

OmniAir Consortium, Inc.

Intellectual Property Rights Policy

Approved and Adopted: September 14, 2021 (“Effective Date”) (Version 2.0)

I. Introduction

This Intellectual Property Rights Policy (“IPR Policy”) governs all activities of the OmniAir Consortium, Inc. (“OmniAir”), including its Members, Board of Directors, Technical and Working Committees and management and staff. It is the intent of OmniAir to acknowledge and respect the rights of IP owners and encourage their participation in OmniAir activities. Equally, OmniAir is committed to developing and protecting its IP rights in its certification programs, procedures and other endeavors. This IPR Policy covers all types of intellectual property, copyrights, trademarks and patents.

This IPR Policy is the complete and exclusive statement of OmniAir’s IPR Policy and applies to and governs all of OmniAir’s activities as of the Effective Date, except where the OmniAir Board of Directors has determined and has specified in writing for a particular OmniAir activity, that this IPR Policy does not apply. This IPR Policy supersedes any and all prior documentation regarding OmniAir’s IPR Policy, including, but not limited to, statements in the OmniAir Bylaws.

No Member of OmniAir, or any other individual or entity, may participate in any Working Group governed by this IPR Policy without agreeing to the terms and conditions in this IPR Policy. Each Member (or other individual or entity) participating in any such Working Group shall confirm in writing that it agrees to the terms of this IPR Policy; provided, however, that participation in any Working Group governed by this Policy, even without written confirmation that the Member (or other individual or entity) accepts the terms of this IPR Policy, will constitute the Member’s (or other individual’s or entity’s) ratification and acceptance of its terms.

II. Definitions

“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. For avoidance of doubt, this definition does not include the parent company(ies) of the Member or other Affiliates of the parent company(ies).

“Approved Specification” means a Specification that has been adopted by the Board of Directors in accordance with the Bylaws and this IPR Policy.

“Compliant Implementations” shall mean any system, device, product, service, operation or method to the extent it is within the bounds of the Scope and fully compliant with an Approved Specification, provided however that it does not have to be compliant with any portions of the Approved Specification marked as non-mandatory.

“Contribution” shall mean a submission to or for a Working Group proposing an addition to or modification of an existing Specification or a draft Specification or a new Specification or portion thereof, or a submission proposing changes or modifications to reference design documents, provided that the submission is submitted in writing (including a writing in electronic medium or written record of an oral statement).

“Good Faith” shall mean for a party to act honestly, based on a sincerely held belief or motive and without malice or desire to defraud another person or entity.

“Implementer” shall mean a Member, former member or non-member who uses or implements an Approved Specification (required or info element) in an OmniAir-Certified product, device, technology or application.

“License Review Period” shall mean, as described in Section VII, is the thirty (30)-day review period prior to submission of a Specification to the Board of Directors for approval during which period Members are to review such Specification with respect to any Necessary Claims that such Member may hold in the Specification.

“Licensing Objection” shall mean, as described in Section IX, written notification submitted by a Member during the License Review Period of its intent not to grant licenses under a Necessary Claim the Member may hold in a Specification.

“Member” shall mean a Member of OmniAir as defined in the OmniAir Bylaws. Only Members may participate in Working Groups.

“Necessary Claims” means claims of a patent or patent application throughout the world that (a) are owned or controlled by a Member or its Affiliates now or at any future time; and (b) are necessarily infringed by implementing those relevant portions of the Approved Specification, wherein a claim is necessarily infringed only when it is not possible on technically reasonable grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization, to make, sell, lease, otherwise dispose of, repair, use or operate Compliant Implementations without infringing the claim. Notwithstanding the foregoing sentence, Necessary Claims do not include any claims: (i) other than those set forth above, even if contained in the same patent or patent application as Necessary Claims; or (ii) that, if licensed, would require consent from, and/or a payment of royalties by, the licensor to unaffiliated third parties. The Board of Directors shall have the discretion to implement and require a standard form document for the submission of Necessary Claims.

