

ANNEXURE IV
FINAL DRAFT IPR POLICY
2nd April 2019

FINAL DRAFT
INTELLECTUAL
PROPERTY RIGHTS
POLICY

Telecom Standards Development Society, India

TELECOM STANDARDS DEVELOPMENT SOCIETY, INDIA
(TSDSI) INTELLECTUAL PROPERTY RIGHTS POLICY

CONTENTS

1.0	Introduction	4
2.0	Definitions.....	4
3.0	Disclosure of IPRs.....	6
4.0	Procedures for Committees	6
5.0	Availability of Licences	6
6.0	Information on IPR by TSDSI	7
7.0	Non-availability of Licences prior to publication	7
7.1	Existence of a viable alternative technology.....	7
7.2	Non-existence of a viable alternative technology.....	7
7.3	NON-AVAILABILITY OF LICENCES POST PUBLICATION	8
8.0	TSDSI's ownership of IPRs	9
9.0	Confidentiality.....	9
10.0	Reproduction of Standards Documentation.....	9
11.0	Law and Regulation.....	10
12.0	Violation of Policy.....	10
	Appendix	11

TSDSI INTELLECTUAL PROPERTY RIGHTS POLICY

1.0 INTRODUCTION

- 1.1** Terms in the POLICY which are written in capital letters shall have the meaning set forth in this Clause 2.
- 1.2** TSDSI's objectives are to create STANDARDS and TECHNICAL SPECIFICATIONS that are based on solutions which best meet the technical objectives of the Indian telecommunications sector in the interest of the consumer. In order to meet this objective, the TSDSI IPR POLICY seeks to reduce the risk to TSDSI, MEMBERS, and others applying TSDSI STANDARDS and TECHNICAL SPECIFICATIONS, that investment in the preparation, adoption and application of STANDARDS could be wasted as a result of an ESSENTIAL IPR for a STANDARD or TECHNICAL SPECIFICATION being unavailable, and seeks to provide a balance between the interests of owners of IPR and the interests of implementers of TSDSI STANDARDS and TECHNICAL SPECIFICATIONS.
- 1.3** IPR holders, whether MEMBERS of TSDSI and their AFFILIATES or third parties, should be adequately and fairly rewarded for the use of their IPRs in the implementation of STANDARDS and TECHNICAL SPECIFICATIONS.
- 1.4** TSDSI shall take reasonable measures to ensure, as far as possible, that its activities which relate to the preparation, adoption and application of STANDARDS and TECHNICAL SPECIFICATIONS, enable STANDARDS and TECHNICAL SPECIFICATIONS to be available to potential users.



2.0 DEFINITIONS

- 2.1** COMMITTEE shall mean any Technical Body of TSDSI and shall include TSDSI Projects, Technical Committees, TSDSI Partnership Projects, and their Working Groups.
- 2.2** CONFIDENTIAL INFORMATION shall mean all the information deemed to be confidential pursuant to Clause 9 of the POLICY, disclosed directly or indirectly to the MEMBER.
- 2.3** EQUIPMENT shall mean any system, or device fully conforming to a STANDARD.
- 2.4** ESSENTIAL, as applied to IPR, means that it is not possible on technical (but not commercial) grounds, taking into account normal technical practice and the state-of-the-art generally available at the time of standardization, to make, sell, lease, otherwise dispose of, repair, use or operate EQUIPMENT or METHODS which comply with a STANDARD without infringing that IPR. For the avoidance of doubt in exceptional cases where a STANDARD can only be implemented by technical solutions, all of which are infringements of IPRs, all such IPRs shall be considered ESSENTIAL.
- 2.5** FRAND means fair, reasonable and non-discriminatory.

2.6 IPR shall mean any intellectual property right conferred by statute law including applications therefor, other than trademarks. For the avoidance of doubt, rights relating to get-up, confidential information, trade secrets, or the like, are excluded from the definition of IPR.

