

Intellectual Property Rights Policy

Approved by the **bmcoforum** plenary meeting on June 17th, 2008

PREAMBLE

The "Broadcast Mobile Convergence Forum" ("**bmcoforum**") is an international non-profit industry consortium designed to provide a constructive discussion platform for companies involved in the development of a worldwide open market for mobile broadcast services and to inform a broad public on all related aspects. The activities of **bmcoforum** are focused on driving and shaping the technical, economical and regulatory framework for mobile broadcast services.

The **bmcoforum** co-operates closely with other institutions and organizations, particularly with a view to joint lobbying and standardization.

While it is not the main focus of **bmcoforum** to develop standards or technical specifications to be used in commercial implementations, for meeting the mission of the **bmcoforum** to enable open markets for mobile broadcasting occasionally it may be necessary to develop profiles of existing standards or specific technical documents.

bmcoforum's activities may therefore result in the creation of documents and other work product that includes newly created intellectual property rights and/or intellectual property rights of others. To encourage participation in the **bmcoforum** and allow it to achieve its objectives, **bmcoforum** acknowledges the importance of having an intellectual property rights policy in place that clearly states how such intellectual property rights will be treated.

This **bmcoforum** Intellectual Property Rights Policy (the "Policy") outlines the policy of the **bmcoforum** regarding the use of proprietary materials in the work product of the **bmcoforum** Working Groups and in other activities that result in the creation or use of intellectual property rights. The Policy is the complete and exclusive statement of the **bmcoforum** intellectual property rights policy, and applies to and governs all of **bmcoforum's** activity.

ARTICLE 1. DEFINITIONS

The following definitions shall apply to this Policy:

- (a) "Affiliate" or "Affiliates" shall mean an entity that directly or indirectly controls another entity via beneficial ownership of more than fifty percent (50%) of the voting power or equity in another entity ("Control"), or is Controlled by another entity, or is under common Control with another entity, so long as such Control exists, and shall include an entity within

the meaning of § 15 of the German Stock Corporation Act ("Aktengesetz").

- (b) "**bmcoforum** Articles of Association" shall mean the Articles of Association of **bmcoforum** as may be amended from time to time.
- (c) "Contribution" shall mean any submission to or for a Working Group or the Board for consideration by a Working Group or the Board.
- (d) "Draft Document" shall mean a preliminary draft of a proposed Final Document (including Profiles).
- (e) "Equipment" shall mean any product, including hardware and / or software application or other software product, fully conforming to a Final Document or Draft Document. For purposes of the foregoing, "fully conforming" specifically includes the implementation of any or all relevant portions of the Final Document or Draft Document, as applicable, that are required to implement a mandatory or an optional feature or function under that Final Document or Draft Document.
- (f) "Essential IPR" means any IPR without which it is not possible on technical (but not commercial) grounds, taking into account normal technical practice and the state of the art generally available, to make, use, sell, lease, repair or operate Equipment or Methods, which comply with the Final Document or Draft Document without infringing that IPR; provided that where a patent contains several patent claims, the Essential IPR may comprise only one or several claims of such patent.
- (g) To "Hold" an Essential IPR means that the respective member or Affiliate owns or otherwise has the right to grant licenses with respect to the respective IPR.
- (h) "IPR" shall mean the patents and pending patent applications, utility models and pending utility model applications, copyrights covering software or firmware, and maskworks, whether in existence now or created, invented or developed.
- (i) "Member" shall mean any Full Member and Associate Member of **bmcoforum**.
- (j) "Method" shall mean any method or operation fully conforming (as such term is defined in (e) above) to a Final Document or Draft Document.
- (k) "Final Document" shall mean a final technical document adopted and approved for release by **bmcoforum** pursuant to the **bmcoforum** Articles of Association, including profiles and any updates or revisions adopted and approved for release by **bmcoforum**.
- (l) "Working Group" shall mean any group created pursuant to the **bmcoforum** Articles of Association. For the avoidance of doubt, "Working Group" shall include Thematic Working Groups and National Working Groups, but shall not mean those certain groups created by the Board to undertake solely non-technical related activities. Such groups may be designated as "Non-IPR" groups by the Board.

- (m) Unless provided otherwise herein, terms defined in the **bmcoforum** Articles of Association shall have the meaning attributed to them in the **bmcoforum** Articles of Association.

ARTICLE 2. PUBLIC DISCLOSURE GUIDELINES

Subject to Article 5, public disclosure (i.e., disclosure to anyone who is not a Member) of any version or revision of a **bmcoforum** Final Document or Draft Document, shall be subject to the written approval of the Board pursuant to the terms hereof. In addition, Members shall not, without the prior authorization of the **bmcoforum**, publicly disclose other information or materials of the **bmcoforum** except for information and materials that are already generally known or available to the public or are clearly intended for public release, such as approved marketing and promotional materials.