“OmniAir Board of Directors” (“Board of Directors” or “Board”) shall mean the Board of Directors duly elected as set forth in the OmniAir Bylaws.

“OmniAir Bylaws” shall mean the Bylaws currently in effect as adopted and approved by the OmniAir Board of Directors.

“OmniAir Technical Director” shall mean that individual responsible for OmniAir’s technical programs, including its certification programs.

“Specification” shall mean any of the following: (a) certification program (b) technical specification, (c) qualified test tools, (d) test plans, (e) device certification procedures, (f) reference device program, and (g) test laboratory and test tool authorization procedures and techniques.

“Scope” shall mean an element of a Working Group charter approved by the Board, which describes a specific technology for OmniAir for which the Working Group is chartered to develop an Approved Specification. The Scope shall not include (a) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with an Approved Specification, but are not themselves expressly set forth in an Approved Specification, or (b) the implementation or use of other standards, including without limitation those referred to in the body of an Approved Specification but not first

developed within OmniAir, even if required for compliance with the Approved Specification, or (c) any portions of any product and combinations thereof the purpose or function of which is not required for compliance with an Approved Specification, or (d) reference or informational portions of the Approved Specification.

“Working Group” shall mean a group of Members created by authorization of the Board to undertake certain specific defined tasks. “Working Group” refers to working groups, task forces, subcommittees, and specification and certification development committees and any other OmniAir-sponsored activity designated as governed by this IPR Policy.

III. Limitation on the Scope of Disclosed Information

The Members acknowledge that they will not, prior to the publication of a draft Specification containing information of another Member or OmniAir, disclose or exchange such information other than as part of OmniAir activities among themselves or third parties and when such disclosure is necessary to further the goals set forth in the Bylaws of OmniAir; provided, however, that disclosure of such information to third parties shall additionally be subject to prior approval by the Board of Directors.

IV. OmniAir Information

Public disclosure of any version or revision of a Specification, or other related materials of OmniAir, shall be subject to the prior approval by the Board.

V. Digital Millennium Copyright Act

If any party believes that material available on the OmniAir website, documents or other materials infringes its copyright or the copyright of any third party, notification should be provided to OmniAir’s DMCA agent as follows:

OmniAir Consortium, Inc.
c/o Executive Director
201 N. Union Street
Suite 110
Alexandria, VA 22314
(571) 489-4499
info@omniair.org

Please note that, to be effective, notice of infringement must comply with the Digital Millennium Copyright Act (“DMCA”). Notice must include the following:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
2. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrights works at a single online site are covered by a single notification, a representative list of such works at that site;
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
4. Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an email address;
5. A statement that you have Good Faith belief that use of the material in the matter complained of is not authorized by the copyright owner, its agent, or the law; and

6. A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please note that this process only relates to reporting a claim of copyright infringement. Messages related to other matters will not receive a response through this process. Please note that under Section 512(f) of the DMCA, any person who knowingly materially misrepresents that material is infringing may be subject to liability. If you are unsure whether material infringes your copyright, you should contact an attorney prior to sending notice.

VI. Disclosure of IP Rights

Members and Affiliates participating in a Working Group are requested to disclose to the Working Group as soon as reasonably possible whether they hold a Necessary Claim(s) in a draft Specification being considered by that Working Group. Concurrent with such disclosure, or as soon as practical thereafter, the Member or Affiliate shall provide a written statement to the chairperson of the Working Group regarding the Member's or Affiliate's intent whether or not to provide a license for its Necessary Claim(s) pursuant to Section VIII.

