

KNX ASSOCIATION CVBA
INTERNAL RULES
IPR

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Document History

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Introduction

In accordance with the *Internal Rules – Membership*, the IPR Manager ensures that the Association enters into an IPR License Agreement with all eligible members.

These Internal Rules govern the Association in its relationship with members who are party to an IPR License Agreement (“members”).

In case of conflicts the provisions of the IPR License Agreement have precedence.

The Internal Rules are grouped in 4 parts.

Part 1 The handling of IPR

Part 2 The process for identification of necessary IPR

Part 3 The format of the patent lists

Part 4 IPR management in general

Part 1: The handling of IPR

§ 1. Guiding principles

This paragraph summarises the IPR principles and rules in layman's terms – whereby the legally binding details are given elsewhere in this and other documents.

The Association has two guiding principles:

Principle #1: The goal of the Association is to achieve an open bus standard where:

- *All patents that are necessary for the exploitation of the bus standard, are licensed for free to all members.*
- *If copyrighted material (such as software or drawings) is necessary for the exploitation of the bus standard, then relevant access information is available (and licensed) to those members who create substitute or compatible works.*

Principle #2: For all other IPR, (i.e. IPR that is not necessary), the Association takes a “hands off” approach – the Association leaves matters concerning such IPR to the individual responsibility of its members.

In support of Principle #1 – Bullet 1, the Association conducts a process related to each version of the bus standard through which the necessary patents become identified, and where the respective patent owners (members) may give their consent to license them freely to all other members. The result of a successful Clearance process is a list of patents called the “Free List” – which is published, and from time to time updated, by the Association.

When a patent is entered into the Free List, the owner licenses the Association for its use in relation to the bus standard. The Association in turn sublicenses the patent to all other members for creating and exploiting products that comply with the bus standard.

When all known / detected necessary patents appear to end up in the Free List, the Association can Clear the bus standard. And at this point, the members are able to implement products without infringing the respective patent rights.

It is important to note that members need not disclose their patents during the Clearance process. They are given an opportunity to voluntarily do so and clarify grey-zone cases early. When disclosing a patent that may or may not be necessary, the member can refuse to license it altogether, thereby obtaining protection against the Association unilaterally licensing the patent after Clearance, if it deems the patent necessary.

However, if the Association then is unable to achieve a situation where all necessary patents can be assumed to end up in the Free List, the bus standard as a rule must be modified so as to bypass the respective patents.

In support of Principle #2 and to lay out the licenses that have been definitively refused during Clearance, the Association also publishes a second list of patents called the “Safe List”. This list informs members about patents which are somehow relevant to the bus standard, but which are not considered necessary to its implementation but rather “nice to have”. Or, alternatively, for which some other solution has been found. If members intend to use such a patent in their products, they might license it directly from the respective owner.

In support of Principle #1 – Bullet 2, a member might allege that copyrighted material (such as software or drawings) is necessary for an exploitation of the bus standard. If the Association so decides, then the Association and the member who owns the copyright must close an agreement about the extent of access information that is required for others to create their own substitute or compatible work. Other members may then request this access information (and a license under the copyright therein) from the Association for creating and exploiting products that comply with the bus standard.

§ 2. Internal member patents

Internal patents are patents of a member or of the Association. Usually, such a patent is owned by them. Patents of the Association are dealt with separately in § 3.

Internal member patents in the Free List are sublicensed to all members as per section 3 of the IPR License Agreement.

§ 2.1 The Clearance process

The process is set out in sections 1 and 2 of Annex 1 to the IPR License Agreement.

The process is run for each new version of the bus standard. Intermediate changes of the bus standard are possible but only Cleared if they are integrated into the next version.

The purpose is that each member obtains a high level of certainty at an early stage about the permission to use patents of fellow members and about whether he himself must give such permission.

The Management Board starts the process by ordering the IPR Manager to set the disclosure period of 12 weeks and to send out Letters of Request based on a standard format as described in § 6.

The members confirm receipt of the Letter of Request.

The IPR Manager sends an additional reminder to all members around 4 weeks before the 12 weeks period expires.

