

QIBA Patent Disclosure Policy

A.3 Patent Disclosure

A.3.1 Introduction

An important purpose of QIBA is the development and dissemination for broad adoption of standards documents known as QIBA Profiles. Since part of the intent in publishing these documents is to offer an open model that can be adopted by developers to increase the level of standardization across imaging systems, it is important for QIBA committees to know if conforming to specifications in a proposed Profile requires any technologies that are or may be considered proprietary intellectual property. This policy does not apply to any proprietary intellectual property that is integral to the imaging device for purposes of producing the imaging biomarker that is the subject of the Profile. Rather it applies to any technology (for example, test objects, analysis software or methods) that is specified in the Profile as necessary in order for a vendor to demonstrate conformance with the Profile.

A.3.2 Duty to Disclose Patents and Patent Applications

Each QIBA member has an affirmative duty of good faith to bring to the attention of QIBA any claims of a patent or patent application anywhere in the world (excluding design patents and design registrations) owned, controlled or that can be sublicensed by the member's organization (or a parent company, subsidiary or affiliate of the member's organization) now or at any future time of which the QIBA member is aware and which the member believes would necessarily be infringed by implementation of QIBA Profile specifications developed by any Committee on which the member participates. No QIBA member shall knowingly conceal from QIBA any patents or patent applications owned, controlled or sub-licensable by the member's organization (or any parent company, subsidiary or affiliate) which would be necessarily infringed by a user of the QIBA Profile in order to conform to specifications in the QIBA Profile or any revision thereof that is proposed for adoption. However, the preceding provisions notwithstanding, no member shall be obligated to disclose any information about a patent application which has not been published other than to identify the existence of the patent application and the affected QIBA Profile.

A.3.3 Necessary Claims

A claim is necessarily infringed for purposes of this Agreement (a "Necessary Claim") only when it is not possible to avoid infringing it because there is no plausible non-infringing alternative for implementing the relevant portions of a QIBA Profile.

A.3.4 No Duty to Search Patent Portfolios

QIBA members do not have an affirmative duty to search patent portfolios to determine whether a participating individual or organization owns a patent or patent application involving Necessary Claims.

A.3.5 Limitation of Duty to Disclose to Active Committee Representatives

The affirmative duty of a QIBA member to disclose known patents applies only as to Committees on which they serve as Representatives (whether voting or non-voting) or to whose QIBA Profile they make any Contribution.

A.3.6 Timing of Disclosure

The duty of good faith described in Section A.3.2 includes a requirement that the disclosure be made as expeditiously as possible after the participating individual or organization Committee Representative recognizes the obligation of disclosure.

A.3.7 Method of Disclosure

Disclosures should be made in writing and submitted to the QIBA Chair who shall make them immediately available to the QIBA Steering Committee and any affected committees.

A.3.8 Commitment to License

Once an individual or company discloses that it owns or controls proprietary intellectual property that will be incorporated into a QIBA Profile, the member then must make a voluntary commitment to license the patent to QIBA Profile users under Reasonable and Non-Discriminatory (RAND) terms, or to disclose that it does not intend to license the patent.

A.3.9 No Effect on Obligations Related to Base Standards

QIBA Profiles refer to and make use of a number of standards developed and published by several standards development organizations. QIBA participating individuals or organizations may also participate in the standards development organizations responsible for base standards used in QIBA Profiles and may thus be subject to obligations with respect to intellectual property imposed by those organizations. The obligations of participating individuals or organizations under this QIBA Intellectual Property Agreement do not in any way alter their obligations under the intellectual property policies of any other standards development organization, nor do the obligations of participating individuals or organizations under the intellectual property policies of any other standards organizations alter their obligations under this QIBA Intellectual Property Agreement.

A.3.10 Confidentiality Provision

Each QIBA member that receives, as a result of their participation in QIBA, information that is identified as confidential shall take all reasonable steps to prevent further disclosure of such information to any individuals or organizations other than those involved in the QIBA activities out of which the disclosure arose.