VII. License Review Period

When a Working Group determines that a Specification is ready to be submitted to the Board of Directors for consideration as an Approved Specification, OmniAir, on behalf of the Working Group, shall provide all Members with notice of the Working Group's intent to submit such Specification to the Board of Directors for approval. Such notice shall include a complete draft of the Specification that is the subject of such notice. Each Member, on behalf of itself and its Affiliates, shall have thirty (30) days following the date of such notice to review such Specification with respect to any intellectual property licensing issues including, without limitation, consideration of such Member's licensing obligations with respect to any Necessary Claims that such Member may hold in the Specification. Nothing in this Section is intended to create a duty for a Member to conduct a search of its patent portfolio.

VIII. Licensing of Member Intellectual Property Rights

Upon ratification by the Board of an Approved Specification, in accordance with the License Review Period, and unless a Member has timely made and not withdrawn a Licensing Objection, such Member and its Affiliates hereby agree to grant to other Members, their Affiliates and Implementers of the Approved Specification, under reasonable terms and conditions that are free of any discrimination, a nonexclusive, nontransferable, worldwide license of its Necessary Claims to make, have made, use, import, offer to sell, lease and sell and otherwise distribute Compliant Implementations of the Approved Specification, provided that such agreement to license shall not extend to any part or function of a product, process and/or method in which a Compliant Implementations is incorporated that is not itself part of the Compliant Implementations. Each Member agrees that it will not transfer, and have not transferred, patents having Necessary Claims solely for the purpose of circumventing such Member's obligations under this IPR Policy.

Dissolution of OmniAir or a Member's termination, expiration or withdrawal of its membership in OmniAir shall not have any impact on a Member's or former Member's licenses with other Members, their Affiliates and Implementers that existed prior to such termination, expiration or withdrawal, other than in accordance with the individual terms of such preexisting licenses.

IX. Licensing Objections

In the event that the Member in Good Faith believes that the implementation of Necessary Claims in a Specification would require a license from that Member, and that such Member is unwilling to provide a license pursuant to Section VIII, that Member must no later than the end of the License Review Period provide written notification to the chairperson of the responsible Working Group and the OmniAir Technical Director of its intent not to grant licenses for such Necessary Claim(s) ("Licensing Objection"). Notwithstanding the foregoing, a Member shall have the right to submit a Licensing Objection with respect to any Necessary Claims in any Contribution submitted by such Member.

Such Licensing Objection will include written identification of any Necessary Claims that such Member refuses to license hereunder. In the event that a Member properly submits a Licensing Objection within the License Review Period, such Member shall not be required to grant licenses under the identified Necessary Claims; however, in the event that a Member does not properly submit a Licensing Objection within the License Review Period, the licensing provisions of the Intellectual Property Rights Policy shall apply. Nothing in this paragraph, nor in the IP Rights Policy generally, is intended to extinguish or restrict rights otherwise held by a Member in its IP.

The Board of Directors shall have the discretion to implement and require a standard form document for the submission of Licensing Objections. If a Member submits a Licensing Objection within the License Review Period, the Working Group developing the affected Specification will, in consultation with the OmniAir Technical Director, determine how best to proceed, such as by attempting to develop a revised version of the Specification that does not reference or otherwise implement the potentially blocking patent rights that the patent rights holder has declined to license to all Implementers.

Notwithstanding the submission of a Licensing Objection, the Member may continue to participate in OmniAir activities, including Working Groups.

X. Incumbent Members' Initial License Review

Upon each incumbent Member's execution of the Membership Agreement at their first membership renewal after adoption of this IPR Policy, each incumbent Member is provided sixty (60) days to review prior Approved Specifications for any and all Necessary Claims and to agree in separate affirmative writing to be committed to the licensing provisions of Section VIII, for all Approved Specifications as of the date of each incumbent Membership's renewal. The Executive Director may provide additional time for this review upon request.

XI. New Member License Review

Upon a new Member joining OmniAir, the new Member shall be permitted sixty (60) days to review Approved Specifications and then pending Specifications for any and all Necessary Claims and to agree in separate affirmative writing to be committed to the licensing provisions of Section VIII. The Executive Director may provide additional time for this review upon request. For clarification, a new Member cannot submit a Licensing Objection regarding Approved Specifications and Specifications which were already reviewed by incumbents Members before the new Member joins OmniAir.

