

**WORKING GROUP AND INTELLECTUAL PROPERTY POLICY
OF THE
CONSORTIUM FOR ON-BOARD OPTICS**

2016-08-08

1. PURPOSE OF THE WORKING GROUP POLICY

This Working Group and Intellectual Property Policy (“Working Group and IPR Policy”) of the Consortium for On-Board Optics (“COBO” or “the Corporation”), together with the Bylaws and relevant policies approved by the Board, governs all Working Groups of the Corporation. Terms not defined here have the meaning set forth in the Bylaws.

2. ESTABLISHING WORKING GROUPS

2.1 Proposals. Any Member of the Corporation may submit to the Board a written Proposal to establish a Working Group to develop specifications, documents, or policies relating to the purposes of the Corporation. The Board considers each Proposal and may adopt it as written, modify it and adopt it as modified, return it for modification and subsequent consideration, or reject it.

2.2 Formation. A Working Group is formed by Supermajority Vote of the Board. The Board’s approval must specify one of two categories: (1) If the purpose of the Working Group is to develop a technical specification, a “**Specification Working Group**” is formed. (2) If a Working Group is formed for any other purpose, a “**General Working Group**” is formed. The Corporation will notify all Members in writing of the Working Group’s formation. Working Groups operate in an advisory capacity to the Board.

3. WORKING GROUP RULES

3.1 Rules Applicable to All Working Groups.

- A. Participation. Each Steering Member and each qualifying Associate Member may become a Working Group Member by notifying the Corporate Secretary or President (or their designee) in writing and designating a “Lead Participant”. (Multiple Participants may be designated, but only the Lead Participant has standing for purposes of consensus or voting.)
- B. Chair. The Working Group must designate a Chair. The Chair (or the Chair’s designee) maintains a list of Working Group Members, their Lead Participants, and their other designated Participants; organizes, issues required notices of, and presides over meetings and voting; and ensures that the Working Group meets its goals. The Chair may delegate duties as appropriate but remains responsible for their execution. The Chair should also periodically direct Participants’ attention to their obligations under this Policy (including but not limited to Section 5.1 (Antitrust and Other Laws)) and those provisions of the Bylaws that govern the conduct of Working Groups (such as Section 1.4 (voting rights of Affiliates), 8.4 (Intellectual Property Rights), and 8.5 (Confidentiality)), but each Member remains solely responsible for its own compliance with all applicable laws and rules. The Chair may be removed and replaced by Supermajority Vote of all Working Group Members or by Supermajority Vote of the Board.
- C. Meetings. The Working Group Chair issues written notice of the time and place of any meeting of the Working Group, or the first of any series of regular meetings, as follows: At least 14 days before in-person meetings, at least seven days before teleconference meetings, no advance notice for general communications that include all Participants or if all Working Group Members agree (in writing or, if orally, as recorded in the minutes).
- D. Decisions. Working Groups will endeavor to make all decisions by consensus. If consensus is not clear, the Working Group may make decisions by Supermajority Vote, as follows:
 - 1. Each Working Group Member has one vote, which may be exercised by the Lead Participant directly or by delegation to another of that Working Group Member’s Participants.