2.7 MANUFACTURE shall mean production of EQUIPMENT.

2.8 MEMBER shall mean a MEMBER of TSDSI.

2.9 METHODS shall mean any method or operation fully conforming to a STANDARD.

2.10 POLICY shall mean TSDSI's Intellectual Property Rights POLICY.

2.11 STANDARD shall mean any standard adopted by TSDSI including options therein or amended versions including drafts, but not any standards, or parts thereof, not made by TSDSI. The date on which a STANDARD is considered to be adopted by TSDSI for the purposes of this POLICY shall be the date on which the technical content of that STANDARD was available to all MEMBERS.

2.12 TECHNICALSPECIFICATION shall mean any technical specification adopted by TSDSI, including options therein or amended versions including drafts, the technical specifications of which are available to all MEMBERS, but not including any technical specifications, or parts thereof, not made by TSDSI. The date on which a TECHNICAL SPECIFICATION is considered to be adopted by TSDSI for the purposes of this POLICY shall be the date on which the technical content of that TECHNICAL SPECIFICATION was available to all its MEMBERS.

2.13 AFFILIATE of a first legal entity (MEMBER) means any other legal entity:

- directly or indirectly owning or controlling the first legal entity, or
- under the same direct or indirect ownership or control as the first legal entity, or
- directly or indirectly owned or controlled by the first legal entity,

for so long as such ownership or control lasts.

Ownership or control shall exist through the direct or indirect:

- ownership of more than 50% of the nominal value of the issued equity share capital or of more than 50% of the shares entitling the holders to vote for the election of directors or persons performing similar functions, or
- right by any other means to elect or appoint directors, or persons who collectively can exercise such control. A government (central or state), an organ of a government or other public entity operating under public law, or any legal entity, linked to the first legal entity solely through a government or any organ of a government or other public entity operating under public law, shall be deemed to fall outside the definition of an AFFILIATE.

2.14 PATENT FAMILY shall mean all the documents having at least one priority in common, including the priority document(s) themselves. For the avoidance of doubt, document refers to patents, and applications therefor.

3.0 DISCLOSURE OF IPRs

3.1 Each MEMBER shall use its reasonable endeavours, in particular during the development of a STANDARD or TECHNICAL SPECIFICATION where it participates, to inform TSDSI of that MEMBER's ESSENTIAL IPRs in a timely fashion. A MEMBER submitting a technical proposal for development of a STANDARD or TECHNICAL SPECIFICATION shall, on a bona fide basis, draw the attention of TSDSI, in a timely fashion, to the IPR of that MEMBER which might be ESSENTIAL if the proposal is adopted. However, this POLICY does not imply any obligation on MEMBERS to conduct IPR searches.

3.2 The obligations pursuant to Clause 3.1 above are deemed to be fulfilled in respect of all existing and future members of PATENT FAMILY if TSDSI has been informed of a member of this PATENT FAMILY in a timely fashion. Information on other members of this PATENT FAMILY, if any, may be voluntarily provided. However, any mandatory requirements for declaration before the competent authority as per the patent laws of India will be separately met by the MEMBERS.

3.3 The disclosures by MEMBERS may voluntarily allow for referencing specific section of the STANDARD or TECHNICAL SPECIFICATION to which the MEMBER's ESSENTIAL IPR is believed to be relevant.

3.4 With respect to AFFILIATES, the MEMBERS may provide Uniform Resource Locators (URL or link), pointing to the disclosures made by such AFFILIATES to any other standards body.

4.0 PROCEDURES FOR COMMITTEES

4.1 TSDSI shall establish guidelines for the chairmen of COMMITTEES with respect to ESSENTIAL IPRs.

5.0 AVAILABILITY OF LICENCES

5.1 When an ESSENTIAL IPR relating to a particular STANDARD or TECHNICAL SPECIFICATION is brought to the attention of TSDSI, the TSDSI shall immediately request the owner of ESSENTIAL IPR to give within three months an irrevocable undertaking in writing that it is prepared to grant irrevocable licences on FRAND terms and conditions under such IPR to at least the following extent:

- a. MANUFACTURE, including the right to make or have made customised components and sub-systems to the licensee's own design for use in MANUFACTURE;
- b. Sell, lease, or otherwise dispose of EQUIPMENT so MANUFACTURED;
- c. Repair, use, or operate EQUIPMENT.
- d. Use METHODS.