XII. Reciprocity

The provisions of Section VIII shall not be effective as to any other Member or that other Member's Affiliates or to any Implementer of the Specification, if that Member, its Affiliates or other Implementer, does not, in fact and practice, make the patent license grant of Section VIII available to the other Members, their Affiliates and any Implementers.

XIII. No Other License

No other patent license, immunity or other right is granted under this IPR Policy by any Member or its Affiliate(s) to any other Members, their Affiliates, non-members, third parties or to OmniAir, either directly or by implication, estoppel or otherwise, other than the agreements to grant licenses expressly set forth in this IPR Policy.

XIV. Transfer of Necessary Claim

Any transfer by a Member or its Affiliates to a third party of a patent having Necessary Claims shall be subject to: (a) the terms and conditions of this IPR Policy; and (b) the agreement to grant licenses by the Member and its Affiliates to other Members, their Affiliates and Implementers of the Specification, pursuant to Section VIII and Section XII of this IPR Policy.

XV. Copyrights

1. The Members grant to OmniAir a worldwide, irrevocable, nonexclusive, nontransferable, royalty-free copyright license to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform the Contributions of the granting Member solely for the purposes of developing, publishing and distributing Specifications and related materials, as well as products based on such documents to Members, Implementers and the public.
2. OmniAir shall own the copyright in draft Specifications and Approved Specifications, subject to the underlying copyright rights of the contributing Members and other copyright owners. Any publication of a Specification shall contain an appropriate copyright notice in the name of OmniAir. OmniAir may exercise any and all rights of copyright ownership in the Specification and will be authorized to license such rights to Implementers of an Approved Specification.

XVI. Trademarks

1. In the event that OmniAir proposes to adopt any name or logo as a trademark or trade name (collectively, "Trademarks"), OmniAir shall take such steps as it deems necessary and proper to protect its rights under such Trademarks adopted for use by OmniAir. In furtherance thereof, OmniAir shall establish and disseminate reasonable and nondiscriminatory terms and conditions and procedures for the licensing and use of such Trademarks among the Members and non-Members if applicable.
2. From time-to-time, OmniAir may request from its Members to display – at no cost to OmniAir -- certain of the Members' trademarks or logos on, for example, the Members' page of the OmniAir website, news releases, listings of certified products or qualified test equipment, indications of event sponsorships, or other promotional or marketing materials. However, at no time will OmniAir use a Member's trademark or logo for any purpose without the express prior written consent of the Member.

XVII. No Representations or Warranties

EACH MEMBER HEREBY AGREES AND ACKNOWLEDGES THAT: (A) OMNIAIR AND EACH MEMBER, INCLUDING TASK GROUP REPRESENTATIVES AND TASK GROUP CHAIRS, TAKE NO POSITION AS TO WHETHER ANY INTELLECTUAL PROPERTY RIGHTS EXIST IN ANY DRAFT OR APPROVED SPECIFICATIONS; (B) THE SPECIFICATIONS AND ANY CONTRIBUTIONS THERETO ARE ALL PROVIDED "AS IS" AND "WITH ALL FAULTS"; (C) OMNIAIR AND EACH MEMBER, INCLUDING WORKING GROUP REPRESENTATIVES AND WORKING GROUP CHAIRS, MAKE NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH

RESPECT TO THE SPECIFICATIONS OR ANY CONTRIBUTIONS THERETO, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OF REASONABLE CARE OR WORKMANLIKE EFFORT, OR RESULTS OR OF LACK OF NEGLIGENCE; AND (D) NEITHER OMNIAIR NOR ANY OF ITS MEMBERS, INCLUDING WORKING GROUP REPRESENTATIVES AND WORKING GROUP CHAIRS, HAS UNDERTAKEN ON BEHALF OF OMNIAIR OR ITS MEMBERS, ANY PATENT SEARCH WITH RESPECT TO THE SPECIFICATIONS. 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 SPECIFICATIONS.

