

20 January 2017

DECISION OF THE SASB APPEAL OFFICERS

Appellants have appealed from the action taken by the IEEE 802 LMSC Sponsor (“IEEE 802”) Executive Committee and the IEEE Standards Association Standards Board (“SASB”) following the IEEE-SA’s finding that a special interest group (“SIG”) engaged in dominance in connection with the 802 TGax complaint, arguing that the remedies implemented by the IEEE 802 Executive Committee and the SASB are ineffective and insufficient. The action of the IEEE 802 Executive Committee occurred on 8 November 2016. The appeal was submitted on 5 January 2017. To the extent that the appeal is taken from the IEEE 802 Executive Committee’s decision, the appeal is rejected as untimely. The action of the SASB occurred on 7 December 2016, and the appeal as to that action is timely.

The SASB Appeal Officers have reviewed the Appellants’ brief in accordance with Section 5.8 of the IEEE-SA Standards Board Operations Manual to determine whether Appellants have established a prima facie case and whether the appeal shall be heard by an SASB Appeal Panel, should be referred to the IEEE-SA Board of Governors, or should be returned to the Appellant with instructions. For the reasons stated below, the SASB Appeal Officers have determined that Appellants have not established a prima facie case and that the appeal should therefore be dismissed.

Section 5.8.3 of the IEEE-SA Standards Board Operations Manual provides:

The SASB Appeal Officers shall review the appeal brief and determine within 20 days of receipt of the appeal brief whether the appeal shall be heard by an IEEE-SA Standards Board Appeal Panel, should be referred to the IEEE-SA BOG, or should be returned to the appellant with instructions. ...The SASB Appeal Officers shall review whether the appellant has established a prima facie case.... If it is determined that a prima facie case has not been established, the Secretary shall notify the appellant in writing that the appeal will be dismissed.

Section 5.4 of the IEEE-SA Standards Board Bylaws provides:

Persons who have directly and materially affected interests and who have been, or could reasonably be expected to be, adversely affected by a standard within the IEEE’s jurisdiction, or by the lack of action in any part of the IEEE standardization process, shall have the right to appeal procedural actions or inactions, provided that the appellant shall have first exhausted the appeals procedures of any relevant subordinate committee or body before filing the procedural appeal with the IEEE-SA Standards Board.

Appellants have the right to appeal “procedural actions or inactions”. However, Appellants are not arguing that the SASB’s action to ratify the actions taken on 8 November 2016 by the IEEE 802 Executive Committee violated any IEEE-SA policy or procedure. Although Appellants claim that the SASB’s remedies to address dominance in 802.11 TGax are not effective, that claim does not provide a basis for appeal.

Specifically, Section 5.2.1.3 of the IEEE-SA Standards Board Operations Manual provides in relevant part:

If evidence of dominance exists, corrective action shall be initiated. If the Sponsor's official P&P contain corrective action(s), the Sponsor shall implement such action(s) and promptly notify the IEEE-SA Standards Board. If the Sponsor's official P&P do not contain corrective actions, the Sponsor shall initiate corrective action(s), but only after such action(s) have been approved by the IEEE-SA Standards Board.

In the absence of effective corrective action(s) by the Sponsor, the IEEE-SA Standards Board shall implement either the corrective action specified in 5.2.1.3.1 or, at its discretion, an alternative corrective action [e.g., withdrawal of the PAR, limiting the number of voting members, one vote per organization, etc.]. The IEEE-SA Standards Board may impose further corrective action(s) if previous corrective action(s) prove to be insufficient.

The first quoted sentence states that “corrective action shall be initiated.” Appellants do not claim that no corrective action was taken. The second sentence applies only if the Sponsor’s P&P require a specific corrective action. Appellants do not claim that the Sponsor (IEEE 802 via its Executive Committee) failed to implement a corrective action that was provided in the Sponsor’s P&P. The third sentence applies where the Sponsor’s P&P do not specify an action and requires SASB approval of the Sponsor’s action. Appellants do not claim that the Sponsor implemented a remedy without SASB approval. App. Br. At 3 (“It is Appellants’ understanding that the SASB approved the Remedies during its December 7, 2016 meeting . . .”).

The second paragraph applies only if the Sponsor has failed to take “effective corrective action(s).” The rule does not specify who should determine whether the Sponsor’s action was effective or the date as of which such a determination should be made. Even if it is assumed that the Sponsor failed to take “effective corrective action,” however, that would only mean that the SASB is required to implement either “the corrective action specified in 5.2.1.3.1 or, at its discretion, an alternative corrective action.” Appellants do not claim that the SASB failed to implement “a corrective action” (in this instance, “an alternative corrective action”), namely, the action that the SASB approved. Appellants do not claim that the action taken was a prohibited action. Appellants simply disagree with the effectiveness of the chosen remedy. There is no procedural issue for an appellate

panel to address, and it would not be appropriate for an appeals panel to substitute its judgment for that of the full IEEE-SA Standards Board.

This does not mean that Appellants are left without an avenue for pursuing what they believe would be a more appropriate remedy. The final sentence in the quoted passage permits the SASB to “impose further corrective action(s) if previous corrective action(s) prove to be insufficient.” An SASB member, Appellants, or any other party who believes that a corrective action has proven to be ineffective is free to request that the SASB consider further corrective action. This permits the SASB itself (as opposed to a much smaller appeals panel) to determine whether its remedy has been effective and, if it believes appropriate, to provide further or different corrective action. This would also permit other interested parties (who might believe that the remedy was effective or was even more than the circumstance warranted) to provide information as well.

Therefore, an SASB Appeal Panel will not be appointed, and the appeal is dismissed. The Secretary is instructed to send a copy of this decision to all Appellants.

Jean-Philippe Faure and John Kulick
SASB Appeal Officers