

# IEEE HVCB Q&R WG

WG PC37.10

**Draft “Guide for Investigation,  
Analysis and Reporting of  
Power Circuit Breaker Failures”**

Tuesday, Sept. 28, 2010

08:00 – 09:45

Las Vegas, NV

# Proposed Agenda

- Introductions
- Acceptance of Minutes of Myrtle Beach meeting
- IEEE Patent slides
- Results of Recirculation Ballot of PC37.10 D2.0
- Resolution of negative ballot and response to balloting comments
- New Business

# Changes to Patent Policy

- a) Contributions that are previously published and those not previously published
- b) Copyright ownership of original contributions versus ownership of the compilation (e.g., the draft or approved standard)
- c) Responsibilities of all participants, including the responsibility to understand and comply with the Copyright Policy
- d) A clear explanation of what rights are granted to the IEEE when a contribution is submitted and the rights that the IEEE has once the standard is approved

# Instructions for the WG Chair

The IEEE-SA strongly recommends that at each WG meeting the chair or a designee:

- Show slides #1 through #4 of this presentation
- Advise the WG attendees that:
  - The IEEE's patent policy is consistent with the ANSI patent policy and is described in Clause 6 of the *IEEE-SA Standards Board Bylaws*;
  - Early identification of patent claims which may be essential for the use of standards under development is strongly encouraged;
  - There may be Essential Patent Claims of which the IEEE is not aware. Additionally, neither the IEEE, the WG, nor the WG chair can ensure the accuracy or completeness of any assurance or whether any such assurance is, in fact, of a Patent Claim that is essential for the use of the standard under development.
- Instruct the WG Secretary to record in the minutes of the relevant WG meeting:
  - That the foregoing information was provided and that slides 1 through 4 (and this slide 0, if applicable) were shown;
  - That the chair or designee provided an opportunity for participants to identify patent claim(s)/patent application claim(s) and/or the holder of patent claim(s)/patent application claim(s) of which the participant is personally aware and that may be essential for the use of that standard
  - Any responses that were given, specifically the patent claim(s)/patent application claim(s) and/or the holder of the patent claim(s)/patent application claim(s) that were identified (if any) and by whom.
- The WG Chair shall ensure that a request is made to any identified holders of potential essential patent claim(s) to complete and submit a Letter of Assurance.
- It is recommended that the WG chair review the guidance in *IEEE-SA Standards Board Operations Manual* 6.3.5 and in FAQs 12 and 12a on inclusion of potential Essential Patent Claims by incorporation or by reference.

Note: **WG** includes Working Groups, Task Groups, and other standards-developing committees with a PAR approved by the IEEE-SA Standards Board.

**(Optional to be shown)**

# Participants, Patents, and Duty to Inform

All participants in this meeting have certain obligations under the IEEE-SA Patent Policy. Participants:

- “Shall inform the IEEE (or cause the IEEE to be informed)” of the identity of each “holder of any potential Essential Patent Claims of which they are personally aware” if the claims are owned or controlled by the participant or the entity the participant is from, employed by, or otherwise represents
  - “Personal awareness” means that the participant “is personally aware that the holder may have a potential Essential Patent Claim,” even if the participant is not personally aware of the specific patents or patent claims
- “Should inform the IEEE (or cause the IEEE to be informed)” of the identity of “any other holders of such potential Essential Patent Claims” (that is, third parties that are not affiliated with the participant, with the participant’s employer, or with anyone else that the participant is from or otherwise represents)
- The above does not apply if the patent claim is already the subject of an Accepted Letter of Assurance that applies to the proposed standard(s) under consideration by this group

Quoted text excerpted from IEEE-SA Standards Board Bylaws subclause 6.2

- Early identification of holders of potential Essential Patent Claims is strongly encouraged
- No duty to perform a patent search

# Patent Related Links

All participants should be familiar with their obligations under the IEEE-SA Policies & Procedures for standards development.

Patent Policy is stated in these sources:

IEEE-SA Standards Boards Bylaws

*<http://standards.ieee.org/guides/bylaws/sect6-7.html#6>*

IEEE-SA Standards Board Operations Manual

*<http://standards.ieee.org/guides/opman/sect6.html#6.3>*

Material about the patent policy is available at

*<http://standards.ieee.org/board/pat/pat-material.html>*

If you have questions, contact the IEEE-SA Standards Board Patent Committee Administrator at [patcom@ieee.org](mailto:patcom@ieee.org) or visit <http://standards.ieee.org/board/pat/index.html>

This slide set is available at <http://standards.ieee.org/board/pat/pat-slideset.ppt>

# Call for Potentially Essential Patents

- If anyone in this meeting is personally aware of the holder of any patent claims that are potentially essential to implementation of the proposed standard(s) under consideration by this group and that are not already the subject of an Accepted Letter of Assurance:
  - Either speak up now or
  - Provide the chair of this group with the identity of the holder(s) of any and all such claims as soon as possible or
  - Cause an LOA to be submitted

