

Draft IALA Patent Policy and associated procedures

1 INTRODUCTION

This Guideline establishes the IALA policy relating to Patentable subject matter, Patent Applications and Patents covering, in varying degrees, the subject matters of IALA Documents (Standards, Recommendations, Guidelines, Manuals, etc.).

The Patent Policy encourages the early disclosure and identification of Patents, Patent Applications and of potentially Patentable subject matter relevant ~~for~~ to the work of IALA and to IALA Documents under development.

The purpose of this Policy is twofold, namely on the one hand to prevent IALA Committee participants or third parties from patenting the contents of IALA Documents and thereby ~~instituting~~ creating obstacles to the work of IALA and on the other hand, to avoid infringements of patented subject matter within IALA Documents before the latter are published and used.

IALA is not in a position to evaluate the scope or validity of Patents, their relevance or essentiality with regards to the work of IALA or IALA Documents, to disclose Patentable subject matter, or to interfere with licensing negotiations, or engage in settling disputes on Patents.

2 OBJECTIVES

One of the objectives of IALA Documents is to facilitate the harmonization and interoperability of Marine Aids to Navigation, navigation technologies and ~~-~~systems worldwide.

To meet this objective, which is in the common interests of all those participating, the aim is that IALA Documents are accessible to ~~and~~ and may be used by ~~everybody~~.

The primary objective of this guideline is to be the Code of Practice in the event that Patents, Patent Applications or Patentable subject matter are embodied fully or partly in an IALA Document.

3 POLICY STATEMENT

3.1 General statement of policy

~~It is the intent of~~ IALA ~~intends~~ to develop Standards, Recommendations, Guidelines, Manuals and other guidance, i.e. "IALA Documents" that are free for use by the public in general and that are accessible to the public.

Therefore, IALA Documents should be kept free of subject matters, which could infringe patents or patent applications unless a free Patent License or a Patent License on reasonable terms is available.

IALA does not intend to apply for patent protection to obtain ~~the~~ sole right to exploit ~~their~~ patented inventions. On the contrary, ~~the aim of~~ IALA ~~has the aim of publishing is to publish~~ any patentable subject matter to prevent third parties from patenting said matter, which could obstruct the free use of IALA Documents by the public in general and public accessibility.

IALA Committees should follow the procedures in section 4 of this guideline in order to enforce this policy.

Commenté [31]: Is this sentence necessary? The original text tried to convey that IALA would not take an active role, but rather leave it to the parties concerned (patent holders and users of IALA guidelines). This sentence could be interpreted as IALA being responsible for providing external legal advice when necessary...
AEL: It is not mandatory: I have deleted this sentence.

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4 PROCEDURES RELATING TO PATENTS

4.1 Action to be taken by IALA in situations that may arise

In the course of their work, developing IALA Documents, situations may arise where IALA Committees may detect the existence of:

- Patentable subject matter,
- Patented subject matter, or
- Published Patent Application(s) covering patentable subject matter.

In all of the above ~~three~~ types of events, IALA will endeavour to ~~facilitate that bring~~ the parties involved ~~get~~ together with the aim that the patentable or the patented subject matter becomes accessible to all relevant stakeholders without undue constraints.

In the event that:

a) Patentable subject matter is disclosed.

Action: IALA ~~will endeavour~~ to publish this subject matter to eliminate the risk that a third party attempts to patent the subject matter, and thereby ~~institutes hindrances~~ ~~hinders to~~ the work of the IALA Committees.

In order to destroy the Novelty of the invention, the information published by IALA must include information and data to the extent that the published subject matter enables a person skilled in the art to understand the invention to the extent that he would be able to exploit the invention, and to deliver the information he has obtained to third parties.

b) Patented subject matter is disclosed.

Action: IALA ~~makes efforts~~ ~~will endeavour~~ to approach the Patent owner to ~~hear~~ establish whether a free License can be obtained and on ~~which~~ what conditions.

The preferred solution is that ~~if~~ the Patent owner is willing to issue a free license to IALA and IALA members to allow IALA Committees to continue their work, ~~this is the preferred solution~~.

If a free license for IALA and IALA members to use the patented subject matter as part of IALA's intended goals as an organisation cannot be obtained, ~~the~~ IALA Committees must carry on their work and activities with due respect ~~of to~~ the Patents i.e. by working around these Patents.

If it is not possible to work around said Patents and Patent applications, IALA may ~~engage in negotiating~~ seek to negotiate a License on reasonable terms.

c) Publication of a Patent Application that has been in the 18-months' secrecy box and that covers Patentable subject matter, is detected by IALA Patented subject matter is disclosed by IALA through the publication of a Patent Application that has been in the 18 months' secrecy box.

Action: IALA ~~makes efforts~~ ~~will endeavour~~ to approach the Patent Applicant to inquire whether a free License can be obtained and on ~~which~~ what conditions.

