



March 1, 2010

China National Institute of Standardization  
Standardization Theory and Strategy Department  
4 Zhichun Road  
Haidian District, Beijing, 100088  
Peoples Republic of China  
Contact: Zhu Xianghua

**Re: IPO Response to Request for Comments on Draft National Standard  
Disposition Rules for the Inclusion of Patents in National Standards (Standard  
No. 20090445-Z-424)**

The Intellectual Property Owners Association (“IPO”) respectfully submits its comments to the China National Institute of Standardization (“CNIS”) on the Draft National Standard Disposition Rules for the Inclusion of Patents in National Standards (“Draft Rules”).

IPO is an international association, based in the United States, of more than 230 companies and more than 11,000 individuals involved in the association either through their companies or as IPO inventor, author, executive, law firm, or attorney members. Founded in 1972, IPO represents the interests of all owners of intellectual property covering all areas of technology, many of whom are involved in various formal and informal standards development organizations (SDOs) around the world. IPO members also file approximately 30 percent of the patents filed in the United States Patent and Trademark Office by U.S. nationals and a significant number of applications at the State Intellectual Property Office (SIPO). Several leading Chinese law firms are also members.

IPO would like to thank CNIS for the opportunity to comment upon the Draft Rules and applauds the effort by CNIS to align the Draft Rules with other international standard developers by, for example, using a reasonable and non-discriminatory licensing option and avoiding any reference to compulsory licensing. In moving forward with the finalization of the implementation guidelines, IPO encourages CNIS and the Standards Administration of China (SAC) to give further consideration to (i) which patent claims are covered by the patent licensing statement, (ii) the restrictions placed on the licensing of essential patent claims, and (iii) what obligations, if any, can be imposed on those who may not actively participate in standards setting activities in China. We believe that such additional consideration may lead to modifications that will clarify the text and further align the Draft Rules with international criteria. These three issues are outlined below and discussed in detail in the accompanying feedback form.

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### Essential Patents and Essential Patent Claims

Patents generally contain multiple claims. Some claims may be essential as defined by an SDO while other claims in the same patent may not be essential. When a proposed standard is being considered, the well-established SDOs encourage disclosure of patents having at least one claim that is believed to read on a proposed standard. Any commitments to offer licenses, however, typically apply only to those claims of the disclosed patents that actually are and remain essential to the standard when it is finally formally adopted. SDOs have such disclosure and licensing policies in order to achieve a practical balance between the need to produce a standard that can be implemented by all, and the need to provide a process in which innovators will wish to participate.

It would therefore be helpful if the Draft Rules were clarified to more accurately reflect this distinction between a broader disclosure rule and the more narrowly tailored licensing rules found in other SDOs' policies. The broader disclosure rule for a proposed standard is designed to put members on notice regarding patent holders who believe they may have patents containing claims essential to the proposed standard. The patent licensing statement is designed to provide information to members about patent holders who believe they have patents containing claims essential to the adopted standard and about the patent holders' intentions regarding the licensing of the essential claims in those patents to implementers of the adopted standard. This distinction addresses the underlying purpose for the disclosure and licensing statements, which is to encourage early disclosure and identification of patents that may relate to a standard under development. In doing so, greater efficiency in standards development is possible and potential patent rights problems can be avoided.

### Patent Licensing Statements

Many well-established and successful SDOs allow patent holders to provide a statement indicating the patent holder's willingness to offer licenses to its essential claims, i.e., those claims that are unavoidably infringed by an implementation of the standard. Many of these SDOs request that the holder of patents with essential claims provide a patent declaration or patent licensing statement indicating that the patent holder either (i) will offer to license such essential patents on reasonable and non-discriminatory (RAND) terms and conditions, (ii) will offer to license such essential patents on RAND-RF (royalty-free) terms and conditions, or (iii) will not offer licenses for such essential patents on RAND or RAND-RF terms and conditions. IPO appreciates that the licensing framework CNIS sets forth in the Draft Rules is partially aligned with the policies of these SDOs, and in the feedback form IPO proposes some modifications that would further align the Draft Rules with international criteria.

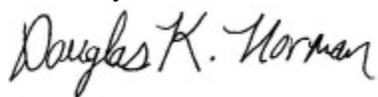
Obligations of Participants and Non-Participants

IPO understands that it is desirable to receive as much information as possible regarding patents that likely will be essential during the development of the standard. While it may be desirable to know whether non-participants hold patents, it is also important to reassure non-participating innovators that they will not be required to monitor each and every standard in development. We are unaware of any SDO patent practice that applies to non-participants or that requires participants to conduct patent searches. The Draft Rules would be more consistent with international SDO practices if the Draft Rules expressly encouraged but did not require disclosures by non-participants and expressly stated that, in any event, there is no obligation on the part of either participants or non-participants to conduct searches of their patent portfolios.