ARTICLE 3. DISCLOSURE

- (a) Each Member and its Affiliate shall use its reasonable endeavours, in particular during the development of a Draft Document or a Final Document in a Working Group in which it is participating, to inform **bmcoforum** in a timely manner of Essential IPRs as they become aware that the Essential IPR is related to a prepared or published Draft Document or Final Document. This obligation includes Essential IPR owned or held by others than Members or Affiliates, but does not imply an obligation on Members or their Affiliates to conduct IPR searches.
- (b) With regard to work relating to implementation of other published documents (including specifications) not developed by or for **bmcoforum** by way of normative reference or other procedure, the disclosure obligation under this Policy shall concern only such Essential IPR that are not covered by the other published specifications.
- (c) Disclosure under this Article 3 is based on an individual representative's own actual and personal knowledge, and no knowledge of the Member or its Affiliate on whose behalf the representative is acting (or its employees) or requirement to search regarding patent information will be imputed to such individual representative. However, a Member and its Affiliate acknowledges that it is prohibited from intentionally isolating, and will not intentionally isolate, a participant from potentially relevant patent information within the Member organization for the deliberate reason of avoiding the terms of this Article 3.
- (d) All chairpersons of Working Groups shall remind participants of this obligation of early disclosure at the beginning of each Working Group meeting substantially in the form provided as ANNEX 1 and shall provide a copy of this Policy to any requesting party. The chairperson shall minute that enquiries in relation to Essential IPRs were made and shall record the answers received or the fact that there were no replies, as the case may be. For the avoidance of doubt, a failure of a chairperson to remind

participants has no impact on the obligations of Members and their Affiliates pursuant to this Policy.

- (e) When disclosure is made under this Policy, Members and their Affiliates are encouraged to provide the most complete information possible concerning Essential IPRs, and to indicate how they may apply to the relevant Final Document or Draft Document.
- (f) Where disclosure is made under this Policy, the form provided as ANNEX 2 shall be used.
- (g) At the same time as a disclosure is made, the respective Member and its Affiliate shall also submit a binding written statement to **bmcoforum**'s Executive Director using the form provided as ANNEX 3 declaring (i) that it will license such Essential IPR on fair, reasonable and non-discriminatory ("FRAND") terms; or (ii) its intention to not license its Essential IPR. When a Member or Affiliate declares its intention not to license, the declaration shall include a written explanation of the reasons for refusing such license. With regard to option (ii) above ("opting out"), such statement must be submitted at least 30 days before the approval of the respective Final Document; otherwise the Member shall be regarded to have agreed to grant a FRAND license on the basis of option (i) above (provided, however, that this shall only apply to such Essential IPRs which have been disclosed at such time). When a member declares its intention not to license, the **bmcoforum** board shall take appropriate measures, which may include the following: (a) review of the Final or Draft Document to satisfy itself that a viable alternative technology is available for such Final or Draft Document which is not blocked by such Essential IPR; (b) request the Member or third party to reconsider its position; (c) consider in good faith whether or not **bmcoforum** should pursue development of the concerned part(s) of the affected Final or Draft Document based on the non-available technology, whether to look for alternative solutions or whether to withdraw such affected Final or Draft Document.

ARTICLE 4. LICENSING OF INTELLECTUAL PROPERTY RIGHTS

- (a) Each Member, as a condition to membership in the **bmcoforum**, hereby irrevocably agrees that it will, subject to Article 3 (g) and 4 (b) herein, grant to other Members, non-members, and their respective Affiliates a non-exclusive license to use any of the Essential IPRs it Holds or is Held by any of its Affiliates under FRAND terms. Such licence shall allow the licensee to do at least the following:
 - (aa) manufacture, including the right to make or have made Equipment, customised components and / or sub-systems to the licensee's own design for use in manufacture;
 - (bb) sell, lease or otherwise dispose of Equipment so manufactured;

- (cc) repair, maintain, use or operate Equipment; and
- (dd) use Methods.
- (b) The obligation under this Article 4 (a) is subject to the condition that any licensee agrees to grant licences to their Essential IPR on FRAND terms.
- (c) The obligation under this Article 4 (a) shall only arise to the extent this is permissible under Article 81 (1) EC and in particular under the Commission's Regulation on Categories of Technology Transfer Agreements (EC) No 772/2004 of 27 April 2004 or any updates, modifications or replacements thereof.
- (d) Each licensor agrees that it will not transfer Essential IPRs for the purpose of circumventing this Article 4 (a). Any transfer shall be subject to the terms and conditions of this Policy. Licensor may choose the manner in which it complies with this Article, provided that the agreement shall clearly be sufficient to comply with this Article 4.