5.2 The above undertaking may be made subject to the condition that those who seek licences agree to reciprocate.

- 5.3** FRAND licensing undertakings made pursuant to Clause 5.1 shall be interpreted as encumbrances that bind all successors-in-interest. Recognizing that this interpretation may not apply in all legal jurisdictions, any Declarant who has submitted a FRAND undertaking according to the POLICY who transfers ownership of ESSENTIAL IPR that is subject to such undertaking shall include appropriate provisions in the relevant transfer documents to ensure that the undertaking is binding on the transferee and that the transferee will similarly include appropriate provisions in the event of future transfers with the goal of binding all successors-in-interest. The undertaking shall be interpreted as binding on successors-in-interest regardless of whether such provisions are included in the relevant transfer documents.
- 5.4** An undertaking pursuant to Clause 5.1 with regard to a specified member of a PATENT FAMILY shall apply to all existing and future ESSENTIAL IPRs of that PATENT FAMILY unless there is an explicit written exclusion of specified IPRs at the time the undertaking is made. The extent of any such exclusion shall be limited to those explicitly specified IPRs.
- 5.5** If the requested undertaking of the IPR owner is not granted, the COMMITTEE Chairmen should, if appropriate, in consultation with the TSDSI Secretariat, use their judgment as to whether or not the COMMITTEE should suspend work on the relevant parts of the STANDARD or TECHNICAL SPECIFICATIONS until the matter has been resolved and/or submit for approval any relevant STANDARD or TECHNICAL SPECIFICATIONS.
- 5.6** MEMBERS shall use one of the TSDSI IPR Licensing Declaration forms at the Appendix to make their IPR licensing declarations.

6.0 INFORMATION ON IPR BY TSDSI

- 6.1** Any published STANDARD or TECHNICAL SPECIFICATION shall include information pertaining to ESSENTIAL IPRs which are brought to the attention of TSDSI prior to such publication.
- 6.2** TSDSI shall establish appropriate procedures to allow access to information at any time with respect to ESSENTIAL IPRs which have been brought to its attention.

7.0 NON-AVAILABILITY OF LICENCES PRIOR TO PUBLICATION

7.1 EXISTENCE OF A VIABLE ALTERNATIVE TECHNOLOGY

- 7.1.1** Where prior to the publication of a STANDARD or a TECHNICAL SPECIFICATION an IPR owner informs TSDSI that it is not prepared to license an IPR in respect of a STANDARD or TECHNICAL SPECIFICATION, TSDSI shall review the requirement for that STANDARD or TECHNICAL SPECIFICATION and satisfy itself that a viable alternative technology is available for the STANDARD or TECHNICAL SPECIFICATION which is not blocked by that IPR and satisfies TSDSI's requirements.

7.2 NON-EXISTENCE OF A VIABLE ALTERNATIVE TECHNOLOGY

- 7.2.1** Where, in the opinion of TSDSI, no such viable alternative technology exists, work on the STANDARD or TECHNICAL SPECIFICATIONS shall cease, and the TSDSI shall observe the following procedure

- a. If the IPR owner is a MEMBER
 - i. TSDSI shall request that MEMBER to reconsider its position.
 - ii. If that MEMBER, however, decides not to withdraw its refusal to license the IPR, it shall then inform the TSDSI of its decision and provide a written explanation of its reasons for refusing to license that IPR, within three months of its receipt of the TSDSI's request.
 - iii. TSDSI shall then take further action as deemed fit including consultation with TSDSI counsellors.
- b. If the IPR owner is a third party
 - i. TSDSI shall, wherever appropriate, request full supporting details from any MEMBER who has complained that licences are not available and/or request appropriate MEMBERS to use their good offices to find a solution to the problem.
 - ii. Where this does not lead to a solution, the TSDSI shall write to the IPR owner concerned for an explanation and request ultimately that licences be granted in accordance with the provisions.
 - iii. Where the IPR owner refuses the TSDSI's request and decides not to withdraw its refusal to license the IPR or does not answer the letter within three months after the receipt of the TSDSI's request, TSDSI shall then take further action as deemed fit.

