



SLOVENSKI STANDARD SIST-V CEN/CLC Guide 8:2010

01-marec-2010

Vodila CEN/CENELEC za izvajanje skupne politike IPR (patenti in druge zakonske pravice iz naslova intelektualne lastnine, ki temelji na izumih)

CEN-CENELEC Guidelines for Implementation of the Common IPR Policy (Patents and other statutory intellectual property rights based on inventions)

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Ta slovenski standard je istoveten z: **CEN/CLC Guide 8:2010**
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ICS:

03.140 Patenti. Intelektualna lastnina Patents. Intellectual property

SIST-V CEN/CLC Guide 8:2010

en,fr,de

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CEN/CENELEC Guide 8

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CEN and CENELEC decided to adopt this new CEN-CENELEC Guide 8 with CENELEC General Assembly decision of 26 October 2009 and CEN General Assembly Resolution of 15 November 2009.



**European Committee for
Standardization**

**European Committee for
Electrotechnical
Standardization**

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**Avenue Marnixlaan 17
B – 1000 Brussels**

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**Tel: +32 2 550 08 11
Fax: +32 2 550 08 19**

**Tel: +32 2 519 68 71
Fax: +32 2 519 69 19**

www.cen.eu

www.cenelec.eu

CEN-CENELEC Guidelines for Implementation of the Common IPR Policy (Patents and other statutory intellectual property rights based on inventions)

"Rules for Mariners caught on a lee shore:

Rule 1. Don't get caught on a lee shore!"

English Seamen's Manual, 18th century

1 Purpose

CEN and CENELEC have had an intellectual property rights (IPR) policy for many years under the provision of the CEN/CENELEC Guide 8 "Standardization and intellectual property rights (IPR)", the purpose of these common guidelines is to provide in simple words practical guidance to the participants in their technical bodies in case patent or other intellectual property rights matters arise.

For the sake of clarity this document refers to "patents", as most -but not all- IPR issues that the CEN and CENELEC technical bodies have to deal with concern patent rights. However, the same implementation principles shall apply to other statutory intellectual property rights based on inventions that may arise, such as utility models or registered semiconductor topographies (see Clause 2, *Terms and definitions*).

Considering that technical experts are normally not familiar with the complex issue of patent law, the Common patent policy for ISO/IEC/ITU endorsed by CEN and CENELEC (hereafter referred to as the "Patent Policy") was drafted in its operative part as a checklist, covering the three different cases which may arise if a Deliverable requires licences for patents to be practiced or implemented, fully or partly.

The Guidelines for Implementation of the Common IPR Policy for CEN/CENELEC (hereafter referred to as the "Guidelines") are intended to clarify and facilitate implementation of the Patent Policy, a copy of which can be found in Annex 1 and also on the websites of both Organizations.

The Patent Policy encourages the early disclosure and identification of patents that may relate to Deliverables under development. In doing so, greater efficiency in standards development is possible and potential patent rights problems can be avoided.

CEN and CENELEC should not be involved in evaluating patent relevance or essentiality with regard to Deliverables, interfere with licensing negotiations, or engage in settling disputes on patents; this should be left – as in the past – to the parties concerned.

2 Terms and definitions

For the purposes of this Guide, the following terms and definitions apply:

2.1

contribution

any document submitted for consideration by a technical body

2.2**Declaration Form**

the “Statement and Licensing Declaration for CEN and CENELEC Deliverable” attached as Annex 2

2.3**Deliverable**

CEN deliverables and/or CENELEC deliverables

2.4**free of charge**

The words “free of charge” do not mean that the Patent Holder is waiving all of its rights with respect to the essential patent. Rather, “free of charge” refers to the issue of monetary compensation; i.e., that the Patent Holder will not seek any monetary compensation as part of the licensing arrangement (whether such compensation is called a royalty, a one-time licensing fee, etc.). However, while the Patent Holder in this situation is committing to not charging any monetary amount, the Patent Holder is still entitled to require that the implementer of the above document sign a licence agreement that contains other reasonable terms and conditions such as those relating to governing law, field of use, reciprocity, warranties, etc.

2.5**Organization(s)**

CEN and/or CENELEC

2.6**patent**

refers to essential patents or similar rights, utility models and other statutory rights based on inventions, including any applications for any of the foregoing

2.7**Patent Holder**

person or entity that owns, controls and/or has the ability to license patents

2.8**reciprocity**

As used herein, the word “reciprocity” means that the Patent Holder shall only be required to license any prospective licensee if such prospective licensee will commit to license its essential patent(s) or essential patent claim(s) for implementation of the same above document free of charge or under reasonable terms and conditions

2.9**technical body**

Technical Committees, Subcommittees, Working Groups, Workshops and other groups in CEN and CENELEC

3 Patent disclosure

As mandated by the Patent Policy in its first paragraph, any party participating in the work of the Organizations shall, from the outset, draw their attention to any known patent or to any known pending patent application, either their own or of other organizations.

In this context, the words “from the outset” imply that such information should be disclosed as early as possible during the development of the Deliverable. This might not be possible when the first draft text appears since at this time, the text might be still too vague or subject to subsequent major modifications. Moreover, that information should be provided in good faith and on a best effort basis, but there is no requirement for patent searches.

In addition to the above, any party not participating in technical bodies may draw the attention of the Organizations to any known patent, either their own and/or of any third party.

When disclosing their own patents, Patent Holders shall use the Declaration Form as stated in Clause 4 of these Guidelines.

Any communication drawing the attention to any third-party patent shall be addressed to the concerned Organization(s) in writing. The potential Patent Holder will then be requested by the relevant Organization(s) to submit a Declaration Form.