ARTICLE 5. COPYRIGHTS

- (a) Each Member grants to the **bmcoforum** a worldwide, irrevocable, non-exclusive, non-transferable, royalty-free copyright license to reproduce, create derivative works, distribute, display, perform, make available and sublicense the rights to reproduce, distribute, display and perform and make available the Contributions of the granting Member. Such grant shall be solely for the purposes of developing, publishing, distributing and making available Final Documents, Draft Documents or Contributions, and of performing other activities deemed by the **bmcoforum** to be appropriate to the development of products compliant with a Final Document, based on such documents, and consistent with the **bmcoforum** Articles of Association.
- (b) The **bmcoforum** shall own the copyright in the Draft Document and the published Final Documents themselves, subject to the underlying copyright rights of the contributing Members and other copyright owners in their contributions. Any publication of a Final Document may contain an appropriate copyright notice in the name of the **bmcoforum**. The **bmcoforum** may exercise any and all rights of copyright ownership in the Final Document and will be authorized to license such rights to all implementers of the Final Document as approved by the Board and in accordance with this Policy. The **bmcoforum** hereby grants, under such copyright rights, to each Full Member a royalty-free, non-sublicensable right to reproduce, create derivative works, distribute and display Final Documents only to develop, implement or otherwise use such Final Documents to test compliance or interoperability of products it implements, develops or manufactures from any such Final Documents, and not for any other purpose.
- (c) For the avoidance of doubt, these provisions in Article 5 shall not assign, convey, transfer or grant ownership, title or any rights in or to a Member's computer program or its results, or any copyrights to such computer

programs or results that may be implemented from such Final Documents, to the **bmcoforum** or to any other of its Members or to any non-members.

ARTICLE 6. NO REPRESENTATIONS AND WARRANTIES; LIMITATIONS

- (a) Each Member hereby agrees and acknowledges that: (i) the **bmcoforum** and each Member, including Working Group representatives and Working group chairs take no position as to whether any intellectual property rights exist in any Draft or Final Documents; (ii) the Final Documents and Draft Documents and any Contributions thereto are all provided "as is" and "with all faults"; (iii) the **bmcoforum** and each Member, including Working Group representatives and Working Group chairs make no warranties, express, implied, statutory or otherwise with respect to the Final Documents or Draft Documents or any Contributions thereto, or use thereof, including but not limited to all implied warranties accuracy, completeness of merchantability, title, sufficiency, non-infringement and fitness for a particular purpose, of reasonable care or workmanlike effort, or results or of lack of negligence; and (iv) neither the **bmcoforum** nor any of its Members, including Working Group representatives and Working Group chairs, has undertaken on behalf of the **bmcoforum** or its Members any IPR search with respect to the Final Documents and Draft Documents. Nothing herein shall, however, be construed as a restriction on any Member conducting its own due diligence or other technology search or screening with respect to the Final Documents and Draft Documents.
- (b) In no event shall the **bmcoforum** or any Member, Working Group representative or Working Group chair be liable to any other Member or to any other third party for and hereby disclaims liability for (i) any damages or losses, including indirect, special, incidental, punitive or consequential damages, resulting under this Policy or out of or in connection with the use of a Final Document or a Draft Document or any Contribution thereto, whether under contract, tort, warranty or otherwise, and whether or not such party had advance notice of the possibility of such damages; or (ii) the cost of procuring substitute goods or services, lost profits, loss of use, or loss of data. The liability for wilful misconduct and any other liability which cannot be limited by law remains unaffected.
- (c) Published Final Documents shall include a disclaimer in a form including substantially the provisions of the foregoing Article 6 (a) and (b).

ARTICLE 7. OTHER PROVISIONS

- (a) Notwithstanding any dissolution of the **bmcoforum** or a termination of a Membership by resignation or exclusion, a Member's or its Affiliate's agreement to make available a license as provided in Articles 4 (a) shall remain in full force and effect for:

- (aa) any of its Essential IPR in a Contribution made by such Member or former Member (or its Affiliate) that is incorporated into a specification to which such Contribution was offered;
- (bb) any non-contributed Essential IPR in a specification adopted by the **bmcoforum** for which the applicable review period ended before the effective date of dissolution or before the effective date of a Member's termination, expiration or withdrawal of membership; and
- (cc) any Essential IPR to a specification adopted by the **bmcoforum** after the effective date of the Member's termination, expiration or withdrawal of membership that (i) are necessary for the later-adopted specification to be backwards compatible with the prior specification(s), and (ii) are used in a substantially similar manner and to a substantially similar extent with a substantially similar result as the same Essential IPR were used in a prior specification for which the former Member is obligated to grant licenses.