XVIII. Limitation of Liability

IN NO EVENT SHALL OMNIAIR OR ANY MEMBER BE LIABLE TO ANY OTHER MEMBER OR THIRD PARTY FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RESULTING UNDER THIS POLICY, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, OR LOSS OF DATA.

XIX. Confidentiality

1. Except as otherwise identified by a Member, any information submitted or disclosed to OmniAir, including any Working Group thereof, shall be treated as non-confidential and shall be available to all Members of OmniAir without restriction. Any information pertaining to the business of OmniAir which a Member submits or discloses to OmniAir, including any Working Group thereof, and which is: (a) marked by the Member as "Confidential Information", or (b) if orally disclosed, identified by a Member as Confidential Information prior to disclosure and reduced to writing and marked as Confidential Information within three (3) business days from the date of disclosure, shall be treated as Confidential Information with respect to third parties, except for any portion thereof that constitutes and identified as non-Confidential Information. This section imposes no obligation on OmniAir or any Member with respect to Confidential Information which is (a) rightfully in the public domain other than by a breach of a duty to the disclosing party; (b) rightfully received from a third party without any obligation of confidentiality; (c) rightfully known to the receiving party without any limitation on use or disclosure prior to its receipt from the disclosing party; (d) independently developed by employees of the receiving party; or (e) generally made available to third parties unaffiliated with OmniAir by the disclosing party without restriction or disclosure. Such Member Confidential information shall be maintained by each Member of OmniAir in confidence with at least the same degree of care that it uses to protect its own confidential and proprietary information and in no event with less than reasonable care, and each Member of OmniAir that receives such Member Confidential information shall only use such Confidential information for the purpose for which it was submitted to OmniAir. Member Confidential information will not be included in an Approved Specification unless the Member waives its confidentiality. In the event a Member breaches the obligation of confidentiality with respect to Confidential information of another Member, the sole and exclusive remedy of the Member shall be to seek recourse against the breaching Member and OmniAir shall have no liability with respect to such breach.
2. If OmniAir is required by legal process to disclose Confidential Information belonging to a Member, such disclosure shall not be deemed a violation of this section, provided OmniAir agrees to give the disclosing Member reasonable advance notice so that the disclosing Member may contest the order and/or seek a protective order, unless prohibited by law to provide such notice.
3. Upon a disclosing Member's written request, OmniAir will promptly return or destroy all Confidential Information received from a disclosing Member and certify in writing that all such

Confidential Information has been so returned or destroyed. OmniAir will direct all Members receiving such Confidential Information to similarly return or destroy such Confidential Information, as directed by the disclosing Member.

4. The rights and obligations set forth in this Section shall expire three (3) years after the date the Member discloses or submits the Member Confidential information to OmniAir or other Member or Implementer.

XX. Revisions to This IPR Policy

Any revisions or other amendments to this IPR Policy will become effective only upon approval by the Board in accordance with the Bylaws, and only after: (a) the Board takes reasonable measures to notify all Members in writing (such as by e-mail) of such revisions; (b) a clear and conspicuous link to the revised IPR Policy (with the revisions highlighted) is posted on the home page of the OmniAir website (<http://www.omniair.org/>); and (c) Members are afforded at least sixty (60) days from the date of receiving notice of such revisions to withdraw from OmniAir; provided, however, that ministerial changes to this IPR Policy (such as proof-reading corrections or formatting changes) may be unilaterally executed by the OmniAir Executive Director, so long as the Board takes reasonable measures to communicate all such changes to all Members. Any Member that withdraws from OmniAir prior to the end of this sixty (60) day period will be subject to the surviving provisions of the IPR Policy in accordance with their terms but will not be subject to terms of the revised or amended IPR Policy.