§ 2.1.1 Disclosure

During the disclosure period, a member may choose to disclose his patents and allocate them to either a License List (license to all other members for free) or a Non-License List (refusal to license for free).

He may also mention a patent of another member that is in the Safe List. The purpose is to again assess the patent that was previously held not to be necessary for some version. It might however be necessary for the version at hand. The affected other member then allocates his patent to either of his lists.

The member states official patent numbers in his License List and Non-License List, preferably an officially published patent or application number but at least an official internal identification number. Paper copies of the patents are annexed, preferably the official publications. If the patent claims are not (also) in the English language, the member adds a paper translation thereof.

After the disclosure period has elapsed and until Clearance as per section 1.5 of Annex 1, IPR LA, the IPR Manager shall strike patent indications from the Non-License List

regarding which the Management Board decides that the member did not sufficiently meet the criteria of the previous paragraph. The Association shall consult with the member when considering such decision.

Should the member himself request in writing that a patent be struck from his Non-License List at a time that the IPR Manager deems suitable, the IPR Manager shall do so.

The member at his earliest convenience shall also file

- the same information as is normally contained in the Free List, respectively the Safe List, as described in part 3,
- his statement on whether he thinks that each listed patent will be a necessary patent, and
- electronic copies of the above lists, patents and claims translations, information and statements, but only insofar as they are readily available to him.

§ 2.1.2 Objection

After the disclosure period has elapsed, the IPR Manager initially provides the License Lists, the Non-License Lists and at least the English language patent claims to all members, preferably in electronic form.

Within a subsequent period of 4 weeks, the member may request the Association in writing for a full text translation of specifically identified foreign-language patents.

The IPR Manager shall inform the member in writing of any such request by 2 or more other members regarding a patent in his Non-License List. The member within 4 weeks thereafter shall file an electronic translation or copy of an equivalent patent with the same content in English. The IPR Manager shall provide or disclose copies of the result to all members, preferably in electronic form.

After the translation period has elapsed and until Clearance as per section 1.5 of Annex 1, IPR LA, the IPR Manager shall strike the patent from the Non-License List if the Management Board decides that the member did not sufficiently meet the criteria of the previous paragraph. The Association shall consult with the member when considering such decision.

Around 7 weeks after the initial provision of disclosure results, the IPR Manager submits copies or summaries of the License Lists and the Non-License Lists and their available annexes, preferably in electronic form, to all members.

Within 6 weeks after the submission date, the member may object in writing to a patent being in a Non-License List on the ground that it is necessary and license should not be refused. The IPR Manager publishes the essentials of all objections.

If the IPR Manager does not find grounds to believe that the patent is necessary, he closes the objection process by notifying the objecting member.

Otherwise, and if the license after discussions with the IPR Manager continues to be refused, the Association decides whether a necessary patent is concerned.

If so, and if the IPR Manager cannot resolve the deadlock, subject to ratification by the Management Board, in an amicable and fair way, the Management Board will cease (or: not commence) the certification of goods and services under the version of the bus

standard. It may order the Technical Board to develop a modified version such that the patent will likely be avoided. The IPR Manager prematurely closes the internal patent Clearance process by corresponding publication.

In all other cases, the IPR Manager closes the objection process by making a corresponding publication that includes the essentials of any such resolution.

§ 2.1.3 Clearance

If all objections have been dealt with, the IPR Manager enters the patents from the License Lists and Non-License Lists into the Free List and Safe List and closes the internal patent Clearance process by making a corresponding publication.

§ 2.2 Processes after Clearance

Sections 3, 4 and 5 of Annex 1 to the IPR License Agreement deal with internal member patents after a Clearance process has been successfully executed.

These processes are initiated by the Management Board if and when it deems it appropriate.

The purpose is to obtain certainty soon with respect to member patents that were absent or assessed incorrectly in the Clearance process.

§ 2.2.1 Unlisted patents

Any member may bring an undisclosed patent of another member to the attention of the Association with the request to decide that it is necessary.

Younger patents that were invented after Clearance by a member should be overlooked in this process, because there had been no opportunity to disclose them and refuse licenses in the Clearance process.

If the patent is held to be necessary and not younger, the IPR Manager enters it into the Free List. The adversely affected member may request arbitration against this decision.