7.2.2 Prior to any decision by TSDSI, the COMMITTEE should in consultation with the TSDSI Secretariat use their judgment as to whether or not the COMMITTEE should pursue development of the concerned parts of the STANDARD or a TECHNICAL SPECIFICATION based on the non-available technology and should look for alternative solutions.

7.3 NON-AVAILABILITY OF LICENCES POST PUBLICATION

- 7.3.1 Where, in respect of a published STANDARD or TECHNICAL SPECIFICATION, TSDSI becomes aware that licences are not available from an IPR owner in accordance with the provisions, TSDSI shall take further action in accordance with the following procedure
- a. TSDSI shall request full supporting details from any MEMBER or third party who has complained that licences are not available in accordance with the provisions.
 - b. TSDSI shall write to the IPR owner concerned for an explanation and request that licences are granted according to the provisions. Where the concerned IPR owner is a MEMBER, it shall inform TSDSI of its decision and provide a written explanation of its reasons in case of continuing refusal to license that IPR.
 - c. Where the IPR owner refuses TSDSI's request or does not answer the letter within three months, TSDSI shall refer the STANDARD or TECHNICAL SPECIFICATIONS to the relevant COMMITTEE to modify it so that the IPR is no longer ESSENTIAL.
 - d. TSDSI shall, where appropriate, consult the TSDSI Counsellors with a view to finding a solution to the problem. In parallel, TSDSI may request appropriate MEMBERS to use their good offices to find a solution to the problem.
 - e. Where this also does not lead to a solution, then TSDSI may consider what further action may be appropriate, including withdrawal of the STANDARD or TECHNICAL SPECIFICATION in question.

- 7.3.2 In carrying out the foregoing procedure due account shall be taken of the interest of the enterprises that have invested in the implementation of the STANDARD or TECHNICAL SPECIFICATION in question.

8.0 TSDSI's OWNERSHIP OF IPRs

- 8.1 The ownership of the copyright in STANDARDS and TECHNICAL SPECIFICATIONS documentation and reports created by TSDSI or any of its COMMITTEES shall vest in TSDSI but due acknowledgement shall be given to copyrights owned by third parties that are identifiable in TSDSI copyrighted works.
- 8.2 Subject to the provisions of Article 8.3, in respect of IPRs other than copyright in STANDARDS and TECHNICAL SPECIFICATIONS documentation and reports, TSDSI shall only seek ownership of IPRs generated by employees or by secondees to TSDSI
- 8.3 TSDSI shall on request by a non-member, grant licenses to that non-member on fair and reasonable terms and conditions in respect of any IPRs owned by TSDSI, other than those referred to in Clause 8.1 above. MEMBERS shall be allowed to use IPRs owned by TSDSI free of charge.
- 8.4 Notwithstanding anything to the contrary contained in this IPR Policy or any other document, in no eventuality TSDI shall claim the ownership or any right in the IPR created by the Members of TSDI until and unless anything to the contrary agreed in this regard between the TSDI and the respective Member in writing

9.0 CONFIDENTIALITY

- 9.1 The proceedings of a COMMITTEE shall be regarded as non-confidential except as expressly provided below and all information submitted to a COMMITTEE shall be treated as if non-confidential and shall be available for public inspection unless the information is
- a. In written or other tangible form.
 - b. Identified in writing, when submitted, as confidential.
 - c. First submitted to, and accepted by, the chairman of the COMMITTEE as confidential.
- 9.2 CONFIDENTIAL INFORMATION incorporated in a STANDARD or TECHNICAL SPECIFICATION shall be regarded as non-confidential by TSDSI and its MEMBERS, from the date on which the STANDARD or TECHNICAL SPECIFICATION is published.

10.0 REPRODUCTION OF STANDARDS DOCUMENTATION

- 10.1 MEMBERS may make copies of STANDARDS and TECHNICAL SPECIFICATIONS documentation produced by TSDSI for their own, use free of charge, but may not distribute such copies to others.

