

February 4, 2004

**Open Mobile Alliance IPR Procedural Guidelines
For OMA Members**

DISCLOSURE

Members and their Affiliates (collectively, "Members") agree to use their reasonable endeavours to inform timely the Open Mobile Alliance of Essential IPR as they become aware that the Essential IPR is related to the prepared or published Specification. This obligation does not imply an obligation on Members to conduct IPR searches. This duty is contained in the Open Mobile Alliance application form (the "Application Form") to which each Member's attention is drawn. The Application Form is available on the Open Mobile Alliance Web site at <http://www.openmobilealliance.org/>

Where appropriate, definitions set out in the Application Form and the Articles of Association have been used throughout this document.

The procedure for disclosure of Essential IPR's is as follows:

1. At any meeting of the Technical Plenary and its groups, including its committees and sub-committees, where technical specifications are discussed ("Meeting") the convener of the Meeting shall remind Members of their duty to disclose Essential IPR. The convener will make the statement as set forth in Appendix D below.
2. The same statement shall also be specifically made at the following stages:
 - 2.1 by the Technical Plenary convener on submission to the Technical Plenary of a technical specification to be approved as a Specification;
 - 2.2 by the Technical Plenary convener on adoption of a technical specification as an approved Specification if such adoption is during a meeting which is different from that noted in section 2.1;
 - 2.3 by the Technical Plenary convener prior to the publication of a Specification which has been ratified by the Open Mobile Alliance Board of Directors.
3. Where any of the above instances as set forth in section 2 takes place in a Meeting, the convener of such Meeting shall minute that enquiries in relation to Essential IPR's were made and shall record the answers received. If there were no replies, this fact shall also be recorded.
4. If a participant discloses Essential IPR pursuant to its obligations under the Application Form it shall, or a competent person from its organisation shall, fill out the IPR Information Statement set forth in Appendix A.
5. As a further reminder to Members of their duty to disclose Essential IPR, approximately once a year, and at other times if the need arises, the Open Mobile Alliance shall provide to all Members a reminder in a format similar to that described in Appendix D.

LICENSING DECLARATION

Upon disclosure of an Essential IPR, the Open Mobile Alliance shall ask the relevant Member to give a declaration that it will license such Essential IPR in accordance with the Application Form (i.e. on fair, reasonable and non-discriminatory terms). Appendix B to these IPR Procedural Guidelines contains the standard form that shall be used for this declaration.

A Member shall immediately notify the Open Mobile Alliance if it or one of its Affiliates is not prepared to licence an Essential IPR and shall, upon request from the Open Mobile Alliance, provide a written explanation of the reasons for refusing to license such Essential IPR within ninety (90) days of receipt of such request. A valid reason for such a refusal is that such IPR is not an Essential IPR. Any disputes shall be finally resolved by arbitration in accordance with the terms of the Application Form.

RECORD KEEPING

Details received from Members regarding IPR disclosures and licensing declarations are held by and freely available from the Open Mobile Alliance. The Open Mobile Alliance has currently posted at http://www.openmobilealliance.org/about_OMA/ipr.html a list of IPR disclosures ("IPR Declarations List"). The IPR Declarations List is updated from time to time, though at any particular point in time the IPR Declarations List may not reflect all of the information received from the membership. No representations or warranties (whether express or implied) are made by the Open Mobile Alliance regarding any of the information related to IPR disclosures, including but not limited to the accuracy, completeness, validity or relevance of the information or whether or not such IPR rights are essential or non-essential.

All notices, declarations and documents to be given to the Open Mobile Alliance in relation to these IPR Procedural Guidelines shall be sent to the General Manager of Operations of the Open Mobile Alliance.

Appendix A: IPR Information Statement

Appendix B: IPR Licensing Declaration

Appendix C: Notice of Essential IPR for inclusion in all Specifications

Appendix D: Example of a formal call for IPR's

Appendix A IPR Information Statement
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This statement is made on _____ (date) by _____

representative of _____, a Member of the Open Mobile Alliance Ltd (“OMA”). In accordance with the OMA Application Form, I hereby inform OMA it is the belief of the undersigned, signing on behalf of the Member, that the following IPR’s are, or likely to become, Essential IPR’s in relation to the draft technical specification/Specification ⁽¹⁾ identified as
 _____.

Company	Title	Country	Appl. #	Patent #	Specification reference, impacted paragraph	Countries Applicable

Signed by _____

Print Name _____

Position _____

Notes:

⁽¹⁾ Delete as appropriate.

Following completion, this form should be forwarded to the General Manager of Operations of the Open Mobile Alliance.

Appendix B IPR Licensing Declaration
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This declaration is given on _____ (date) by

_____ (Member's name)

To the Open Mobile Alliance Ltd. of England (the "OMA")

The Member has notified OMA that it (or one of its Affiliates) is the proprietor of the intellectual property rights listed in Appendix A (the "Essential IPR") and has informed OMA that it believes that the Essential IPR is essential to the Specifications also listed in Appendix A, as the term "Essential IPR" is defined in the Application Form for membership in OMA.

The Member and/or its Affiliate(s) hereby declare that it is/they are prepared to grant licenses to use the Essential IPR in respect of a Specification on terms and conditions which are in accordance with the Application Form.

The construction, validity and performance of this declaration shall be governed by, and construed in accordance with, the laws of England and Wales.

Signed for and behalf of the Member

By _____

Print Name _____

Position _____

Appendix C: Notice of Essential IPR for inclusion in all Specifications

Notice to be used in all Specifications:

Each Open Mobile Alliance member has agreed to use reasonable endeavors to inform the Open Mobile Alliance in a timely manner of Essential IPR as it becomes aware that the Essential IPR is related to the prepared or published specification. However, the members do not have an obligation to conduct IPR searches. The declared Essential IPR is publicly available to members and non-members of the Open Mobile Alliance and may be found on the "OMA IPR Declarations" list at <http://www.openmobilealliance.org/ipr.html>. The Open Mobile Alliance has not conducted an independent IPR review of this document and the information contained herein, and makes no representations or warranties regarding third party IPR, including without limitation patents, copyrights or trade secret rights. This document may contain inventions for which you must obtain licenses from third parties before making, using or selling the inventions. Defined terms above are set forth in the schedule to the Open Mobile Alliance Application Form.

NO REPRESENTATIONS OR WARRANTIES (WHETHER EXPRESS OR IMPLIED) ARE MADE BY THE OPEN MOBILE ALLIANCE OR ANY OPEN MOBILE ALLIANCE MEMBER OR ITS AFFILIATES REGARDING ANY OF THE IPR'S REPRESENTED ON THE "OMA IPR DECLARATIONS" LIST, INCLUDING, BUT NOT LIMITED TO THE ACCURACY, COMPLETENESS, VALIDITY OR RELEVANCE OF THE INFORMATION OR WHETHER OR NOT SUCH RIGHTS ARE ESSENTIAL OR NON-ESSENTIAL.

THE OPEN MOBILE ALLIANCE IS NOT LIABLE FOR AND HEREBY DISCLAIMS ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OF DOCUMENTS AND THE INFORMATION CONTAINED IN THE DOCUMENTS.

Appendix D Example of a formal call for IPR's

Each Member will use its reasonable endeavours to inform timely the Open Mobile Alliance of Essential IPR as it becomes aware that the Essential IPR is related to the prepared or published Specification. Members shall submit to the General Manager of Operations of OMA the IPR Statement and the IPR Licensing Declaration. These forms are available from OMA or online at the OMA website at www.openmobilealliance.org.