A former Member shall remain entitled to reciprocity pursuant to Article 4. (b) so long as that former Member remains obligated to license any Essential IPR under this Policy. Dissolution of the **bmcoforum** or a Member's termination of its membership shall not have any impact on a Member's licenses pursuant to this IPR Policy, other than in accordance with the individual terms of such pre-existing licenses.

- (b) Full Members and Associate Members will ensure that any of their respective Affiliates, which are not Full Members or Associate Members, shall abide by the obligations set out in this Policy.
- (c) The information disclosed in accordance with this Policy received by **bmcoforum** shall be held by and available at no cost for Members from **bmcoforum**.
- (d) The **bmcoforum** Articles of Association remain unaffected. In the event of a discrepancy between the **bmcoforum** Articles of Association and this IPR Policy with regard to its subject matter, this IPR Policy shall prevail.
- (e) Any dispute arising out or in connection with this Policy shall be resolved by arbitration in accordance with § 17 of the **bmcoforum** Articles of Association.

ANNEXES

ANNEX 1	SAMPLE CHAIRPERSON STATEMENT
ANNEX 2	IPR DISCLOSURE FORM
ANNEX 3	IPR LICENSING DECLARATION FORM

ANNEX 1**SAMPLE CHAIRPERSON STATEMENT**

"Each Member and Affiliate participating in any way in a particular Working Group shall use its reasonable endeavours, in particular during the development of a Draft Document or a Final Document, to inform **bmcoforum** in a timely manner of Essential IPRs. Such Member shall submit to the Executive Director of **bmcoforum** the IPR Disclosure Form and the IPR Licensing Declaration Form. These Forms are available from **bmcoforum** or online at the **bmcoforum** website at www.bmcoforum.org."

**ANNEX 2
IPR DISCLOSURE FORM**

This statement is made on _____ [Date] by _____, representative of _____. In accordance with Article 3 of the **bmcoforum** IPR Policy, I hereby inform **bmcoforum** that it is the belief of the undersigned, signing on behalf of the [Member/participant], that the following IPR's are, or are likely to become Essential IPR's in relation to the [Draft Document/Final Document] identified as _____.

bmcoforum [Draft Document/Final Document]				Patent (or IP right) Propriet or	Application No.	Patent No.	Patent Subject/ Title	Country of registration	OPTIONAL INFORMATION: Other Patents/Applications No. in same family*	
Project or profile name	Work Item or profile No.	Illustrative Specific part of the Work Item or profile (e.g. Section)	Version (V.X.X. X)						Patent/Applicat ion No.	Country Applicable

*Patent family information is provided voluntarily. The completeness and accuracy of any patent family information that is provided cannot be guaranteed.

Place, Date:

(Place, Date)

Signature:
_____, (_____ Print name)
(Signed for and on behalf of _____)

ANNEX 3

IPR LICENSING DECLARATION FORM

<u>IPR Holder/Organisation</u>	<u>IPR Licensing Declaration</u>
Name: _____	
<u>Signatory</u>	
Name: _____	
Position: _____	
Department: _____	
Address: _____ _____	
Tel.: _____ Fax: _____	
E-mail: _____	
<u>IPR licensing declaration</u>	
<p>The Signatory has notified bmcoforum that it is the holder of the IPRs listed in the attached IPR Disclosure Form and has informed bmcoforum that it believes that the IPRs may be considered Essential IPRs in relation to the Work Items or profiles also listed in the IPR Disclosure Form.</p> <p>The IPR Holder and/or its Affiliates hereby irrevocably declare(s) (<u>check one box only</u>):</p> <p><input type="checkbox"/> that it is/they are prepared to grant licences under the IPRs on FRAND terms and conditions which are in accordance with Art. 4 of the bmcoforum IPR Policy, to the extent that the IPRs remain Essential IPRs.</p> <p style="padding-left: 40px;">This undertaking is made subject to the condition that those who seek licences agree to reciprocate same in accordance with Article 4 (b) of the bmcoforum IPR policy [delete this paragraph if this condition is not required].</p> <p><input type="checkbox"/> that it is/they are unwilling to grant irrevocable licences under the IPRs on FRAND terms and conditions which are in accordance with Art. 4 of the bmcoforum IPR Policy for the following reason(s):</p> <p style="padding-left: 40px;">_____</p> <p style="padding-left: 40px;">_____</p> <p style="padding-left: 40px;">_____</p>	

The construction, validity and performance of this licensing declaration shall be governed by the laws of Germany.

Place, Date:

Signature:

(Place, Date)

_____, (_____
(Signed for and on behalf of the IPR Holder) Print name)

Please return this form duly signed to:
bmcoforum Executive Director, Attilastraße 61-67, 12105 Berlin, Germany,
Fax +49 (30) 255680-99