# Other Guidelines for IEEE WG

## Meetings

- **All IEEE-SA standards meetings shall be conducted in compliance with all applicable laws, including antitrust and competition laws.**
  - **Don't discuss the interpretation, validity, or essentiality of patents/patent claims.**
  - **Don't discuss specific license rates, terms, or conditions.**
    - Relative costs, including licensing costs of essential patent claims, of different technical approaches may be discussed in standards development meetings.
      - Technical considerations remain primary focus
  - **Don't discuss or engage in the fixing of product prices, allocation of customers, or division of sales markets.**
  - **Don't discuss the status or substance of ongoing or threatened litigation.**
  - **Don't be silent if inappropriate topics are discussed ... do formally object.**

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See *IEEE-SA Standards Board Operations Manual*, clause 5.3.10 and “Promoting Competition and Innovation: What You Need to Know about the IEEE Standards Association’s Antitrust and Competition Policy” for more details.



# New FAQ

12a. How should Working Groups handle Letters of Assurance when re-using portions of a non-IEEE standard in a [Proposed] IEEE Standard?

**The Working Group Chair shall initiate a request for a Letter of Assurance from holders of potential Essential Patent Claims when re-using portions of an existing non-IEEE standard in a [Proposed] IEEE Standard. Any patent letters of assurance (or patent declarations) given to the developer of the non-IEEE standard cannot be stated to also apply to the [Proposed] IEEE Standard. In addition, there are specific requirements that must be incorporated into an IEEE Letter of Assurance in order for it to have the possibility of becoming an Accepted IEEE Letter of Assurance.**

# **IEEE PC37.10™/D1.0**

- **Draft “Guide for Investigation, Analysis and Reporting of Power Circuit Breaker Failures”**
  - **Revision of Std C37.10, and**
  - **Incorporation of IEEE Std 1325**

# **Ballot Results PC37.10/D1.0**

- Ballot Open Date:24-Mar-2010
- Ballot Close Date:23-Apr-2010

# RESPONSE RATE

- This ballot has met the 75% returned ballot requirement.
- 106 eligible people in this ballot group
- 79 affirmative votes
- 9 negative votes with comments
- 0 negative votes without comments
- 3 abstention votes
- 91 votes received = 85% returned
- 3% abstention

# Initial Ballot Summary PC37.10

Classification	Affirmative	Negative	Abstain	Un-returned	Total
Producer	19	5	0	5	29
User	32	2	2	6	42
Gov't/Milt	4	0	0	1	5
General Interest	24	2	1	3	30
Totals	79	9	3	15	106

# APPROVAL RATE

- The 75% affirmation requirement is being met.
- 79 affirmative votes
- 9 negative votes with comments
- 88 votes = 89% affirmative

# **Recirculation Ballot #1 Results**

## **PC37.10/D.0**

- Ballot Open Date:26-Aug-2010
- Ballot Close Date:16-Sept-2010

# RESPONSE RATE

## Recirculation Ballot #1

- This ballot has met the 75% returned ballot requirement.
- 106 eligible people in this ballot group
- 90 affirmative votes
- 1 negative votes with comments
- 0 negative votes without comments
- 2 abstention votes
- 93 votes received = 87% returned
- 2% abstention



# Initial Ballot Summary PC37.10

Classification	Affirmative	Negative	Abstain	Un-returned	Total
Producer	19/25	5/1	0/0	5/3	29/29
User	32/35	2/0	2/1	6/6	42/42
Gov't/Milt	4/4	0/0	0/0	1/1	5/5
General Interest	24/26	2/0	1/1	3/3	30/30
Totals	79/90	9/1	3/2	15/13	106/ 106

# APPROVAL RATE

- The 75% affirmation requirement is being met.
- 90 affirmative votes
- 1 negative votes with comments
- 91 votes = 98% affirmative

# Negative Comment

- **3. Definitions**
- **3.5 defect:** “Imperfection in the state of an item (or inherent weakness) which can result in one or more failures of the item itself or of another item under the specific service or environmental or maintenance conditions for a stated period of time.”

# Basis of Negative Comment

- This term has negative legal connotations. Additionally, the term does not require a definition because it is only used in the document in Notes of other defined terms. See Page 4 on: Line 7 as Note to another definition - failure; Page 5, Lines 1 & 3 as Note to another definition - major failure (and this is actually used as a quoted IEC definition). Also see Annex B, Page 2, Line 1 where it is used as part of a referenced document's title. There is no need to define a term that is only used in Notes of other defined terms, and in a referenced document title, but never in the actual body of the standard.

# Proposed Change

- Delete the term & definition for clause 3.5 "defect."
- Alternatively, the term "nonconforming" is much more acceptable.

# Purpose of Definition

- “Report writers are encouraged to use the above definitions to promote consistent language in the report and to assist understanding by those reading the report.”
- If “defect” is a problematic term, would it be better to have an "acceptable" definition to refer to?
- Even if we remove the definition of "defect" from the guide, we have no guarantee that everyone will refrain from using it in their reports. Some people may well use it anyway.
- And in that situation, if the definition has been removed from the document, we won't have an "agreed definition" to point to, if we feel that they may have used it incorrectly.