The adversely affected member also may claim that he justifiably could not find his own patent in time for disclosing it. This includes patents that he acquired from a third party before elapse of the disclosure period.

For such claim to be granted, the invention must have been created by a division that is not involved in home and building electronic systems. If already filed at the time, the patent must have been handled and financed by such divisions alone.

Other circumstances might play a role too. If the overall number of patents of the member was low, or if the official or an internal classification was typical for home and building electronic systems, or if its content suggests an application therein, there is as a rule no justification for not finding it.

If the IPR Manager, subject to ratification by the Management Board, is convinced, he removes the patent from the Free List. Otherwise, he requests arbitration instead.

§ 2.2.2 Patents in the Free List

A patent in the Free List principally remains there, even if it may no longer be a necessary patent for later versions of the bus standard. The license must be kept available for the users of previous versions.

The Association may give its opinion that a patent can no longer be considered a necessary patent for a later version of the bus standard. As with disputes about the scope of a license, the Association leaves the decision making to the members involved and eventually courts of law.

Any member may bring a patent of another member in the Free List to the attention of the Association with the request to decide that it is also necessary for an earlier version than the one for which it was entered therein.

If the Association decides accordingly, the IPR Manager removes the patent from the Free List and enters it again for the earlier version. The adversely affected member may request arbitration against the decision.

Such action for instance is required when an undisclosed patent had already been entered into the Free List for a later, Cleared version, while the earlier version had not yet been Cleared. This might happen if the Clearance processes of different versions run in parallel.

The Association however has to make the said decision within one year after the situation first arose, if at all, that is within one year after entry into the Free List or after Clearance of the earlier version, whatever comes later. If the Association does not spot the necessary nature in time, the patent is protected as if it were in the Safe List just for those earlier versions, in order to give the patent owner and everyone else certainty in the long run.

There is a second ground for removing patents from the Free List, namely changes in the patent itself.

At the close of relevant proceedings, for instance when an application is granted, or when a patent is maintained in opposition, the members must inform the Association of any resulting change in the content of their Free List patents.

Normally, the IPR Manager simply updates the identification of the patent in the Free List. However, if the Association decides that the patent no longer is necessary because of the change, the IPR Manager instead removes it therefrom.

§ 2.2.3 Patents in the Safe List

A patent in the Safe List is protected in the sense that it in principle remains there and is not moved into the Free List. As a main rule, the IPR Manager only removes it with the consent of the relevant member, for instance when it appears to be necessary during the internal patent Clearance process for some later version of the bus standard, or at any other time.

The Association may however unilaterally remove patents from the Safe List because of changes in the patent itself, this resembling a removal from the Free List as explained in § 2.2.2.

Such changes are ultimately under the control of the patent owner and therefore at his risk.

§ 2.2.4 Emergency exit

Although considered necessary after Clearance, a member patent might be in the Safe List or too young or otherwise not properly licensable.

In that case, the IPR Manager strives to find an amicable and fair solution with the member, which is subject to ratification by the Management Board. The IPR Manager publishes the essentials of any such solution.

Should the IPR Manager fail, the Management Board stops certification for the affected versions of the bus standard and may order the Technical Board to develop modified versions such that the patent will likely be avoided. The IPR Manager makes a corresponding publication. No one is expected to benefit from this “emergency exit”.

The purpose is to promote an amicable solution instead that fairly weighs the interests of other members that license their patents for free, as well as the interest of the member that disclosed his apparently non-necessary patent in time, or couldn't do so through no fault of his.

Short-term exit licenses are provided for those members who have already started using the patent that turned out to be necessary. In order for them to benefit most, they should bring an allegation of the patent being necessary to the attention of the Association without major delay.

§ 3. Internal patents of the Association

Necessary patents of the Association are licensed to all members as per section 3 of the IPR License Agreement.

Sections 3.1 - 3.4 of the IPR License Agreement define the scope and period of such licenses, sometimes explicitly and sometimes by analogy to Free List licenses. However, if the Association is constrained such that it cannot license its patents as broadly as patents that are in the Free List, then the scope and period of the license are correspondingly reduced.