2. Adoption of a Charter, Initial Draft, or Approval Draft, if not established by consensus, requires a Supermajority Vote of all Working Group Members. For all other matters, if not established by consensus, votes may be taken at any meeting at which at least 2/3 of all Lead Participants are represented (directly or by delegation to a non-Lead Participant representing that Working Group Member, but not by proxy), and decisions may be made by Supermajority Vote of the quorum for that meeting.
 3. Working Groups may vote electronically on any matter without a meeting provided that (1) a written ballot with only “yes” or “no” options is provided to all Lead Participants and (2) the voting remains open for at least seven days or until a Supermajority of all Working Group Members is established.
- E. Adoption of Charter and Initial Draft. The Working Group must adopt the approved Proposal as its Charter or adopt a more-detailed Charter consistent with the Proposal within 28 days after its formation, and must approve an “Initial Draft” Document (for General Working Groups) or Specification (for Specification Working Groups) within one year after its formation, unless the Board’s approving resolution sets forth different deadlines. If the Working Group fails to meet either deadline it must be rechartered or disbanded unless the Board expressly approves its continued existence and sets new deadlines.
- F. Approval Draft. When the Chair determines that the Working Group’s objectives under its Charter have been met, the Chair will circulate to Working Group Members a draft that, if approved by the Working Group Members, will then be submitted to the Steering Members for consideration (“Approval Draft”).
- G. Steering Member Review. Within 60 days after receipt of an Approval Draft the Steering Members will vote on the Approval Draft. If approved by a Supermajority Vote of all Steering Members, the Approval Draft is submitted to the Board; if not, the Working Group may subsequently submit a revised Approval Draft.
- H. Board Review. Within 35 days after receipt of an Approval Draft the Board will vote to (a) approve the Approval Draft as an Approved Specification; (b) request that the Working Group submit a revised Approval Draft; (c) reject the Approval Draft and disband the Working Group; or (d) take such other actions as are in the best interests of the Corporation. If approved by Supermajority Vote of the Board, the Approval Draft becomes an Approved Document or Approved Specification, and the Working Group is disbanded unless the charter is unchanged. The Board may, when chartering a Working Group, specify as its starting point an Initial Draft, Exclusion Draft, Approval Draft, Approved Specification, or other document (identified by date or version) that was produced by another Working Group.
- I. Publication. Except as determined by Supermajority Vote of the Board, only Approved Documents and Approved Specifications may be published outside of the Corporation.
- J. Copyright.
1. Rights in Contributions. To make any Contribution to a Working Group, Members must (1) have sufficient rights to make the Contribution under the terms of the Bylaws and this Working Group Policy and (2) must disclose the identities of all copyright owners in the Contribution.
 2. Contributions License Grant. For purposes of the development, publication, distribution, and modification of each Working Group Document or Specification, each Member and its Participants is deemed to have granted a perpetual, nonexclusive, irrevocable, royalty-free, paid up, worldwide license to copy, modify, prepare derivative works, publicly display, publicly perform, and distribute its Contributions in their original and modified forms, and to allow others to do the same, with no accounting obligations.
 3. Publications License for Documents and Draft Specifications. Subject to the restraints on publication set forth in Section 3.1I, unless otherwise determined by Supermajority Vote of the Board all Proposals, Charters, Draft Documents, Draft Specifications, and Approved Documents are subject to the license terms as set forth in Section 3.1J.4 of this Working Group Policy.
 4. Publications License for Approved Specifications. Unless otherwise determined by Supermajority Vote of the Board:
 - a. Proposals, Charters, Draft Documents, and Draft Specifications are subject to the Corporation’s copyright and any concurrent rights held under copyright by the contributors.

- b. Approved Specifications published by COBO are subject to CC BY-ND 4.0.
- c. Approved Specifications that are provided to a standards-development organization for further development are subject to CC BY 4.0, with the Consortium for On-Board Optics or "COBO" identified as the copyright owner.

