

Patent Advisory Group (PAG) Teleconference Minutes of February 7, 2017

PAG Members Attending: Ben Wilson, DigiCert; Bruce Morton, Entrust; Carolyn Oldenburg, GlobalSign; Chris Nalevanko, Amazon; Dean Coclin, Symantec; Doug Beattie, GlobalSign; Gerv Markham, Mozilla; Heather Buchta, GoDaddy; Jeremy Rowley, DigiCert; Kirk Hall, Entrust; Richard Nordgren, Symantec; Rowan Smith, GoDaddy; Stephen Cannavale, Comodo; Symantec; Tim Hollebeck, Trustwave; Virginia Fournier, Apple; Wayne Thayer, GoDaddy.

1. List of candidates for permanent PAG Chair; Election of Chair. There were no volunteers to be PAG Chair, so Kirk will continue as interim Chair for the meeting.
2. Assignment of Minutes-taker, style of Minutes. Kirk agreed to take Minutes of the meeting. He noted Virginia's recommendation of how to take Minutes for a PAG, and indicated he would follow her recommendation.
3. Review of Agenda. There were no suggestions for change.
4. Approval of Minutes of PAG meeting of Jan. 24, 2017 (as drafted by Virginia). The Minutes of Jan. 24 as drafted by Virginia were approved. The PAG noted that PAG minutes are typically not distributed to the public, but only to members, and the PAG agreed to follow that procedure. The PAG also discussed whether or not PAG calls should be recorded, and concluded it would help in drafting Minutes, but the recordings should be deleted immediately after Minutes were approved.
5. Review of updated list of patents presented in Exclusion Notices. The PAG noted that copies of or links to non-US patents listed in the Exclusion Notices had been provided.
6. Review of IPR Policy sections on what is included in a CABF Royalty Free License. The PAG noted the elements of a Royalty Free (RF) License under Section 5 of the IPR Policy.
7. Discuss order of PAG work – The PAG discussed whether it should first determine if the Exclusion Notices were covered by a previously-made Contribution by the excluder, or should it proceed to review of the form of RF licenses being offered by members who filed Exclusion Notices. It was noted that the PAG's job is not to determine whether an Essential Claim is valid, but to provide a conclusion about how to proceed in light of such claim. The sentiment was to work directly on the RF licenses first, as all three members who had filed Exclusion Notices have indicated an interest in granting RF licenses to Essential Claims in some form.

Doug said GlobalSign had made a "Contribution" during Validation Working Group proceedings as to validation method 9, but had filed an Exclusion Notice during the Review Period out of an excess of caution and because it wasn't sure how the IPR Policy would be applied. He indicated GlobalSign wanted to offer a RF license, and asked what should happen next.

The PAG discussed that the IPR Policy did not include an explicit option for members with Essential Claims to offer a RF license, and maybe it should. It was also noted that Symantec's Exclusion Notice explicitly modified the sample form of Exclusion Notice that had been based on the IPR Policy language to simultaneously offer a RF license. Doug asked if it would be appropriate for GlobalSign to modify its Exclusion Notice to indicate willingness to offer a RF license, and there was no objection.

Wayne said GoDaddy was also inclined to offer a RF license, but might want to follow a slightly different path than Symantec. -GoDaddy didn't want to sign individual licenses with every CA – it was looking for a way to grant a general license across the board. -GoDaddy would also file a modified Exclusion Notice to indicate that, and would also be looking for a reciprocal license of rights from other members who filed Exclusion Notices for their IP, the same as Symantec was.

The PAG discussed that it is not necessary for each member who filed an Exclusion Notice to use the same form of RF license, and also discussed how licenses could reach unknown CAs who are not members of the Forum, but who are following the BRs. For those members with Exclusion Notices who would prefer signed RF licenses with other CAs, like Symantec, the solution might be to post the form of license on the Forum website and direct those who want a license to contact Symantec

The PAG discussed whether the BRs should highlight that certain domain validation methods of BR 3.2.2.4 have associated Exclusion Notices, and that RF licenses were available. This could be done by using an asterisk or other marker for those methods in BR 3.2.2.4 with a footnote referring to a special Appendix, where links to or details of the Exclusion Notices and available licenses would be presented. This seemed like a good idea.

Finally, the PAG discussed the possibility of each member with Essential Claims having two forms of RF license – one a reciprocal license (to be used with other members who claim to have Essential Claims, subject to RF licenses), and the other just a basic license (to be used with other members who don't have RF licenses to Essential Claims). It was acknowledged it would be up to the licensing members to determine their own respective licensing terms.