The preferred solution is ~~that~~ the Patent applicant is willing to issue a free license to IALA and IALA members to allow IALA Committees to continue their work, ~~this is the preferred solution~~.

If a free license for IALA and IALA members to use the patented subject matter as part of IALA's intended goals as an organisation cannot be obtained, the IALA Committees must carry on their work and activities with due respect ~~of to~~ the patent applications i.e. by respecting and working around the patented subject matter.

If it is not possible to work around said Patent applications, IALA may ~~engage in seeking to negotiating~~ negotiate a License on reasonable terms.

Commenté [32]: Detected? In the course of IALA Committees work.
AEL: I agree to this amendment with the purpose of not emphasizing an unwanted active role of IALA.

Commenté [33]: Detected
AEL: I agree. See my comments in previous frame

Commenté [34]: Can be confused with letter b). May be better if it reads: "application covering patentable subject matter is detected"
AEL: I see your point and suggest that the title of litra c) be rephrased to read: c) .Publication of a Patent Application that has been in the 18-months' secrecy box and that covers Patentable subject matter, is detected by IALA

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4.2 Disclosure of Patent and Patent applications and of Patentable subject matter:

Any party participating in the work of IALA should, from the outset, draw the attention of IALA to any known Patent or to any known pending Patent application, either its own or that of other organisations or individuals. This should be done in writing as early as possible.

IALA is not in a position to give authoritative or comprehensive information about evidence or to assess the validity or scope of patents, but it is desirable that the fullest available information is disclosed to form the broadest possible basis for decisions on how to proceed with the work of IALA.

In the case of the events referred to in paragraph 4.1 a), b) and c) above, the Patent Owner or the Patent Applicant must provide IALA with a written statement to be filed at the IALA Secretariat using the appropriate "Patent Statement and Licensing Declaration for IALA Documents" (Annex A). This statement must not include additional provisions, conditions, or any other exclusion clauses in excess of what is provided for each case in the corresponding boxes of the form in Annex A of this guideline.

4.3 Obligations of IALA Committee members

To meet the objectives described in this guideline, IALA Committee members must inform the Chair of their Committee about their own Patents and pending public Patent Applications or Patents and Patents Application of which they have knowledge, which are or may become relevant for the work of IALA. This should be done in a timely manner and before the relevant IALA Documents are published.

IALA Committee members must also inform the Chair of their Committee in a timely manner about any subject matter in IALA Documents that might be Patentable subject matter with the aim that this subject matter be published by IALA to prevent third party's patenting thereof.

4.4 Prompting for patent disclosures at IALA Committee meetings

Chairs of Committees will ask, at an appropriate time in each meeting, whether anyone present has knowledge of their own or other organizations' patents, or published pending patent applications, the use of which may be required to practice or implement the content of IALA Documents being considered.

This can be done by reading the following statement to all committee members:

Does anyone present have the knowledge of any patents, or published pending Patent applications, held either by themselves or by other organisations or individuals, the use of which may be required to practice or implement the content of IALA Documents being developed or worked on in this committee?

The fact that the question was asked shall be recorded in the meeting report, along with any affirmative and negative responses.

4.5 Use of patented elements in IALA Documents

Patented elements may only be included in ~~the~~ IALA Documents with the Patent Owner's or Patent Applicant's written consent. When IALA has a License Agreement with received a properly filled out and signed "IALA Patent Statement and Licensing Declaration" with either option 1 or option 2 selected (see Annex A) from the Patent Owner or Patent Applicant, a consent ~~has~~ is considered to have been granted.

4.6 Information on patented elements in IALA Documents

In lieu of an IALA patent database, each IALA Document shall list the ~~p~~Patents and Patent Applications, which have been declared as applicable to that document.

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5 DESCRIPTION OF TERMS

5.1 Description of terms

a) Patents and requirements ~~to~~ for Patents

A Patent is granted provided that the invention fulfils certain requirements:

1. The invention must be novel in relation to "the state of the art" and it must differ essentially from the "state of the art" at the day of the filing of the patent application,
2. an invention must be ~~susceptible~~ capable of industrial application to be patentable,
3. "the state of the art" comprises everything made available to the public (published) by means of written or oral description, by use or in any other way.

It follows from this, that if potentially patentable subject matter is made available to the public, e.g. by the ~~correct~~ publication on the IALA website, the subject matter can no longer be patented as the subject matter then lacks the required novelty.

The fact that only industrially applicable inventions are patentable means that an invention that cannot lead to an industrially manufactured product will not be patentable.