3.2 Rules Applicable to Specification Working Groups Only.

A. Patent Licensing (RAND).

1. Licensing Commitment. Each Working Group Member agrees it will offer to all applicants a nonexclusive, worldwide, non-sublicensable, perpetual patent license to its Essential Claims on fair, reasonable, and non-discriminatory terms to make, have made, use, import, offer to sell, sell, and distribute conformant implementations of any Approved Specification of that Working Group. A Member's obligation to offer licenses to Essential Claims is perpetual and includes Essential Claims owned or controlled by its Affiliates. If a Member or an Affiliate grants an exclusive license to or transfers an Essential Claim, the transferee and all successors must be subject to the same licensing obligations as the Member became obligated to under this Policy (and in the event that a Member or its successors fails to include appropriate requirements in such transfer documents, it is nonetheless intended that each Member's obligations shall run with title to the patent and be binding upon any transferee). Any license to Essential Claims may be conditioned upon the licensee's reciprocal grant of Essential Claims as defined by this Policy. In addition, at the time of making a Contribution, the Working Group Member making such Contribution shall disclose in writing to the Working Group Chair and Corporate Secretary (1) any patent or pending patent application that it believes would include an Essential Claim if the Contribution were incorporated into an Approved Specification (unless the claim is already subject to the patent licensing obligations of this Section 3.2.A.1), and (2) the name of any party whose direct input was incorporated into the Contribution (excluding parties whose patents would be subject to the patent licensing obligations of this Section 3.2.A.1).
2. Patent Exclusion. A "Patent Exclusion Period" is required as to each Draft Specification (1) upon initial adoption as a Draft Specification by the Specification Working Group and (2) again (if modified after the first Patent Exclusion Period) before it is proposed to be an Approved Specification. The Chair initiates the Patent Exclusion Period by notifying all Working Group Members in writing, identifying the Draft Specification by date or version number, and stating a closing date at least 28 days after the initial notice date. A Working Group Member may exclude Essential Claims from its licensing commitments by providing written notice of that intent to the Working Group Chair and the Corporate Secretary ("Exclusion Notice") no later than the closing date of the applicable Patent Exclusion Period. (A party that joins a Working Group after the closing date of a Patent Exclusion Period must deliver any Exclusion Notice upon joining.) The Exclusion Notice must provide the patent registration or application number, identify which portions of the Draft Specification are affected, and briefly summarize the patent claims. A Working Group Member who fails to exclude a patent during a Patent Exclusion Period may not subsequently seek to exclude an Essential Claim from the licensing obligations. For subsequent Patent Exclusion Periods the exclusion opportunity applies only to material in the Draft Specification that was not present during a previous Patent Exclusion Period during which the Working Group Member had an opportunity to exclude. The exclusion opportunity is not available with respect to a Member's own Contributions. The Working Group Chair will make the declarations available to the Corporate Secretary or President, who will promptly make the declarations to all Members. Declarations will be made available to the general public upon publication of the Approved Specification.
3. Members Not In Working Group. Members that are not in a Working Group may, at their sole option, voluntarily deliver to the Corporate Secretary an Exclusion Notice or their agreement to be bound by a voluntary licensing commitment with respect to any Draft Specification, Approval Draft specification, or Approved Specification.
4. Defensive Suspension of Licenses. If an implementer of an Approved Specification or any of its Affiliates ("Implementer") initiates or joins a legal action asserting that an Approved Specification infringes Implementer's patent rights in an Essential Claim (as defined by this Policy), all patent

licenses to Essential Claims in that Approved Specification that benefit Implementer pursuant to this IPR Policy are suspended automatically as of the date and time such suit or action is filed. (This provision does not apply to a counterclaim or countersuit filed defensively in response to a prior patent infringement action by the licensor.)

- B. Submission to Standards-Development Organization.
 - 1. Approved Specifications may, by Supermajority Vote of the Board, be submitted for publication or further development to a recognized standards-development organization (“SDO”).
- C. Terms to Include In Published Specifications. Published Specifications must include the following terms:

Copyright

Copyright © [Date] COBO Group. All Rights Reserved. This publication is subject to the terms of *[Insert reference to CC BY-ND 4.0 or CC BY 4.0]*.

Limitations

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4. REFERENCES TO OTHERS

4.1 Use of Member Name. Approved Documents and Approved Specifications may include attribution to COBO and to Members that participated in the Working Group. Members may not otherwise use the name of any other COBO member in connection with any Proposal, Draft, Document, Specification, or related activity of the Corporation without express authorization from the named party.

5. APPLICABLE LAWS

5.1 Antitrust and Other Laws. Members and their representatives must not violate laws and regulations applicable to their conduct under this Agreement, including but not limited to antitrust laws and regulations. By way of example only, and not as a substitute for each Member’s reliance on its own legal counsel: Members may compete against one another; each Member may conduct its business in whatever way it chooses; each may design, develop, manufacture, acquire, or market competitive deliverables, products and services; no Member is obligated to announce or market any products or services; and Members are not to discuss product pricing, methods or channels of product distribution, division of markets, allocation of customers, or other topics inappropriate for discussion among competitors.