For instance, the Association cannot pass on an exit license as per section 4.1 of Annex 1 to the members for longer than its 5 years duration.

§ 3.1 The process

The listing of Association patents is not set out in the IPR License Agreement.

The process is initiated by the Management Board at its earliest convenience.

The purpose is that each member obtains a high level of certainty at an early stage about the permission to use patents of the Association.

Any member may bring an unlisted patent of the Association to its attention with the request for its opinion that the patent is necessary.

If an Association patent is held to be necessary for a Cleared version of the bus standard, the IPR Manager in confirmation enters it into an “Association List”.

If the patent has not been entered into the Association List within 6 months from receipt of a written petition therefor, any adversely affected member may request arbitration.

The Association represents that the information in the Association List is correct, particularly that the patents therein are licensed to the members, and that the information will remain correct.

If information has not been correspondingly altered within 6 months from receipt of a written petition for correction, any adversely affected member may request arbitration.

§ 4. External patents

External patents are other patents than those of a member or of the Association.

The IPR License Agreement, particularly sections 8.2 and 8.5 of section 8 (“Disclaimer of warranties and special damages”) applies.

It remains the responsibility of each member to avoid or accept external patent risks with respect to its individual bus standard products and to carry out, or choose not to, its own product clearances.

§ 4.1 The investigation

The process is not set out in the IPR License Agreement.

The process is run with respect to some version of the bus standard if and at any time that the Management Board deems it appropriate.

The purpose of the external patent investigation is to lower the risks of external patents blocking future versions of the bus standard.

The Management Board starts the process by ordering the IPR Manager to make a corresponding publication and convene a panel of IPR experts under his supervision.

In order not to prejudice or bias the members, the IPR Manager then ensures that the IPR experts and he himself sign an undertaking with the Association to keep the identity of suspect patents and all related information strictly confidential and among themselves.

§ 4.1.1 Search and analysis

Any member may name suspect patents.

The panel actively searches external patents (not overlooking unlisted patents of members) that are potentially relevant for the bus standard, and then analyses them to see if they are likely to be necessary.

The search will likely cover many countries and involve key words. The analyses will relate to many jurisdictions and often-vague legal criteria. The members and the Association acknowledge that they can be incomplete or contain errors of judgement.

§ 4.1.2 Revealing internal patents

The confidentiality undertaking should allow the IPR Manager to reveal any apparently internal patent for the more important purpose of improving the Free List.

A member may of course disclose his so revealed patent in an ongoing internal patent Clearance process if the disclosure period has not yet elapsed. If too late, § 2.2.1 applies.

After consultation with the relevant member, the IPR Manager takes patents that he considers to be internal, out of this process.

§ 4.1.3 Royalty-bearing licenses

The IPR Manager might negotiate and agree options for a royalty-bearing license with the owner of a suspect external patent, subject to ratification by the Management Board.

In order for the option to be ratified, it must be irrevocable, open to all members at any time under non-discriminatory conditions and against a sensible royalty percentage of the net sales price of each licensed product, and have retroactive effect.

The IPR Manager publishes the full text of such a license contract.

§ 4.1.4 Closure

After the Management Board deems that reasonable efforts have been made, the IPR manager closes the external patent investigation by making a corresponding publication, eventually proposing an indication to the Management Board as to how the next versions might be modified.

§ 5. Internal copyrights

Internal copyrights are copyrights of a member or of the Association.

Internal copyrights in contributions to the creation of the bus standard are sublicensed to all members as per section 4 of Annex 2 to the IPR License Agreement.

If the Association decides that other copyrights of a member are necessary, he must provide access information that allows for the creation of substitute or compatible works. Copyrights in the access information are sublicensed to all members as per section 4 of Annex 2 to the IPR License Agreement.

§ 5.1 Providing access information

The process is set out in section 3 of Annex 2 to the IPR License Agreement.

The process is initiated by the Management Board at its discretion.

The purpose is to enable members to create their own substitute or compatible solutions.

Any member may bring a work of another member to the attention of the Association with the request to decide that the copyright therein is necessary.