11.0 LAW AND REGULATION

11.1 The POLICY shall be governed by the laws of India. However, no MEMBER shall be obliged by the POLICY to commit a breach of the laws or regulations of its country or to act against supranational laws or regulations applicable to its country insofar as derogation by agreement between parties is not permitted by such laws.

11.2 Any right granted to, and any obligation imposed on, a MEMBER which derives from Indian law and which are not already contained in the national or supranational law applicable to that MEMBER is to be understood as being of solely a contractual nature.

12.0 VIOLATION OF POLICY

12.1 Any violation of the POLICY by a MEMBER shall be deemed to be a breach, by that MEMBER, of its obligations to TSDSI. The TSDSI shall have the authority to decide the action to be taken, if any, against the MEMBER in breach, in accordance with the TSDSI Rules and Regulations.

APPENDIX

IPR LICENSING DECLARATION FORMS

IPR HOLDER/ORGANISATION (“Declarant”)

Legal Name:

CONTACT DETAILS FOR LICENSING INFORMATION Name and Title:

Department:

Address:

Telephone:

Fax:

Email:

URL
:

GENERAL IPR LICENSING DECLARATION

In accordance with Clause 5.1 of the TSDSI IPR POLICY the Declarant and/or its AFFILIATES hereby informs TSDSI that (*check one box only*):

with reference to TSDSI STANDARD(s) or TECHNICAL SPECIFICATION(s) no.

_____, or
with reference to TSDSI Project(s): _____, or

with reference to all TSDSI STANDARDS and TECHNICAL
SPECIFICATIONS **and** with reference to (*check one box only*):

IPR(s) contained within technical contributions made by the Declarant and/or its
AFFILIATES, or any IPRs

the Declarant hereby irrevocably declares that 1) it and/or its AFFILIATES are prepared to grant irrevocable licenses under its/their IPR(s) on terms and conditions which are in accordance with the provisions of Clause 5.1 of TSDSI’s IPR POLICY, in respect of the STANDARD(S), TECHNICAL SPECIFICATION(S), or the TSDSI project(s), as identified above, to the extent that the IPR(s) are or become, and remain ESSENTIAL to practice that/those STANDARD(S) or TECHNICAL SPECIFICATION(S) or, as applicable, any STANDARD or TECHNICAL SPECIFICATION resulting from proposals or Work Items within the current scope of the above identified TSDSI project(s), for the field of use of practice of such STANDARD or TECHNICAL SPECIFICATION; and 2) it will comply with Clause 5.3 of TSDSI’s IPR Policy with respect to such ESSENTIAL IPR(s).

This irrevocable undertaking is made subject to the condition that those who seek licences agree to reciprocate (**check box if applicable**).

The construction, validity and performance of this General IPR licensing declaration shall be governed by the laws of India.

Terms in ALL CAPS on this form have the meaning provided in Clause 2 of the TSDSI IPR POLICY.

SIGNATURE

Note: By signing this General IPR Licensing Declaration form, you represent that you have the authority to bind the Declarant and/or its AFFILIATES to the representations and commitments provided in this form.

Name of authorized person:

Title of authorized person:

Place, Date:

Signature:

Please return this form duly signed to: TSDSI Director-General

IPR INFORMATION STATEMENT AND LICENSING DECLARATION

IPR HOLDER / ORGANISATION (“Declarant”)

Legal Name:

CONTACT DETAILS FOR LICENSING INFORMATION

Name and Title:

Department:

Address

Telephone:

Fax:

Email:

URL:

IPR INFORMATION STATEMENT

In accordance with Clause 5.1 of the TSDSI IPR POLICY the Declarant and/or its AFFILIATES hereby informs TSDSI that it is the Declarant’s and/or its AFFILIATES’ present belief that the IPR(s) disclosed in the attached *IPR Information Statement Annex* may be or may become ESSENTIAL in relation to at least the TSDSI Work Item(s), STANDARD(S) and/or TECHNICAL SPECIFICATIONS identified in the attached *IPR Information Statement Annex*.