6. WITHDRAWAL; TERMINATION

6.1 Automatic Termination. If four consecutive Working Group meetings are convened with no Participants designated by a Working Group Member in attendance that Member is automatically removed from the Working Group, but may be readmitted (1) at the Chair’s discretion (unless such readmission is opposed by a majority vote of the Working Group) or (2) by majority vote of the Board.

6.2 Voluntary Withdrawal. Any Member may terminate its membership in a Working Group or in the Corporation by delivering written notice to the Corporate Secretary or President and to the Chair of any Working Group in which it participates.

6.3 Involuntary Termination. A Member that violates the substantive rules of a Working Group or the Corporation or declares patent exclusions in a manner or to an extent deemed by the Board to be inconsistent with the goals of the Corporation may, after the Member has been given a reasonable opportunity to address the Board, be removed by Supermajority Vote of the Board. The Board’s determination in each case is final and non-appealable, and as a condition of participation in the Corporation each Member agrees no claim of any kind may arise from such removal or termination.

6.4 Effect of Withdrawal or Termination. No new obligations are incurred after a Member’s withdrawal or termination from a Working Group or the Corporation, but any continuing obligations set forth in the Bylaws, this Policy, and other applicable documents do not terminate. With respect to Specification Working Groups, if a Member withdraws or is terminated before the work becomes an Approved Specification, the Member’s obligation to license Essential Claims as to the Approved Specification includes (1) Essential Claims in that Member’s Contributions and (2) claims the Member did not exclude pursuant to a formal opportunity to exclude claims as to a Draft or Approved Specification. In addition, Sections 3.1I, 3.1J, 3.2A, and Articles 4 and 5 of this Policy survive any termination or withdrawal.

7. DEFINED TERMS

7.1 “Approved Document” means any document (excluding Specifications) approved by Supermajority Vote of the Board as set forth in this Policy and the Bylaws.

7.2 “Approved Specification” means any Specification approved by Supermajority Vote of the Board as set forth in this Policy and the Bylaws.

7.3 “CC BY 4.0” means the Creative Commons Attribution 4.0 International license, <http://creativecommons.org/licenses/by/4.0/legalcode>.

7.4 “CC BY-ND 4.0” means the Creative Commons Attribution-NoDerivatives 4.0 International license, <http://creativecommons.org/licenses/by-nd/4.0/legalcode>.

7.5 “Contribution” means any submission to a Working Group that is either (1) submitted in writing or (2) stated orally, written into the minutes of a Working Group, and attributed to an individual. A submitter may correct or withdraw a submission within 21 days after it was made by providing written notice to the Chair; in the case of oral submissions, the 21 days run from the date the Working Group minutes were delivered to the individual submitter or its Lead Participant.

7.6 “Essential Claim” means a claim in any patent or patent application in any jurisdiction that is infringed by implementation of the Normative Elements of an Approved Specification, and for which there is no non-infringing alternative (based on the state of the art at the time the Approved Specification is approved). “Normative Elements” are only those elements set forth in the Approved Specification that must be implemented to conform to the Approved Specification (including its optional components, and excluding all other elements such as explanatory materials, enabling technologies (e.g., operating systems, semiconductor technologies, other technical specifications even if referenced in the Approved Specification), and portions of any product or combination of products not required for conformance to the Approved Specification).

7.7 “Participant” means each individual who participates in a Working Group on behalf of a Member.

7.8 “Working Group Member” means a Member that has joined a Working Group and has not withdrawn or been removed (pursuant to Section 3.1A or otherwise).

7.9 “Proposal” means any proposal relating to the purpose of Corporation.

7.10 “Specification” means a Draft Specification or Approved Specification.

7.11 “Supermajority” means 2/3 of all eligible voters (unless the provision specifies “Supermajority of a quorum”, which means 2/3 of those in the quorum for that meeting).

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