§ 5.1.1 Defining access information

If the Association decides as requested, the IPR Manager and the member must reach a written agreement, subject to ratification by the Management Board, which defines the extent of access information required. If the IPR Manager finds substantial evidence that this agreement is not sufficient, subject to ratification by the Management Board, they must agree on an extension. The IPR Manager publishes such agreements.

The adversely affected member may request arbitration against the decision.

§ 5.1.2 Emergency exit

If the Management Board believes that an agreement on the extent of the access information cannot be reached, it may order the IPR Manager to negotiate an amicable and fair solution with the member, subject to ratification by the Management Board. The IPR Manager publishes the essentials of any such solution.

Alternatively, it may order the IPR Manager to request arbitration.

If the IPR Manager does not succeed in finding such a solution, the Management Board ceases (or: does not commence) the certification of goods and services under the respective version of the bus standard. It also may order the Technical Board to develop modified versions such that the copyright will likely be avoided.

§ 5.1.3 Request for access information

If another member requests the access information in writing, and the IPR Manager believes he has serious intentions to use it for the exploitation of the bus standard, then the IPR Manager provides it to him.

§ 5.1.4 Closure

If the Association decides that the copyright no longer is necessary, or its original decision is overturned in arbitration, the IPR Manager ceases (or: does not commence) providing access information to the other members and makes a corresponding publication.

§ 6. Proforma for Letter of Request

KNX Association CVBA, Brussels, ---> official Letterhead

Dear Mrs / Mr...,

Please find attached a (draft) version of the KNX Bus Standard,

Title Version

In accordance with the IPR License Agreement your company is kindly requested to disclose – in written form – its Patents that are relevant to the above proposed version of the KNX Bus Standard, within 12 weeks from, i.e. the deadline for return is

The disclosure shall contain:

- allocation of Patents to either a License List (license to all other Members for free) or a Non-License List (refusal to license for free). The information in these lists should follow the format of the Free List, respectively the Safe List as described in the Internal Rules – IPR part 3.
- your assertion whether it is a Necessary Patent or not, together with a short explanation.
- a paper and electronic copy of the Patent. If in a foreign language, please add a translation or a copy of an equivalent patent with identical content in English.
- any remark or comment that you may have.

Please return a copy of this letter as confirmation of receipt.

Please note that if your company should decide not to disclose a relevant Patent at this time, it may restrict its future discretion concerning the licensing thereof– see the IPR License Agreement, Annex 1, section 3 “Patents not in the Safe List”.

Even if no Patents are disclosed, could you please reply to this letter anyway, with a statement to this effect.

Thank you in advance.

Best regards,

IPR Manager.

Please return to:

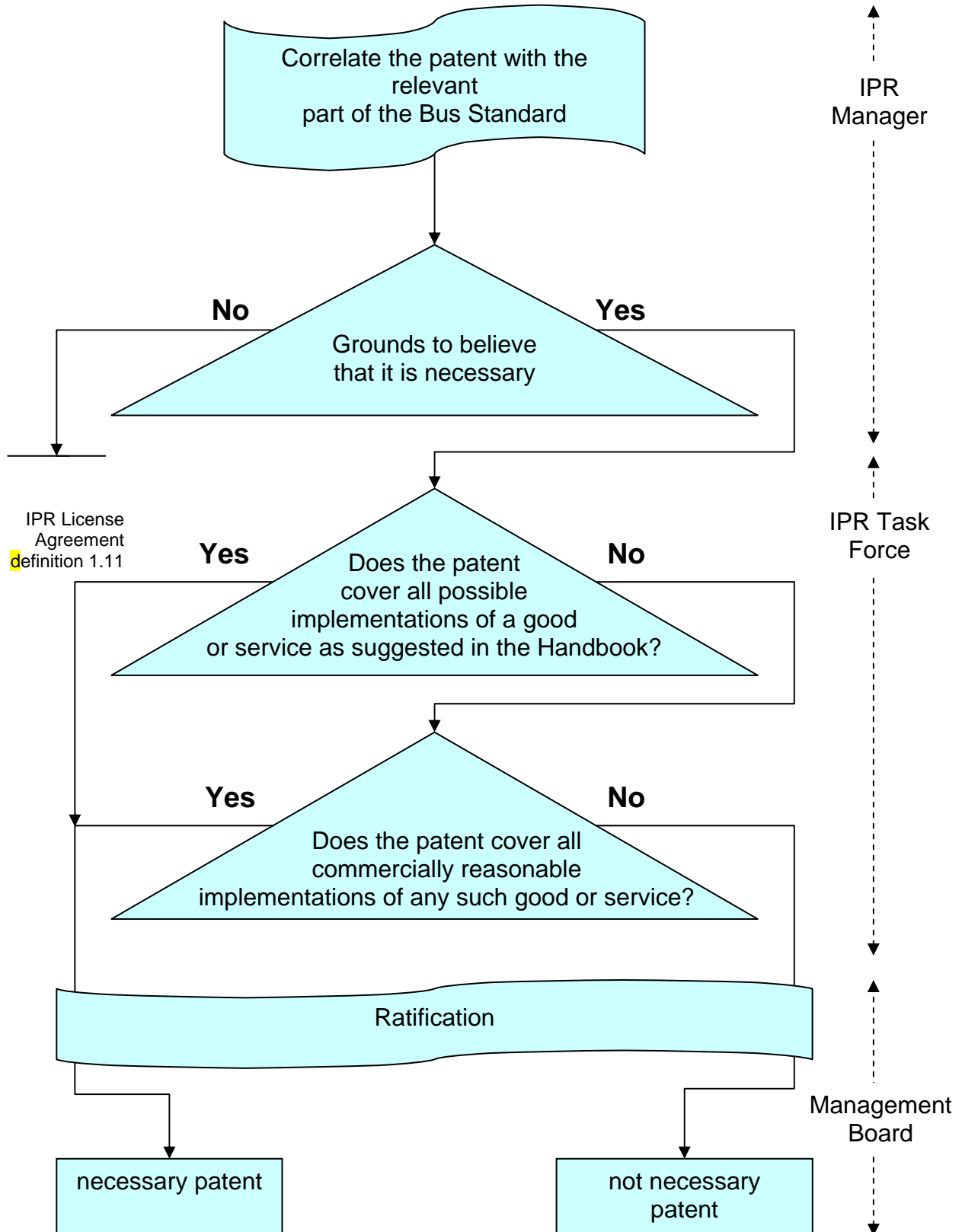
KNX Association General Directorate, Neerveld Straat 105 B-1200 Brussels. Fax +32 2 675 5028 e-mail: joost@eiba.com

Confirmation of receipt:

.....
Date and place	company	name	signature

Part 2: Process for identification of necessary IPR

The IPR Manager or the Management Board elicits a decision or an opinion of the IPR Task Force, subject to ratification of the Management Board, whether certain IPR is necessary. For a Clearance process, the steps for a decision of necessary patents are sketched here.



Part 3: The format of the patent lists

§ 1 General

The IPR Manager maintains (adding or updating their content) the Free List, the Safe List and the Association List. He publishes the latest version and distributes it after each entry or removal of a patent.

The status of a patent may alter. For instance, a patent has been maintained as amended in opposition, an application has been granted that was filed as an international application under the “Patent Co-operation Treaty”, or a priority application has been filed in further national or regional proceedings.

If he becomes aware that the status of a patent has altered, the IPR Manager updates the identification thereof in the Free List, the Safe List or Association List, unless the Association decides for removal because of a definitive change in the patent content, as explained in § 2.2.2 and § 2.2.3 of part 1.

§ 2 The Free List

The Free List has the following content:

1	2	3	4	5	6	7
Entry date of Patent and, if applicable, date of removal	Type, status as last stated by the licensing Member and description of Patent	Official publication number or official internal reference of Patent as last stated by the licensing Member	Licensing Member and Patent owner as last stated by the former	Expected maximum period of validity of Patent as last stated by the licensing Member	Reference to chapter and version of the Bus Standard	Specification of the version of the Bus Standard for which the Patent was entered. And, if applicable, the date before which the license is not available as stated by the licensing Member.