Further, a number of features are exempted from patenting and, therefore, cannot lead to the issuance of a patent. This is e.g. true for: discoveries, scientific theories, mathematical methods, aesthetic creations, programs for computers, playing games or doing business.

b) Patentable subject matter

Patentable subject matter is inventions that fulfil the requirements to become patented but for which ~~it is decided not to file a patent application~~ a patent application has not yet been submitted, see the requirements ~~to~~ for patentable inventions in section 5.1 a) above. Inventions, which are ~~susceptible~~ capable of industrial application, may be patented by the inventor or his Assignees. Inventions may be patented within all areas of technology.

~~When the decision is made not to patent patentable subject matter,~~ Publication of the patentable subject matter in the correct way must take place to destroy the novelty, see section 5.1 a) above.

c) Patent applications:

Pending Patent applications are not accessible to the public (non-published) for 18 months from the application date or if convention priority is claimed from the priority date.

The consequence of this secrecy-box-period is that IALA is unable to disclose the existence of potentially patented subject matter covered by unpublished patent applications and to work around such potentially patented subject matter.

d) Licenses and Royalty fees

The Patentee (Patent Owner) may issue a License that allows a third party to exploit his patent and the patented invention. A License is usually regulated between the parties, i.e. the Patentee/Licensors and his Licensee, in a License Agreement.

The payment for Licensee's right to use and exploit a patented invention is traditionally called a Royalty fee. The Royalty fee is often set as a percentage of e.g. the turnover of the patented products minus the Licensees documented expenses.

e) IALA Documents

IALA Documents are documents such as Standards, Recommendations, Guidelines, Manuals, etc. approved and published by IALA.

ANNEX A IALA PATENT STATEMENT AND LICENSING DECLARATION FORM**IALA PATENT STATEMENT AND LICENSING DECLARATION***This declaration does not represent an actual grant of a license*

Please return to:
 Secretary General, AISM-IALA
 10, rue des Gaudines, 78100 Saint Germain en Laye, France

Patent Owner:		
Legal Name and address of Licensor	<hr/>	
Contact details of Licensor and of Licensee :		
Name & Department	<hr/>	
Address	<hr/>	
	<hr/>	
Tel.	<hr/>	
Fax	<hr/>	
E-mail	<hr/>	
URL (optional)	<hr/>	
IALA Document type:		
<input type="checkbox"/> Standard	<input type="checkbox"/> Recommendation	<input type="checkbox"/> Guidelines
<input type="checkbox"/> Manual	<input type="checkbox"/> Other	
IALA Document Number / Id:	<hr/>	
Document title:	<hr/>	

Patent statement and licensing declaration form for IALA Documents - Page 1 of 3

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Patent Licensing Declaration:

The Patent Owner believes that it holds granted and/or pending applications for Patents, the use of which would be required to implement the above document and hereby declares, in accordance with the IALA Patent Policy that (check one box only):

☐
Option 1.

The Patent Owner **grants a Free of Charge License to IALA and IALA members** on a worldwide, **fair, reasonable and** non-discriminatory basis and under other reasonable terms and conditions to make, use, and sell implementations of the above-mentioned document.

Negotiations are left to the parties concerned and are performed outside of and independent of IALA except where IALA is one of the parties.

☐

Also mark here if the Patent Owner reserves the right to License on reasonable terms and conditions (but not Free of Charge) to applicants who are only willing to License their Patent, whose use would be required to implement the above IALA Document, on reasonable terms and conditions (but not Free of Charge).

☐
Option 2.

The Patent Owner is prepared to grant a **License to IALA and IALA members** on a worldwide, **fair, reasonable and** non-discriminatory basis and on reasonable terms and conditions to make, use and sell implementations of the above IALA Document.

☐
Option 3.

The Patent Owner is unwilling to grant Licenses in accordance with provisions of either option 1 or 2 above.

In this case, the following information must be provided to IALA as part of this declaration:

- Granted patent number or patent application number (if pending);
- Indication of which portions of the above IALA Document are affected;
- Description of the Patents covering the above IALA Document.

Free of Charge:

The words "Free of Charge" do not mean that the Patent Owner is waiving all of its rights with respect to the Patent. Rather, "Free of Charge" refers to the issue of monetary compensation; *i.e.*, that the Patent Owner 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 Owner in this situation is committing to not charging any monetary amount, the Patent Owner is still entitled to require that the implementer of the same above document signs a license agreement that contains other reasonable terms and conditions such as those relating to governing law, field of use, warranties, etc.

Patent:

The word "Patent" means those claims contained in and identified by patents on inventions (including applications for any of these) to the extent that any such claims are essential to the implementation of the same above document.

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Patent Information (desired but not required for options 1 and 2; required for option 3 (NOTE))				
No.	Status [granted/ pending]	Country	Granted Patent Number or Application Number (if pending)	Title
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

☐ Check here if additional patent information is provided on additional pages.

NOTE:

For option 3, the additional minimum information that shall also be provided is listed in the option 3 box above.

Signature (include on final page only):	
Patent Owner	_____
Name of authorized person	_____
Title of authorized person	_____
Signature	_____
Place, Date	