

Open Letter to the Promoter Members and Board of Directors of the Bluetooth Special Interest Group

Dear Promoter Members of the Bluetooth SIG and Bluetooth SIG Board,

We write to bring your attention to a serious IP issue that has the potential to significantly damage the Bluetooth SIG, its members, as well as the growth and adoption of Bluetooth.

Specifically, Nokia, a Bluetooth SIG Promoter, Founding Member, and current Board Member, has sold a patent to a Non-Practicing Entity (“NPE”), which the NPE has then alleged that the Bluetooth Standard itself infringes. More particularly, Nokia’s successor in interest in the patent, WSOU¹, has literally asserted that a feature of Bluetooth² infringes the patent it purchased from Nokia.³ This patent assertion, made in at least one lawsuit⁴ filed against Canon Inc., is contrary to the terms of the Bluetooth Patent/Copyright License Agreement (“BPCLA”) and is completely unjustified.

Having encouraged members to adopt Bluetooth under the promise of a royalty-free license, Nokia and the Bluetooth SIG should take immediate action to secure the IP licensing framework promised to members. Members, like Canon, rely on the royalty-free license provided by the BPCLA when deciding to make the investments necessary to adopt Bluetooth technology instead of alternative technologies. And billions of Bluetooth-enabled devices have been sold in reliance on this license.

Nokia’s actions call the industry’s substantial reliance on the BPCLA into question. Even if Nokia does not control its assignee’s patent assertion campaigns, Nokia, a member of the Bluetooth SIG Board, should be advocating to uphold the BPCLA’s fundamental intent to provide Bluetooth SIG members royalty-free licenses to the Bluetooth essential patents of other members. Nokia has not done this. Nokia has profited from the sale of its patent, which is now being asserted against BPCLA protected technology. And Nokia has sat idly by while its assignee, WSOU, has accused Bluetooth 5.0 of infringement contrary to the BPCLA. As a member of the Bluetooth SIG Board, Nokia has a fiduciary duty to the members of the Bluetooth SIG to provide its position as to WSOU’s infringement

¹ See Unified Patents, A Year of WSOU: Craig Etchegoyen’s Post-Uniloc NPE Files Nearly 200 Cases, Mar. 19, 2021 at <https://www.unifiedpatents.com/insights/2021/3/18/a-year-of-wsjou-craig-etchegoyens-post-uniloc-npe-files-nearly-200-cases> (“One particularly prolific NPE filed almost 200 suits since March 2020, representing 1 out of every 20 district court cases nationwide: WSOU Investments LLC, d/b/a Brazos Licensing”).

² Bluetooth 5.0 Low Energy Channel Selection 2, referring to the Channel Selection Algorithm #2 (CSA2) used in adaptive frequency hopping.

³ WSOU accuses Canon of infringing a patent originally filed and issued to Lucent Technologies. Lucent Technologies later merged with Alcatel, forming Alcatel-Lucent S.A. Nokia acquired the patent when it purchased Alcatel-Lucent on November 2, 2016.

⁴ *WSOU Investments, LLC d/b/a Brazos Licensing and Development v. Canon, Inc. et al.*, No. 6:20-cv-00980-ADA (W.D. Tex.).

assertion and it should publicly disclose whether it stands to profit from WSOU's assertion of this patent against Bluetooth 5.0. Such information is vital to the Bluetooth SIG membership.

To the extent that Nokia, as a founder and member of the Bluetooth SIG Board, believes that WSOU's infringement allegation against the Bluetooth standard and demand for royalties are consistent with a proper interpretation of the BPCLA, it should clearly and publicly say so. If Nokia believes that somehow there are loopholes embedded within the BPCLA that allow the assertion of member patents against the Bluetooth standard, it should publicly say that. It is vital that the members of the Bluetooth SIG understand that interpretation so they can properly evaluate the risks of incorporating Bluetooth technology into their products versus alternative technologies.

Obviously, if Nokia agrees that its assignee's allegations are contrary to the intent of the BPCLA and improper, it should say that. Instead, Nokia has done nothing to clarify the situation. Rather than standing up for the BPCLA, Nokia has not taken a position on its intent in entering into the BPCLA, its interpretation of the BPCLA, or its obligations under the BPCLA. By allowing its assignee to make patent infringement allegations flatly contrary to the intent of the BPCLA without setting the record straight, Nokia is breaching its fiduciary duty to Bluetooth SIG members. And conspiring with an assignee to evade one's licensing obligations constitutes a form of "privateering" activity that offends the antitrust laws.

If Nokia believes its assignee's allegations are wrong, but is doing nothing to correct the record then Nokia is improperly leaving Bluetooth SIG Members at risk. If Nokia believes the BPCLA does not provide a license to Bluetooth 5.0, they should say so because that suggests an even greater risk to Members of the Bluetooth SIG and the reliance they place on the BPCLA. As a Bluetooth SIG Board Member and the assignor of the patent at issue, Nokia can not remain silent.

Indeed, the facts paint a very unflattering picture. After founding the Bluetooth SIG and encouraging companies to become members and adopt Bluetooth technology through an IP policy promising royalty-free patent licenses, Nokia has profited from selling its patents to a non-member party now alleging infringement of those same patents by practicing the Bluetooth standard. Even if Nokia cannot control whether its assignee accuses the Bluetooth standard technologies of infringement, it can control whether it stands up for the IP policy of the organization it encouraged so many parties to join.

This is a very important issue, and we expect the Bluetooth SIG to promptly address the matter. Members are entitled to know where Bluetooth SIG stands regarding the Bluetooth standard and WSOU's infringement assertions so they can make an informed decision whether to adopt that standard in their products.