IPO commends CNIS on its efforts to address these three key issues related to patents included in standards and for its effort to align the Draft Rules with well-established international standard developers. IPO appreciates this opportunity to comment on the Draft Rules and to respectfully propose its recommendations and rationale in the attachments. IPO's recommendations are based on a preliminary review of the CNIS Draft Rules. As the CNIS Draft Rules continue to evolve, IPO may have additional recommendations and comments to offer for your consideration.

Attached to this letter are IPO's comments provided in the form as designated by CNIS in its circular for Standard No. 20090445-Z-424. We invite you to contact us if you would like to discuss IPO's views or would like additional clarification regarding the recommendations and rationale.

Sincerely,



Douglas K. Norman  
President

Attachment One: CNIS Feedback Form-English  
Attachment Two: IPO Cover Letter-Chinese  
Attachment Three: CNIS Feedback Form-Chinese  
Attachment Four: IPO Cross Reference Chart of English and Chinese text

## Disposal Rules for the Inclusion of Patents in National Standards

### 国家标准涉及专利的处置规则

( Draft for Comments )

#### F e e d b a c k F o r m - E N G L I S H

Name	Kirsten Zewers	Tel	+1.202.507.4500	Fax	+1.202.507.4501	Email	kzewers@ipo.org
Entity	Intellectual Property Owners Association			Address	1501 M Street, NW, Suite 1150 Washington, DC USA	ZIP Code	20005
<b>No. of chapter and article</b>	<b>Suggestions on Revision</b> *Proposed deletions are shown in red font with strikethrough marks, i.e. <del>text</del> ; proposed additions are shown in blue font and bracketed, i.e. [text].			<b>Reason for Revision<sup>1</sup></b>			
1.	<b>Clarification of Article 1 Scope</b>			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.			
3.1	<b>Modification to Article 3.1</b> <b>Essential Patent</b> <del>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.</del> <i>[Essential Patent refers to a patent that is likely to include an Essential Claim.]</i>  <b>Add to Article 3.1</b> <i>[Essential Claim</i> <i>Essential Claim is a patent claim that is unavoidably infringed by an implementation of a Chinese National</i>			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.  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			

<sup>1</sup> 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.

	<p><i>Standard given the state of the art and technology at the time of the adoption of the standard.]</i></p>	<p>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>
<p>3.2</p>	<p><b>Modification to Article 3.2</b>  <b>Reasonable non-discriminatory licensing</b>  <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 <del>Essential Patents</del> [Essential Claims] included in such standard on reasonable and non-discriminatory basis, with royalty payment.</i></p>	<p>This modified definition reflects the proposed modifications to the Definition for Essential Patent and Essential Claim in Article 3.1.</p>
<p>3.3</p>	<p><b>Modification to Article 3.3</b>  <b>Reasonable non-discriminatory licensing without royalty</b>  <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 <del>Essential Patents</del> [Essential Claims] included in such standard on reasonable and non-discriminatory basis, without royalty payment.</i></p>	<p>This modified definition reflects the proposed modifications to the Definition for Essential Patent and Essential Claim in Article 3.1.</p>
<p>4.1.1</p>	<p><b>Modification to Articles 4.1.1</b>  <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, <del>as well as those not participating</del>, to disclose <del>known patents or possible patents included in a standard</del> [any Essential Patents</i></p>	<p>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</p>

	<p><i>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 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><b>Add to Article 4.1.1</b>  <i>[Nothing in these rules shall be interpreted as giving rise to a duty to conduct a patent search.]</i></p>	<p>with international criteria.</p> <p>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 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>
<p>4.1.2</p>	<p><b>Modification to Article 4.1.2</b>  <i>When disclosing patent information, a patent information disclosure form (refer to Table A.1 in Annex A) <del>shall</del> [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</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 policies 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,</p>

