



SLOVENSKI STANDARD

SIST-V CEN/CLC Guide 8:2019

01-julij-2019

Smernice CEN/CENELEC za izvajanje skupne politike na področju patentov (in drugih zakonsko določenih pravic intelektualne lastnine, ki temeljijo na izumih)

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

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Ta slovenski standard je istoveten z: CEN/CLC Guide 8:2019
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ICS:

03.140 Patenti. Intelektualna lastnina Patents. Intellectual property

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en,fr,de

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CEN-CENELEC Guidelines for Implementation of the Common Policy on 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 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 not normally 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.

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

The CEN and CENELEC Patent Policy requests stakeholders participating in technical Committees, and in particular patent holders, to proceed to early disclosures and identification of patents that may be considered, at the best of their knowledge, to be essential for the future use of the deliverables under development. In doing so, greater efficiency in standards development is possible and potential patent rights problems can be avoided.

CEN and CENELEC are not involved in evaluating patent relevance or essentiality with regard to deliverables, nor to interfere with licensing negotiations, or engage in settling disputes on patents. This is left to the parties concerned.

2 Terms and definitions

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

2.1**contribution**

document submitted for consideration by a technical body

2.2**declaration Form**

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

2.3**deliverable**

CEN and/or CENELEC technical publication

2.4**patent**

temporary, limited legal right granted to an inventor by public authorities to prevent others from manufacturing, selling or otherwise dispose utility models and other statutory rights based on her/his invention, including any applications for any of the foregoing

2.5**patent holder**

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

2.6**essential patent**

patent considered, for the purpose of making a patent declaration to CEN and CENELEC, by the patent holder as 'essential' when, in her/his own judgment, it is not possible on technical grounds, considering the state of the art at the time the standardisation-making process takes place, to make, sell, lease and otherwise dispose an equipment, product or method which comply with a deliverable without infringing her/his IPR on that Patent.

2.7**organisation(s)**

CEN and/or CENELEC

2.8**free of charge**

as used herein, without due payment to the patent holder as part of the licensing arrangement for the purpose of making a patent declaration to CEN and CENELEC

2.9**reciprocity**

as used herein, requirement for the patent holder to give a license to any prospective licensee only if such prospective licensee will commit to license, where applicable, 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

2.10**technical bodies**

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

2.11**FRAND**

Fair, Reasonable And Non-Discriminatory conditions

3 Essential patent disclosure

Any party participating in the work of CEN and CENELEC is requested, from the outset and at the best of her/his knowledge, to draw attention to any known patent or to any known pending application on patent, either their own or of other organisations that, according to her/his own judgment, may be considered as an essential patent for the deliverable.

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. It is understood that disclosure 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.

Information on essential patents 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 both organisations to any known patent, either their own and/or of any third party that may be considered as essential for the deliverable.

When disclosing their own patents, patent holders shall use the declaration form as stated in Clause 4 of these Guidelines (standards.iteh.ai)

Any communication drawing the attention to any third-party patent shall be addressed to CEN or CENELEC in writing. The potential patent holder will then be requested by the relevant organisation to submit a declaration form.

The Patent Policy and these Guidelines also apply to any Patent disclosed or drawn to the attention of CEN and CENELEC subsequent to the approval of a deliverable.

Whether the identification of the essential 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 concerned organisation 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.

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

4.1 Purpose of the Declaration Form

Patent holders shall use the CEN-CENELEC Declaration Form to provide the necessary information to be included in the CEN and CENELEC Patent Information databases. The CEN-CENELEC Declaration Form is available on the website of each organisation (the Declaration Form is included in Annex 2 for information purposes). Declaration Forms must be sent to the attention of the Director Standards of the CEN-CENELEC Management Centre.

The purpose of the Declaration Form is to ensure a standardised submission to CEN and CENELEC of the declarations being made by patent holders and, most importantly, in case the patent holder declares her/his 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 the essential 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 essential 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.

The words “free of charge” in the Declaration Form do not mean that the patent holder is waiving all of its rights with respect to the essential patent. Rather, it 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.

4.2 Relevant 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 organisations, 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 organisation, the patent holder is requested to inform the CEN-CENELEC Management Centre of any change or corrections to the content of the information provided in the Declaration Form submitted in the past, especially with regard to the contact person, or information that may be relevant for the purpose of the Declaration e.g. in case the relevant patent application has been granted or rejected, or information regarding changes to the legal status of the relevant patent application or patent.

Any other party that may have relevant updated information on the list of the patent database, is also invited to inform the CEN-CENELEC Management Centre.