The Patent Policy and these Guidelines also apply to any patent disclosed or drawn to the attention of the Organizations subsequent to the approval of a Deliverable.

Whether the identification of the patent took place before or after the approval of the Deliverable, if the Patent Holder is unwilling to license under Paragraph 2.1 or 2.2 of the Patent Policy, the Organizations shall promptly advise the technical bodies responsible for the affected Deliverable so that appropriate action can be taken. Such action shall include, but may not be limited to, a review of the Deliverable or its draft in order to remove the potential conflict or to further examine and clarify the technical considerations causing the conflict.

<https://standards.iteh.ai/catalog/standards/sist/c4274d92-dc11-4f1f-8732-ba6d1d450400/sist-cen-clc-guide-8-2010>

4 Statement and Licensing Declaration for CEN and CENELEC Deliverable Patents and other statutory Intellectual Property Rights based on inventions

4.1 Purpose of the Declaration Form

To provide clear information in the Patent Information databases of each Organization, Patent Holders shall use the CEN-CENELEC Declaration Form, which is available on the website of each Organization (the Declaration Form is included in Annex 2 for information purposes). They must be sent to the attention of the Technical Directors of CEN and/or CENELEC.

The purpose of the Declaration Form is to ensure a standardized submission to the respective Organizations of the declarations being made by Patent Holders and, most importantly, in case the Patent Holder declares his/her unwillingness to license under option 1 or 2 of the Declaration Form (i.e. declares option 3 of the Declaration Form) to provide the supporting information and an explanation, as strongly desired by CEN and CENELEC.

The Declaration Form gives Patent Holders the means of making a licensing declaration relating to rights in patents required for implementation of a specific Deliverable. Specifically, by submitting this Declaration Form the submitting party declares its willingness/unwillingness to license the patents held by it and whose licence would be required to practice or implement part(s) or all of a specific Deliverable, in accordance with the Patent Policy.

The statement contained in the Declaration Form remains in force as long as it has not been replaced, e.g. in case of obvious errors.

Multiple Declaration Forms are appropriate if the Patent Holder has identified several patents and classifies them in different options of the Declaration Form and/or if the Patent Holder classifies different claims of a complex patent in different options of the Declaration Form.

4.2 Contact information

In completing Declaration Forms, attention should be given to supplying contact information that will remain valid over time. Where possible, the "Name and Department" and e-mail address should be generic. Also it is preferable, where possible, that parties, particularly multinational organizations, indicate the same contact point on all Declaration Forms submitted.

With a view to maintaining up-to-date information in the Patent Information database of each Organization, it is requested that the Organizations be informed of any change or corrections to the Declaration Form submitted in the past, especially with regard to the contact person.

5 Conduct of meetings

Early disclosure of patents contributes to the efficiency of the process by which Deliverables are established. Therefore, each technical body, in the course of the development of a proposed Deliverable, will request the disclosure of any known patents essential to the proposed Deliverable.

Chairmen of technical bodies will, if appropriate, ask, at an appropriate time in each meeting, whether anyone has knowledge of patents, the use of which may be required to practice or implement the Deliverable being considered. The fact that the question was asked shall be recorded in the meeting report, along with any affirmative responses.

As long as the Organization concerned has received no indication of a Patent Holder selecting Paragraph 2.3 of the Patent Policy, the Deliverable may be approved using the appropriate and respective rules of the Organization concerned. It is expected that discussions in technical bodies will include consideration of including patented material in a Deliverable, however the technical bodies may not take position regarding the essentiality, scope, validity or specific licensing terms of any claimed patents.

6 Patent Information databases

In order to facilitate both the standards-making process and the application of Deliverables, each Organization makes available to the public a Patent Information database composed of information that was communicated to the Organizations by the means of Declaration Forms. The Patent Information database may contain information on specific patents, or may contain no such information but rather a statement about compliance with the Patent Policy for a particular Deliverable.

The Patent Information databases are not certified to be either accurate or complete, but only reflect the information that has been communicated to the Organizations. As such, the Patent Information databases may be viewed as simply raising a flag to alert users that they may wish to contact the entities who have communicated Declaration Forms to the Organizations in order to determine if patent licences must be obtained for use or implementation of a particular Deliverable.

7 Specific provisions

7.1 Consultations on draft Deliverables

All drafts submitted for comment shall include on the cover page the following text:

“Recipients of this draft are invited to submit, with their comments, notification of any relevant patent rights of which they are aware and to provide supporting documentation.”

7.2 Notification

A published Deliverable for which no patent rights have been identified during the preparation thereof, shall contain the following notice in the foreword:

“Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights. [CEN / CENELEC / CEN and CENELEC] shall not be held responsible for identifying any or all such patent rights.”

A published Deliverable for which patent rights have been identified during the preparation thereof, shall include the following notice in the introduction:

“The [European Committee for Standardization (CEN)] [and] [European Committee for Electrotechnical Standardization (CENELEC)] draw[s] attention to the fact that it is claimed that compliance with this document may involve the use of a patent concerning (...subject matter...) given in (...subclause...).

[CEN / CENELEC / CEN and CENELEC] take[s] no position concerning the evidence, validity and scope of this patent right.

The holder of this patent right has assured [CEN / CENELEC / CEN and CENELEC] that he/she is willing to negotiate licences under reasonable and non-discriminatory terms and conditions with applicants throughout the world. In this respect, the statement of the holder of this patent right is registered with [CEN / CENELEC / CEN and CENELEC]. Information may be obtained from:

name of holder of patent right ...

address ...

Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights other than those identified above. [CEN / CENELEC / CEN and CENELEC] shall not be held responsible for identifying any or all such patent rights.”