	<p><i>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 <del>an publication of</del> [the number of the] patent application [and the date of application.] <del>Evidence of an unpublished patent application shall be the number of the patent application.</del></i></p>	<p>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>
4.2.2	<p><b>Modification to 4.2.2</b></p> <p><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></p>	<p>It is common practice for well-established SDOs to provide licensing statements in addition to a list of patents.</p>
4.3.1	<p><b>Modification to 4.3.1</b></p> <p><del>When granting a patent license, the licensor</del><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 license.]</i></p>	<p>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.</p>
4.3.2	<p><b>Modification to 4.3.2</b></p> <p><i>The licensor, when completing a patent licensing statement, shall select any one of the following options:</i></p> <p><i>a) Reasonable and non-discriminatory licensing without royalty payment;</i></p> <p><i>b) Reasonable and non-discriminatory licensing with royalty payment; or</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>

	c).Unwilling to <del>license patent</del> [offer a license] under one of the two above options.	
4.3.4	<p><b>Modification to 4.3.4</b></p> <p><del>In case of transfer of patent rights, the licensing option selected by such licensor for a standard still remains valid for the assignee.</del>[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.]</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.
4.6	<p><b>Formulate National Standards Based on International or Foreign Standards</b></p> <p><b>Add to Article 4.6</b></p> <p><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></p>	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.
5.2.1	<p><b>Modification to Article 5.2.1</b></p> <p><i>The proposers of a standard shall disclose <del>the patents</del>[Essential Patents] held by themselves and relevant affiliates according to the 4.1.2 requirements</i></p>	This modified definition reflects the proposed modification to the Definition for Essential Patent in Article 3.1.
5.3.1	<p><b>Modification to Article 5.3.1</b></p> <p><i>All the <del>members of</del> [individual participants in] the standards setting working group <del>shall disclose the patents</del> [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>	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

	<p><b>Add to Article 5.3.1</b>  <i>[Nothing in these rules shall be interpreted as giving rise to a duty to conduct a patent search.]</i></p>	<p>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.</p>
5.3.2	<p><b>Modification to Article 5.3.2</b>  <i>All the organizations or individuals, <del>which are not members of the standards setting working group but</del> <i>[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 <del>the patents</del> [Essential Patents] that are held by such organization or individual [that are essential in connection with their technical contribution.]</i></i></p>	<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.</p>
5.3.5	<p><b>Modify Article 5.3.5</b>  <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 <del>not contain the provisions based on such patented technology</del> <i>[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.]</i>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>
5.4.1	<p><b>Modification to Article 5.4.1</b>  <i>When soliciting comments on a draft national standard including <del>patents</del> [Essential Patents], relevant patent information of such standard shall be published</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</p>

	<p>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 <del>patents</del> [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.]</p> <p><b>Add to Article 5.4.1</b> [Nothing in these rules shall be interpreted as giving rise to a duty to conduct a patent search.]</p>	<p>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>
5.4.2	<p><b>Modification to Article 5.4.2</b> Members of the standardization technical committee or organization in charge <del>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,</del> [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.</p>	<p>This is now consistent with section 4.1.1 above.</p>
5.4.4	<p><b>Modification of 5.4.4</b> The documents supporting the draft standard submitted by the standards setting working group for <del>examination</del> [review] shall include patent information disclosure forms, evidence [and] list of patents [for Essential Patents] and patent licensing statements for <del>essential patents</del> [Essential Claims].</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>
5.5	<p><b>Review Stage</b></p>	<p>It is unclear what the word "review" means in</p>

	<p><b>Clarification of Article 5.5</b></p>	<p>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</p>	<p><b>Clarification of Article 5.6 Approval Stage</b></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 patents contained in the information.</p>
<p>5.8</p>	<p><b>Clarification of Article 5.8 is needed. Reaffirmation Stage</b></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</p>

		<p>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 policies and therefore is unable to provide helpful commentary at this time.</p>
<p>5.9</p>	<p><b>Addition to Article 5.9 Withdrawal Stage</b></p> <p>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>A.1</p>	<p><b>Modification to Table A.1</b></p> <p>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><b>Substitute the following for the titles of the last two columns in Table A.1</b></p> <p><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>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 modified to reflect any changes in 4.1.2 and to indicate which information is optional.</p>
<p>A.3</p>	<p><b>Add within Table A.3</b></p> <p><i>[The licensing option selected applies only to claims that are and remain Essential Claims.]</i></p>	<p>This modification is to be consistent with modifications to Article 4.3.2. It is strongly recommended that the language regarding</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>“Essential patent licensing statement” be modified to be consistent with that Article.</p> <p>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>
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Please affix your entity's stamp here.



