

SIGIS License Exception Procedure

This document describes procedures to be taken by the SIGIS Board of Directors to address situations in which a Necessary Claims Notification has been timely submitted, as provided for in the SIGIS IPR Policy. These procedures should also be used when the Board is notified by other means that a party may have a patent that is likely to contain Necessary Claims (“Third Party Notification”) where the party is unwilling to grant a Royalty-Free License as defined in the IPR Policy. Notification of a third party patent shall only be deemed a Third Party Notification for purposes of these Procedures when the patent holder itself has alleged that implementation of a SIGIS Deliverable has or will infringe such patent, *e.g.*, sent a cease and desist letter, filed a complaint, etc.

When a Member provides a Necessary Claims Notification to the Board, or upon receiving a Third Party Notification (collectively a “License Exception”), the Board shall, within 10 days, commence a Necessary Claims Review as defined in this document. The purpose of the Necessary Claims Review is to resolve a License Exception and/or determine the best way to proceed notwithstanding the License Exception (“Purpose”). Any decision to modify a Deliverable shall only be made after consultation with the appropriate Working Group or Committee as set forth in these procedures.

I. Composition

1. The Board shall organize a Review Committee of representatives of then current Board Members. The Board may at its discretion limit the number of Board Members participating in the Review Committee or may permit all representatives of the Board to participate.
2. Members participating on the Review Committee may be represented by one or more representatives and each Member shall strive to include representatives that have a sufficient understanding of the relevant issues that will be evaluated by the Review Committee, including but not limited to the SIGIS IPR Policy, patent-related legal risks including privilege issues, and the technical specification at issue. However, each Member shall be entitled to only one (1) vote on the Review Committee. If the Member submitting the Necessary Claims Notification is represented on the Board, (1) representatives of the Member are ineligible to participate on the Review Committee, and (2) the Member’s Board representative is ineligible to participate in a vote according to these procedures.
3. The Review Committee shall choose one of its members to act as the chair for the duration of the Necessary Claims Review. In the event that the members of the committee are unable to agree on a chair by simple majority vote, the Board shall appoint a member to act as chair.
4. The Board may retain counsel, in addition to the SIGIS general counsel, to advise the Review Committee on issues that may be raised by the License Exception. The SIGIS general counsel and/or addition counsel retained by the Board shall attend all meetings of the Review Committee.
5. The chair of the Working Group developing or that developed the Deliverable shall automatically be a member of the Review Committee provided, however, that if the Working Group chair is not a representative of a Board member, he or she will be a non-voting member of the Review Committee. If the Working Group chair is a representative of the Member submitting the Necessary Claims Notification, the Working Group will appoint another representative to serve on the Review Committee in the place of the chair.

II. Process

The Necessary Claims Review is conducted as follows:

1. The Review Committee shall be formed within 10 days of receiving a notification of a License Exception. At the initial meeting of the Review Committee, the representatives, in conjunction with legal counsel, shall endeavor to identify any common legal interests that may exist between the Members of the Review Committee.
2. The Review Committee Chair, with the advice and counsel of the SIGIS general counsel and such legal counsel as the Board may retain to advise the Review Committee, shall conduct the business of the Review Committee, within the Purpose described above based on a simple majority vote of the committee members.
3. The Review Committee may, at any time during the Necessary Claims Review, request the assistance of any SIGIS Working Group or Committee to assist in its efforts.
4. The Review Committee shall, within 60 days of formation, investigate options for moving the Draft Deliverable forward, or in the case of a Final Deliverable, sustaining it, in light of the notification. All investigations conducted by the Review Committee shall be conducted under the guidance and at the request of the SIGIS general counsel and/or such legal counsel as the Board may retain to advise the Review Committee. Based upon the investigation conducted by the Review Committee, the SIGIS general counsel shall prepare a confidential and privileged report for the Board with advice as to how to proceed in view of the License Exception. The report shall include the following findings:
 - a. ***For a Necessary Claims Notification:*** Whether the Member that provided the Necessary Claims Notification, will voluntarily withdraw the notification, either because the Member has determined that it does not hold any Necessary Claims, the claim covers a Contribution made by that Member, or because the Member is now willing to grant the Royalty Free License.

If that Member does not voluntarily withdraw its Necessary Claims Notification, the report shall also address:

- i. Whether specific modifications to the Draft Deliverable could be made, such that the Member would withdraw its Necessary Claims Notification;
 - ii. Whether the feature(s) covered by the Necessary Claims Notification could be made merely optional (no requirements even if the option is implemented), and if so, whether the Member would agree to grant licenses on at least reasonable and non-discriminatory terms and conditions;
 - iii. A recommendation that the Draft Deliverable be approved, modified, or abandoned.
- b. ***For a Third Party Notification:*** Whether a patent holder identified as owning a patent and allegedly unwilling to offer the Royalty Free License, is willing to state that its patent does not contain Necessary Claims or that it will license its Necessary Claims according to the Royalty Free License.

If that party is unwilling to make such a statement, the report shall also address:

- I. Whether specific modifications could be made such that the party would make such a statement;
 - II. Whether the party identified the feature(s) covered by its patents, and if those feature(s) could be made merely optional, and if so, whether the party would offer licenses on reasonable and non-discriminatory terms and conditions;
 - III. A recommendation that the Deliverable be approved/sustained, modified, or rejected/rescinded.
5. The Board may also request that the General Counsel investigate other options.
 6. Neither the Review Committee nor any other SIGIS entity shall coerce, intimidate, or improperly pressure a patent holder with regard to the use and/or licensing of patent(s) subject to the Necessary Claims Review.
 7. The discussions, deliberations, and correspondence of the Review Committee shall be designated as Confidential by the Board and shall be protected by the attorney-client, common interest, and any other legal privileges that may be applicable. If deemed appropriate and if agreed to by Members participating on the Review Committee, the execution of a Common Interest or other agreement may be requested from the participating Members to protect the confidentiality and privilege of any discussions, deliberations, and correspondence of the Review Committee.

III. Board Action

1. In the event that a Member agrees to withdraw its Necessary Claims Notification or a patent holder agrees that its patent does not contain Necessary Claims or that it is willing to license such Necessary Claims according to the Royalty-Free License defined in the SIGIS IPR Policy, the License Exception will be deemed by the Board to be “Resolved.”
2. The Board shall vote on any Draft Deliverable where the License Exception has been Resolved according to the procedures set forth in Section 9.1 of the SIGIS Bylaws.
3. If at the end of the Necessary Claims Review the License Exception has not been Resolved, the Board must vote by a margin of at least ninety (90) percent of all Board Members eligible to vote to either approve the Draft Deliverable as a Final Deliverable or sustain an existing Final Deliverable. If such voting margin is not satisfied, the Board may reject the Draft Deliverable or return it to the relevant Working Group as set forth in Section 9.1 of the Bylaws. The Board may request a formal or informal opinion from the SIGIS General Counsel regarding the risks associated with the adoption of a Final Deliverable or a decision to sustain a Final Deliverable subject to a License Exception that has not been Resolved prior to any such vote.
4. The Board shall inform the SIGIS Membership of any action it takes to address the License Exception as well as any other information that the SIGIS General Counsel recommends be distributed to the SIGIS Members subject to Board approval.