# Defect Definition – Free Dictionary

- **de·fect** (d f kt , d -f kt )
- *n.*
- **1.** The lack of something necessary or desirable for completion or perfection; a deficiency: *a visual defect.*
- **2.** An imperfection that causes inadequacy or failure; a shortcoming. See Synonyms at [blemish](#).
- <http://www.thefreedictionary.com/defect>

# Defect Definitions – Scientific/Technical

- **defect** ['dē,fekt] (science and technology)
- An irregularity that spoils the appearance or impairs the usefulness or effectiveness of an object or a material by causing weakness or failure.
- McGraw-Hill Dictionary of Scientific & Technical Terms, 6E, Copyright © 2003 by The McGraw-Hill Companies, Inc.



# Defect Definition - Medical

- **defect** /de·fect/ (de´fekt) an imperfection, failure, or absence.defec´tive
- <http://medical-dictionary.thefreedictionary.com/defect>

# Defect Definition – Free Dictionary

- *Imperfection, flaw, or deficiency.* That which is subject to a defect is missing a requisite element and, therefore, is not legally binding. Defective [Service of Process](#), for example, is service that does not comply with a procedural or jurisdictional requirement. A defective will is one that has not been properly drawn up, has been obtained by unlawful means, or does not comply with a particular law. In some cases, however, defects can be cured; for example, defective service of process can be cured by the service of an amended complaint.
- Ref: <http://legal-dictionary.thefreedictionary.com/defect>

# Opinions 1

- In Product Liability, a defective product is one that cannot be used for the purposes intended or is made dangerous as a result of a flaw or imperfection. Such a defect might exist in the entire design of a product or in the production of a particular individual product. A *latent defect* is one that is not readily observable by the buyer of an item, whereas a *patent defect* is obvious or immediately apparent upon observation.
- A *fatal defect* is one that, due to its serious nature, serves to nullify a contract.
- West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved.
- Ref: <http://legal-dictionary.thefreedictionary.com/defect>

# Opinions 2

- **latent defect** n. a hidden flaw, weakness or imperfection in an article which a seller knows about, but the buyer cannot discover by reasonable inspection. It includes a hidden defect in the title to land, such as an incorrect property description. Generally, this entitles the purchaser to get his/her money back (rescind the deal) or get a replacement without a defect on the basis of "implied" warranty of quality that a buyer could expect ("merchantability"). Even an "as is" purchase could be rescinded if it could be shown the seller knew of the flaw. (See: [warranty](#), [implied warranty](#), [product liability](#))
- 
- Ref: <http://legal-dictionary.thefreedictionary.com/latent+defect>

- Don Messina (Senior Program Manager, IEEE Standards Activities) asked IEEE lawyers to consider:
  - 1) whether it is appropriate to use and define the term “defect” in the Draft Guide; and
  - 2) whether another word would be more appropriate.

# IEEE Opinion

- The use and definition of the term “defect” in the Draft Guide is appropriate and no change is required. It is our understanding that the definition of “defect” was in the original standard from 1995 and in the reaffirmation of the standard in 2002, and that the term was used in the text of the 1995 standard. It is also our understanding that the term “defect” is used in many equipment reliability surveys around the world. Under those circumstances, there appears to be established a consistent practice and usage of the term in the context of the Draft Guide, and changing this to a different term may result in inconsistency and confusion.

# IEEE Opinion (cont'd)

- The term “defect” does have a specific legal connotation in the United States, but is not dispositive of product liability issues. Given the nature of the subject matter of the Draft Guide, it is likely that any alternative term would have a similar legal connotation. Given the legal connotations associated with the term “defect,” it is important to specify the meaning of the term as used in the Draft Guide. Therefore, we recommend that the definition of “defect” be retained in the Draft Guide.

# “Dispositive”

- Main Entry: **dis·pos·i·tive**  
Pronunciation: dis-'pä-z&-tiv  
Function: *adjective*  
1 : directed toward or effecting a disposition (as of a case)*dispositive* ...pretrial motions — Legal Dictionary Robert Shaw-Meadow>



# “Dispositive”

- **dis·posi·tive** (dis pāz'ə tiv)

***adjective***

that disposes of, or settles, a dispute, question, etc.;  
conclusive; decisive

[Webster's New World College Dictionary](#)

- **dis·pos·i·tive** (dīs-pōz□ī-tīv)

***Adjective***

- Relating to or having an effect on disposition or settlement, especially of a legal case or will.

[The American Heritage® Dictionary of the English Language](#),

# Opinion

- NEMA
- ???

# Required Action(s) ???

- Produce PC37.10D3.0 with editorial changes
- Recirculation ballot PC37D3.0 with discussion on negative ballot regarding “defect”

# New Business

- Reaffirm or revise IEEE C37.10.1 “**IEEE Guide for the Selection of Monitoring for Circuit Breakers**”
  - Was reaffirmed in 2006
- Withdraw IEEE Std. 1325 when PC37.10 is approved

# New Business

- What is your biggest problem with quality or reliability of HV circuit breakers?
- New topics ???

# Adjournment

- Thank you for your participation
- Enjoy your meetings
- Safe travels