Example:

<i>Entry date:</i> 20.12.2001	<i>patent application, all claims</i>	<i>EP-A-1'234'567</i>	<i>X Ltd. Highstreet 10 London, UK</i>	<i>03.04.2018</i>	<i>Vol 3 part 2 Ch 3, § 2.6, version 1</i>	<i>Version 1</i>
<i>as above</i>	<i>patent claims 1 and 2, 12 and 13</i>	<i>US-A-7'654'321</i>	<i>as above</i>	<i>02.04.2019</i>	<i>as above</i>	<i>as above</i>

§ 3 The Safe List

The Safe List has the following content:

1	2	3	4	5	6	7
Entry date of Patent and, if applicable, date of removal	Type, status as last stated by the licensing Member and description of Patent	Official publication number or official internal reference of Patent as last stated by the licensing Member	Licensing Member and Patent owner as last stated by the former	Expected maximum period of validity of Patent as last stated by the licensing Member	Reference to chapter and version of the Bus Standard	Commercial License Option ¹ ?

Example:

<i>Entry date:</i> 20.12.2001	<i>patent, claims</i> 3-11, 14-22	<i>US-A-7'654'321</i>	<i>X Ltd.</i> <i>Highstreet 10</i> <i>London, UK</i>	<i>02.04.2019</i>	<i>Vol 3 part 2 Ch 3,</i> <i>§ 2.6, version 1</i>	Yes, option as of version 1, 0,5 % per I/O interface
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§ 4 The Association List

Normally, the Association List has the same format as the Free List.

Additionally, the latest Cleared version for which the Association considers the patent necessary, if any, is specified. As for exit licenses, the sublicensed versions, as well as the date on which the license began and the date on which it will end, are specified.

¹ Irrevocable option for all members at any time to obtain license as described below.

The license is of the same kind and has an equivalent scope as a license per Free List, licensing the stated version and all later versions, not however any later version that is licensed per Free List.

The license is against non-discriminatory conditions and mere payment of the stated royalty percentage of the net sales price per stated item.

The full text of the license contract is available at the Association.

Part 4: IPR management in general

§ 1 IPR Manager

The IPR Manager is appointed and dismissed by the Management Board

§ 2 IPR Task Force

The IPR Task Force typically consists of 4 to 6 participants from the ranks of members with patent and legal expertise who are appointed and dismissed by the Management Board and might include the IPR Manager.

The IPR Manager ensures that the participants to the IPR Task Force sign an undertaking with the Association in which they declare confidentiality and neutrality.

§ 3 Communication with the Association

The IPR Manager handles all notices to and from the members and others concerned, as well as publications.

§ 3.1 Notices

As set out in section 11 of the IPR License Agreement, notices are deemed given when delivered by hand or mailed per registered mail.

Notices are also deemed given when delivered per fax, provided that confirmation of receipt has been received per return fax.

Distributions and similar by the Association are also deemed made when displayed on its Internet site as well as delivered in summary to each member and other person concerned per e-mail or fax.

§ 3.2 Publications

Publications by the Association are deemed made when displayed on its Internet site.

§ 3.3 Time limits

A time period expires at the end of the day in the relevant subsequent week or month that has the same name or number (up to the highest available) as the day on which the relevant procedural step occurred.

However, if because of schedule or general interruption, such as strike, the post offices at the notifying party are prevented from handling registered mail on that day, the time period instead expires at the end of the first day after the removal of said prevention.

§ 4 Other housekeeping

The IPR Manager handles IPR issues for the Association by default, for instance

- supervising and tracing confidentiality and know how issues
- distributing new editions of these Internal Rules – IPR

§ 5 Subsidiaries

If a legal entity ceases to be a Subsidiary of a member, it remains a beneficiary and the member continues to warrant its compliance as set out in section 7 of the IPR License Agreement.

On request of the member, as set out in section 9.5 of the IPR License Agreement, the IPR Manager consents, subject to ratification by the Management Board, to a partial transfer of his rights and obligations with respect to the legal entity.

These rights and obligations must be transferred to the legal entity if it becomes a member itself.

§ 6 Arbitration

Acts by the Association in the processes of part 1 may only be challenged in arbitration insofar as is specifically set out there or in the IPR License Agreement. The Association itself strives to correct its administrative errors in time, and may do so with retroactive effect.

Arbitration does not suspend the processes of part 1.