8. Review of potential draft Symantec Royalty Free License; comparison with IPR Policy provisions. Rick said he did not yet have a form of RF license available to discuss, but hoped to by the next PAG meeting. The PAG's goal is to make sure the RF license complies with licensing section of the IPR Policy.

9. Discussion of other Exclusion Notices, possible solutions: GlobalSign, GoDaddy. No separate discussion.

10. Next steps. GoDaddy and GlobalSign may file modified Exclusion Notices to indicate their willingness to grant RF license. Symantec will prepare a first draft of a RF license.

11. Other Business. None

12. Next Meeting Date February 21, 2017

13. Adjourn

Patent Advisory Group (PAG) Teleconference Minutes of February 21, 2017

PAG Members Attending: Barrie Rody, Symantec; Ben Wilson, DigiCert; Carolyn Oldenburg, GlobalSign; Chris Nalevanko, Amazon; Dean Coclin, Symantec; Doug Beattie, GlobalSign; Gerv Markham, Mozilla; Kirk Hall, Entrust; Mike Johnson, DigiCert; Richard Nordgren, Symantec; Rowan Smith, GoDaddy; Virginia Fournier, Apple; Wayne Thayer, GoDaddy.

1. Assignment of Minutes-taker. Kirk agreed to take Minutes of the meeting.
2. Review of Agenda. The PAG agreed on an agenda for the call.
3. Approval of Minutes of PAG meeting of Feb. 7, 2017. The Minutes of Feb. 7, 2017 meeting as drafted by Kirk and edited by Virginia were approved.
4. Review of draft Symantec license. Rick presented a draft license agreement from Symantec he had sent out before the call. The PAG discussed various provisions. Rick said he will prepare a revised draft for the next PAG meeting on March 7.
5. Discussion of other Royalty Free Licenses in response to Exclusion Notices. GlobalSign and GoDaddy briefly discussed the possible royalty free licenses they might be offering. They may model their licenses in part on whatever final version of a license Symantec offers.
6. Other Business. None
7. Next Meeting Date March 7, 2017
8. Adjourn

Patent Advisory Group (PAG) Teleconference Minutes of March 7, 2017

PAG Members Attending: Barrie Rody, Symantec; Ben Wilson, DigiCert; Bruce Morton, Entrust Datacard; Chris Nalevanko, Amazon; David Rudin, Microsoft; Doug Beattie, GlobalSign; Gerv Markham, Mozilla; Jeff Ward, BDO (WebTrust); Jeremy Rowley, DigiCert; Kirk Hall, Entrust Datacard; Mike Johnson, DigiCert; Richard Nordgren, Symantec; Rowan Smith, GoDaddy; Stephen Cannavale, Comodo; Wayne Thayer, GoDaddy.

1. Assignment of Minutes-taker. Kirk agreed to take Minutes of the meeting.
2. Approval of Minutes of PAG meeting of Feb. 21, 2017. The Minutes of Feb. 21, 2017 meeting were approved.
3. Review of Emails since Feb. 21, 2017 meeting. The emails sent to the PAG since the Feb. 21 meeting were reviewed
4. Discussion of Path Forward. The PAG discussed how to proceed now that the three members who had filed Exclusion Notices in response to the Ballot 182 Review Notice has indicated their intention to grant royalty-free licenses (RTFs) in accordance with IPR Agreement (IPRA) Section 5.1.

It was noted that other SROs such as W3C pass many guidelines, but exclusion notices are rarely filed, even though W3C members hold many patents relevant to the guidelines. They uniformly intend to grant RFLs, so they take no action and allow a RFL to be granted automatically under the terms of the W3C IPR Agreement, on which the CABF IPRA was modelled.

After further discussion, there was consensus that members who intend to grant RFL for Essential Claims IP they hold encompassed in a Forum Final Guideline or Final Maintenance probably should not file Exclusion Notices indicating a willingness to grant a RFL. Under the IPRA, Exclusion Notices are limited to cases when a member does not want to grant a Section 5.1 RFL. Instead under IPRA Sec. 4.2 Exclusion Notices should only be used when the member has IP for an Essential Claim and the member is not willing to license the IP at all, or is willing to license the IP but wants to charge a royalty. The three members who filed Exclusion Notices for Ballot 182 each wants to grant a RFL and does not want to charge a royalty. Accordingly, it may be appropriate for the three members now to withdraw their Exclusion Notices.

