughout the report it is asserted that IEEE is creating uncertainty and that the patent policy lacks clarity or transparency. In doing so, no supporting evidence is offered why the IEEE patent policy lacks clarity or transparency. A simple look at the patent policy shows that this is simply not the case. While IEEE’s patent policy does not purport to resolve each and every potential ambiguity, it still gives a certain amount of guidance – in contrast to many other SDO patent policies – regarding the fundamental notions upon which it is based.

The report is based on an extremely short timeframe and, for that reason alone, it does not provide any meaningful insights. The author recognizes this shortcoming himself at the beginning of the report, but simply chooses to ignore it throughout the report. Such an approach would immediately discredit any work with a minimum ambition for scientific objectivity, but this ‘detail’ does not seem to bother the author or the sponsors of the report. The report lacks scholarly integrity.

Against this background, the report comes across as a highly biased portrayal of IEEE, with the political motivation to discredit its standardization body by alleging highly speculative economic effects of its patent policy. The conclusions of the report, though, are contradicted by factual data.

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44 Ibid, p. 4.