The Declarant and/or its AFFILIATES (**check one box only**):

are the proprietor(s) of the IPR(s) disclosed in the attached *IPR Information Statement Annex*.

are not the proprietor(s) of the IPR(s) disclosed in the attached *IPR Information Statement Annex*.

IPR LICENSING DECLARATION [if Declarant is IPR owner]

In accordance with Clause 5.1 of the TSDSI IPR POLICY the Declarant and/or its AFFILIATES hereby irrevocably declares the following (**check one box only, and subordinate box, where applicable**):

To the extent that the IPR(s) disclosed in the attached IPR Information Statement Annex are or become, and remain ESSENTIAL in respect of the TSDSI Work Item, STANDARD and/or TECHNICAL SPECIFICATION identified in the attached IPR Information Statement Annex, the Declarant and/or its AFFILIATES are 1) prepared to grant irrevocable licences under this/these IPR(s) on terms and conditions which are in accordance with Clause 5.1 of the TSDSI IPR POLICY; and 2) will comply with Clause 5.3 of the TSDSI IPR POLICY.

This irrevocable undertaking is made subject to the condition that those who seek licences agree to reciprocate (**check box if applicable**).

The Declarant and/or its AFFILIATES are not prepared to make the above IPR Licensing Declaration (reasons may be explained in writing in the attached *IPR Licensing Declaration Annex*).

The construction, validity and performance of this IPR information statement and licensing declaration shall be governed by the laws of India.

Terms in ALL CAPS on this form have the meaning provided in Clause 2 of the TSDSI IPR POLICY.

SIGNATURE

Note: By signing this IPR Information Statement and Licensing Declaration form, you represent that you have the authority to bind the Declarant and/or its AFFILIATES to the representations and commitments provided in this form.

Name of authorized person:

Title of authorized person:

Place, Date:

Signature:

Please return this form duly signed to TSDSI

IPR INFORMATION STATEMENT

Standard, technical specification or TSDSI project item				Proprietor	Applica tion No.	Publicat ion No.	Patent/ Applica tion Title	Patent No. If granted	Country y of registratio n	Additional Information Other members of this Patent Family, if any*		
Project or Standard Name	Work Item or Standar d No.	Specifica tion part of the standard (e.g. Section)	Versi on (V.X. X .X)							Applicat ion No.	Publicat ion No.	Country of registration

* Additional Information on IPR applications in India and other countries related to other members of a Patent Family is provided voluntarily.

Members may use the space below (or provide additional sheet duly signed) to provide Uniform Resource Locators (URL or link), pointing to the disclosures made by their AFFILIATES to any other standard body.

Please return this form together with the “IPR Information Statement and Licensing Declaration form” to TSDSI Director-General

IPR LICENSING DECLARATION

Optional written explanation of reasons for not making the IPR Licensing Declaration

The Declarant and/or its AFFILIATES are unwilling to grant irrevocable licences under the IPR(s) disclosed in the attached *IPR Information Statement Annex* on terms and conditions which are in accordance with Clause 4.1 of the TSDSI IPR POLICY.0

The Declarant and/or its AFFILIATES are unable to grant irrevocable licences under the IPR(s) disclosed in the attached *IPR Information Statement Annex* on terms and conditions which are in accordance with Clause 4.1 of the TSDSI IPR POLICY, because

the Declarant and/or its AFFILIATES are not the proprietor of the IPR(s) disclosed in the attached *IPR Information Statement Annex*,

the Declarant and/or its AFFILIATES do not have the ability to licence the IPR(s) disclosed in the attached *IPR Information Statement Annex* on terms and conditions which are in accordance with Clause 4.1 of the TSDSI IPR POLICY. In this case, please provide Contact information of those who may have this ability:

Legal Name:

Name and Title:

Department:

Address:

Telephone:

Fax:

Email:

Other reasons (please specify):

Please return this form together with the "IPR Information Statement and Licensing Declaration Form" to TSDSI Director-General,