Disposition Rules for the Inclusion of Patents in National Standards<sup>1</sup>

## 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. <del>text</del> ; proposed additions are shown in blue font and bracketed, i.e. [text].	RATIONALE
<b>Foreword</b>	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撑</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>		

<sup>1</sup> 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)

<b>Introduction</b>	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><b>1 Scope</b></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><b>2 Normative Reference</b></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)

<b>3 Terms and Definitions</b>	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		
<b>3.1 Essential Patent</b>	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><b>Modification to Article 3.1 Essential Patent</b>  <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><b>Add to Article 3.1 [Essential Claim]</b>  <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)

<b>3.2 Reasonable non-discriminatory licensing</b>	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。	<b>Modification to Article 3.2</b> <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 <b>Essential Patents</b> [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.
<b>3.3 Reasonable non-discriminatory licensing without royalty</b>	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。	<b>Modification to Article 3.3</b> <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 <b>Essential Patents</b> [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.
<b>3.4 Affiliate</b>	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。		

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

<b>3.5 Control</b>	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。		
<b>3.6 Technical Contribution</b>	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。		
<b>4 Requirements for Disposition of Patents</b>	4 专利处置要求		
<b>4.1 Disclosure of Patent Information</b>	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	<b>Modification to Articles 4.1.1</b> <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, <del>as well as those not participating,</del> 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

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

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

		<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><b>Add to Article 4.1.1</b>  <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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Attachment Four: IPO Cross Reference Chart of English and Chinese text-- Letter to China National Institute of Standardization (March 1, 2010)

<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><b>Modification to Article 4.1.2</b> <i>When disclosing patent information, a patent information disclosure form (refer to Table A.1 in Annex A) <del>shall</del>[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 <del>an</del> <del>publication of</del> [the number of the] patent application [and the date of application.] <del>Evidence of an unpublished patent application shall be the number of the patent application.</del></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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<b>4.2 Announcement of relevant information</b>	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、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、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。	<b>Modification to 4.2.2</b> <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.
<b>4.3 Patent licensing</b>	<b>4.3 专利许可</b>		
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）。	<b>Modification to 4.3.1</b> <del>When granting a patent license, the licensor</del> <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.

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

<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>  <b>Modification to 4.3.2</b>  <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 <del>license patent</del> [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>		

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

<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><b>Modification to 4.3.4</b> <del>In case of transfer of patent rights, the licensing option selected by such licensor for a standard still remains valid for the assignee.</del> <i>[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><b>4.4 Requirements for meetings</b></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><b>4.5 Requirements of Documents</b></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>		

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

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

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

<b>4.6 Formulate National Standards Based on International or Foreign Standards</b>	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。	<b>Add to Article 4.6</b> <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.
<b>5. Procedures for Disposition of Patents</b>	5 专利处置程序		
<b>5.1 Preliminary Stage</b>	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。		

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

<b>5.2 Proposal Stage</b>	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。	<b>Modification to Article 5.2.1</b> <i>The proposers of a standard shall disclose <del>the patents</del>[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。		

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

<b>5.3 Drafting Stage</b>	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><b>Modification to Article 5.3.1</b>  <i>All the <del>members of</del> [individual participants in] the standards setting working group <del>shall disclose the patents</del> [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><b>Add to Article 5.3.1</b>  <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><b>Modification to Article 5.3.2</b>  <i>All the organizations or individuals, <del>which are not members of the standards setting working group but</del> [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 <del>the</del> <del>patents</del> [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.

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

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.	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。		
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.	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		
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.	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。	<b>Modify Article 5.3.5</b> <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 <del>not contain the provisions based on such patented technology</del> [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>	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).

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

<p><b>5.4 Soliciting comments Stage</b></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><b>Modification to Article 5.4.1</b>  <i>When soliciting comments on a draft national standard including <del>patents</del> [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 <del>patents</del> [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><b>Add to Article 5.4.1</b>  <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>

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

<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><b>Modification to Article 5.4.2</b> <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><b>Modification of 5.4.4</b> <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).  IPO understands this action of “review” does not include determination of the scope, validity, or essentiality of the patents contained in the information.</p>

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

<p><b>5.5 Review Stage</b></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><b>Clarification of Article 5.5</b></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><b>5.6 Approval Stage</b></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><b>Clarification of Article 5.6</b></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

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

standardization technical committee or organization in charge, and can be resubmitted for approval only when the problems are addressed within a specified time limit.			patents contained in the information.
5.6.2 The administrative department of standardization shall publish the information of patents included in a standard according to the 4.2 requirements.	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。		
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.	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。		
<b>5.7 Publication Stage</b>	5.7 出版阶段		
The approved standard shall be published according to the 4.5 requirements.	标准文件按4.5的要求出版。		

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

<p><b>5.8 Reaffirmation stage</b></p>	<p>5.8 复审阶段</p>	<p><b>Clarification of Article 5.8 is needed.</b></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>		

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

<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><b>5.9 Withdrawal Stage</b></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><b>Addition to Article 5.9</b> 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><b>ANNEX A (Normative)</b></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><b>Modification to Table A.1</b> 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>

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

		<p><b>Substitute the following for the titles of the last two columns in Table A.1</b>  <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><b>Add within Table A.3</b>  <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>