The PAG noted that IPR Agreements for SROs are generally intended to work this way – members are encouraged to grant RFLs for their IP, and the assumption is that they will do so in accordance with the requirements stated for a RFL in the applicable IPR Agreement. The PAG recognized that IPR Agreements such as the Forum's IPRA allow a RFL to include certain terms of the IP holder's choosing (see Sec. 5.1 for examples), but there is generally no need to reduce a member's intended RFL to writing at the time the Forum creates a new Final Guideline or Final Maintenance Guideline, and there is not even a need for the member to disclose its IP at that time because the member intends to grant a RFL. Instead, the member can wait until an issue arises where the exact terms of the RFL that has been granted by the member need to be known (for example, in the event of litigation between two members over some matter), at which time the member holding the IP may reduce the RFL it has already granted to writing in any form desired, so long as the RFL complies with all the provisions of IPRA Sec. 5.1.

The PAG also discussed whether there was value at the present time in deciding whether a member who filed an Exclusion Notice should not have done so under IPRA Sec. 4.2 because the member's "Contribution" prevented the member from claiming exclusion for its IP. The consensus was no, there was no need or value in making that determination at the present time if the member intended to grant a RFL that complies with IPRA Sec. 5.1.

Also, because all three members who filed Ballot 182 Exclusion Notices have indicated their possible willingness to withdraw their Exclusion Notices in the near future, there was no reason to research the "Contribution" issue at this time.

Symantec, GoDaddy, and GlobalSign all indicated they would consider withdrawing their Ballot 182 Exclusion Notices. If so, the work of the PAG would be complete, and the PAG would not need to issue any conclusion and could discontinue future meetings.

5. Other Business. None

6. Next Meeting Date March 21, 2017 [Note: this meeting was later cancelled due to a conflict with the dates of the Forum's Face-to-Face meeting]

7. Adjourn

Patent Advisory Group (PAG) Teleconference Minutes of April 4, 2017

PAG Members Attending: Barrie Rody, Symantec; Ben Wilson, DigiCert; Bruce Morton, Entrust Datacard; David Rudin, Microsoft; Dean Coclin, Symantec; Doug Beattie, GlobalSign; Kirk Hall, Entrust Datacard; Richard Nordgren, Symantec; Stephen Cannavale, Comodo.

1. Assignment of Minutes-taker. Kirk agreed to take Minutes of the meeting.
2. Approval of Minutes of PAG meeting of March 7, 2017. The Minutes of March 7, 2017 meeting were approved.
3. Recent CA/Browser Forum Face-to-Face Meeting: Kirk said he had circulated the draft March 7, 2017 PAG Minutes to Forum members on the Management list, and had provided a verbal update of the PAG's work at the recent Forum Face-to-Face meeting in Research Triangle Park, NC.
4. Discussion of PAG Ballot 182 Conclusion and plan for distribution. Kirk noted that a revised version of a PAG conclusion had been circulated before the call, and was relatively short. The actual PAG Conclusion would read as follows:

PAG Conclusion: Based on the narrative above, and because there are no longer any Exclusion Notices pending in connection with the Forum's Ballot 182, there is no longer any "conflict" for the PAG to resolve and no other action for the PAG to take. Accordingly, the PAG will hereby dissolve without reaching any Conclusion.

The Ballot 182 Exclusion Notices and the Withdrawals would be attached to the PAG Conclusion once adopted.

Kirk said he proposed to first provide the Forum Members with the PAG's Conclusion and bundled PAG meeting Minutes at its next teleconference for discussion, and then would post the PAG Conclusion and bundled Minutes both to the Public list and to the Forum website to inform other CAs who are not Forum members.

5. Approval of PAG Ballot 182 Conclusion and plan for distribution.

The PAG members approved the revised PAG Ballot 182 Conclusion that had been circulated before the call as the final PAG Ballot 182 Conclusion and also approved Kirk's plan for distribution by consensus.

6. Other Business. None

6. Next Meeting Date. Kirk noted that the PAG had completed its work, and therefore there would be no further meetings. He thanked Virginia Fournier of Apple for her initial work in getting the Forum to address how it should be implementing its IPR Policy, and all the other IP attorneys who had participated on the PAG calls for providing useful guidance. Kirk said he thought the outcome from the PAG's work and the actions of the Members had been very beneficial to all CAs.

7. Adjourn. The PAG meeting was adjourned.