



New IEEE IPR Policy: what are the impacts?

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New IEEE IPR policy

effective since March 15th 2015:

limits inappropriately the terms of licensing negotiations:

- it sets license royalty caps:

(“smallest saleable patent practicing unit”...), while commercial issues are generally left outside SDOs for obvious antitrust reasons

- it requests to grant licenses at all levels of the value chain: unnecessary and unpractical:

impossibility to track components down to the end-user device, exhaustion of rights (double dipping issues),...

New IEEE IPR policy

provides incentives to infringe and litigate...

- litigation driven:

patent by patent, jurisdiction by jurisdiction, while in licensing negotiations: licensees want to take portfolio license with a wide geographical scope

- in practice it forbids to seek injunctive relief against an unwilling potential licensee as defined in Huawei ZTE*

*Case C-170/13 Huawei Technologies Co. Ltd v ZTE Corp., ZTE Deutschland GmbH



New IEEE IPR policy

... to the detriment of owners of standard essential patents

- it restricts the judicial authority, and
- it restricts access to justice where patent owners' rights are being infringed.

How does the IEEE new IPR policy impacts the industry?

1 - standardization fragmentation:

- “FRAND harmony”^{**}: before the new IEEE IPR policy there was uniformity among SDOs in high level and flexible concept of FRAND. In ETSI and ITU IPR policies there are no rules like the new IEEE rules.
- IEEE new rules of FRAND break the “FRAND harmony”^{**} as they are not compatible with other SDOs rules of FRAND like ETSI and ITU for instance.

Technical standards contain **normative references**, meaning that they refer to some of their other earlier technical standards and even to earlier technical standards published by other SDOs.

^{**}Ron D. Katznelson, “Perilous Deviations from FRAND Harmony— Operational Pitfalls of the 2015 IEEE Patent Policy” <http://bit.ly/SIIT-2015>

How does the IEEE new IPR Policy impacts the industry?

2 - lower technical quality standardization:

- IEEE new IPR Policy **undermines fair return on investment** to contributors in standardization
- innovators will **stop contributing** their break through innovations

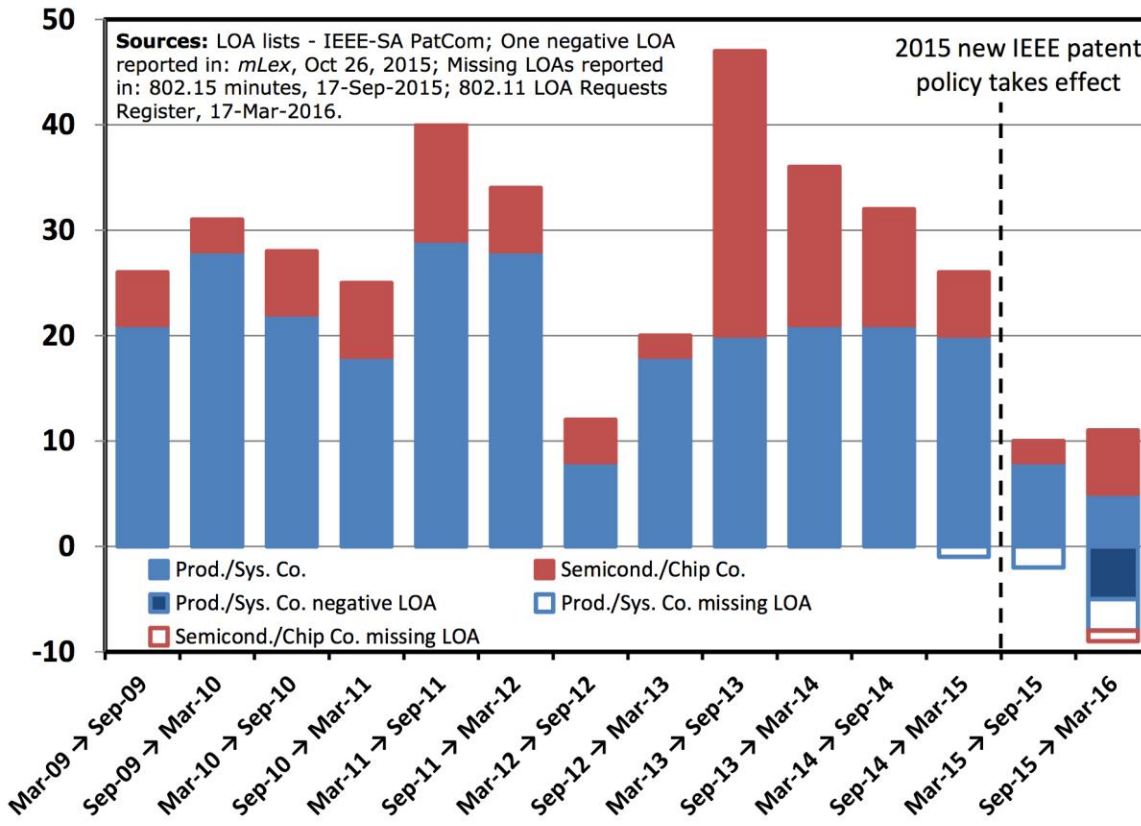
This is already happening!

- decline in new positive Letters of Assurance
- significant rise of negative Letters of Assurance

IEEE new IPR policy impact on standards development

Decline in non-duplicate licensing Letters of Assurance (LOAs) from Product/System companies for IEEE standards

LOAs Presentation of Dr. Ron Katznelson, IEEE GLOBECOM, San Diego, December 2015, corrected and updated for submitted and missing LOAs up to March 30, 2016



Notes:

1. Duplicate LOAs not counted are LOA restatements filed for standards, amendments, or revisions for which a specific or blanket LOA was previously accepted from the same patent holder.
2. "Negative LOA," shown as negative numbers, means LOA in which the patent holder declines to license under the new IEEE patent policy.
3. "Missing LOA," shown as negative numbers, means a disclosed essential patent claim holder from whom IEEE sought but did not receive an Accepted LOA as of March 30, 2016.

How does the IEEE new IPR policy impacts the industry?

- IEEE new IPR Policy will lead to **standardization fragmentation** and **lower technical quality standardization** which is:
 - Detrimental to **open innovation**
 - Detrimental to **interoperability**
 - Detrimental to **consumers**

Thank you

