



Intellectual Property Rights Policy

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INTELLECTUAL PROPERTY RIGHTS POLICY

Purpose

As the technology owner and standards setting body for HART[®] Communication, the HART Communication Foundation (HCF) strives to promote the HART Communication Protocol and Device Description Language Specifications (collectively the “HART Specifications”) as openly available standards for use by automation suppliers and industry users around the globe. As such and to protect the good name and integrity of HCF, the HART technology and the HART[®] trademark, any barriers interfering with open application and authorized use of the HART Communication Technology must be limited. Accordingly, the HCF has established this Intellectual Property Rights (IPR) Policy to govern the rights of HCF and its members and promote widespread use of the HART Communication Technology.

1. Intellectual Property Arising from Foundation Activities

All parties, legal corporations, institutions or individuals, applying for membership in the HART Communication Foundation must sign the Application for Membership form affirming their commitment to abide by all bylaws, rules and policies of the Foundation including the following statement regarding Non-Disclosure and Intellectual Property Rights.

Members who have representation on any technical committee of the HART Communication Foundation agree and acknowledge that (i) the HART Communication Foundation shall own all rights, title and interest in all works, information, ideas, publications, reports, trade secrets, copyrights or other rights of property, either personal or intellectual, arising out of the work or proceedings of any such committee, (ii) no proprietary information shall be disclosed to the Foundation or any technical committee of the Foundation without the appropriate consent of its owner, and (iii) no work or proceedings of any such committee shall be disclosed to any outside third party or any other member prior to the publication of such work by the committee.

Therefore, and as affirmed by their signed commitment on the Application for Membership form, each officer, director, employee, consultant, independent contractor or other agent/representative of a corporate, institutional or individual HCF member who participates on any HCF technical working group/committee shall be deemed to have assigned to the Foundation irrevocably and without compensation, all right, title, and interest in and to their contribution to the technical working group/committee, if and only if it is material to the collective output of the collaborative effort.

The Foundation encourages free and open discussion among technical working group/committee participants, but desires to avoid conflicts that may result from any proprietary interest of the participant or the participant’s employer/client from flowing into the working group/committee output without appropriate approval, notice and contribution of proprietary rights. Accordingly, technical working group/committee participants shall not disclose or contribute any ideas or suggestions that they know to be proprietary in nature without the appropriate prior consent of the technology owner and the appropriate contribution of Private Intellectual Property Rights as set forth in section 2.

This fundamental policy is essential to the proper development of HCF standards and to ensure that the contributions of volunteer member representatives can be incorporated into the HART

Specifications, free of conflict with proprietary interests, and effectively owned, managed and disseminated by the Foundation to its members, the industry and the public.

2. Contributions of Intellectual Property

Should the owner of any Private Intellectual Property Rights such as patents, trademarks, copyrights or trade secrets, under the law of any nation (collectively, "Private IPR") desire to contribute any portion of such Private IPR for use or inclusion in the HART Specifications or other elements of the HART Communication Technology, it shall do so only by means of a written assignment or license agreement duly executed between such owner and the Foundation.

As a general rule, but subject to amendment at the discretion of the Foundation Board of Directors, the Foundation will only accept such assignment or license if the transfer of the Private IPR is without any compensation from the Foundation or its members to the Private IPR owner. The assignment of IPR should be in the form of either; (a) an outright gift of assignment to the Foundation subject to a royalty-free license grant back to the original owner, or (b) a nonexclusive, worldwide, royalty-free license to the Foundation with the right to sublicense at the Foundation's sole discretion and without further obligation to the original owner.

3. Royalty-Free License as Condition of Membership

If any HCF member acquires or possesses any Private IPR that is deemed to be "necessary and essential" by the Foundation's Board of Directors to implementation of the published HART Specifications, then as a condition of initial or continued membership, such member shall grant to the Foundation a perpetual, non-exclusive, worldwide, royalty-free license to such Private IPR solely to the extent reasonably necessary for implementation and open application of the HART Communication Technology in any commercial products to be manufactured, distributed or used.

Should the Private IPR consist of a patent, then "perpetual" shall mean for the remaining life of the patent in any country and "necessary and essential" shall mean that the patent contains one or more claims that either; (a) reads directly upon an element or the equivalent of an element of the approved HART Specifications such that any implementation of the specifications would infringe upon such claims, or (b) reads upon any natural and commercially practical use of the approved HART Specifications so that any such use would infringe upon such claims. The Foundation shall have no rights under this Section 3 to any patent that does not come within the foregoing definitions of "necessary and essential".

Any such license of a Private IPR shall include the right for the Foundation to sublicense the same to members in good standing and/or non-members, subject in either case to reasonable, uniform, and non-discriminatory license fees.

Any disagreement between the member and the Foundation that cannot be resolved by good faith discussion, shall be settled by final and binding arbitration in Chicago, Illinois, U.S.A. under the then current Commercial Arbitration Rules of the American Arbitration Association with the reasonable costs of such arbitration split equally between the member and the Foundation and with the prevailing party entitled to recover its reasonable legal fees and costs incurred.

4. Notification and Disclosure of Conflicting Private IPR

Prior to the adoption of any Proposed HART Specifications, the Foundation will publish notification to all HCF members expressly requesting that the Foundation be notified should they have any knowledge or awareness to the existence of any Private IPR, existing under the law of any nation, owned by either a member or non-member that would conflict, legally bar or adversely affect application or implementation of the Proposed HART Communication Protocol Specifications in any commercial products.

The Foundation shall not adopt the Proposed HART Specifications for a period of at least ninety (90) calendar days following the notice to all HCF members. Should the Foundation receive any notification during this period regarding the existence of any conflicting Private IPR, then adoption shall be further deferred pending completion of legal review by the Foundation's intellectual property counsel and the resolution of any conflicting Private IPR.

Any party notifying the Foundation to the alleged existence of any conflicting Private IPR, shall provide a reasonably detailed description of the Private IPR and the nature and extent of the alleged conflict between the Private IPR and the Proposed HART Specifications.

All communication between the Foundation and the notifying party or between the Foundation and the owner of the alleged conflicting Private IPR shall be held in strict confidence. Such duty of confidentiality, however, shall not extend to any information that: (i) is or becomes publicly known through no act or omission of the Foundation; (ii) is independently developed by the Foundation without any use of or reliance upon the disclosing party's confidential information; (iii) is obtained from a third party without obligation to the disclosing party; (iv) is already known to the Foundation prior to its receipt from the disclosing party; (v) is required to be disclosed by law, provided however, that the Foundation gives prompt and written notice thereof to the disclosing party and gives reasonable cooperation to the disclosing party to limit any public release of such information to the extent provided by law.

Should the conflicting Private IPR be owned by an HCF member, the Foundation Executive Director shall consult with the member in good faith to determine a mutually acceptable resolution to alleviate the conflict between the Private IPR and the Proposed HART Specifications under section 2 or section 3 of this policy as applicable.

Should the conflicting Private IPR be owned by a non-member, the Foundation shall endeavor in good faith to determine a mutually acceptable resolution to eliminate the conflict between the Private IPR and the Proposed HART Specifications comparable to Section 2 or otherwise.

The Foundation shall endeavor to reasonably attempt to avoid conflicting Private IPR in the development of Proposed HART Specifications, taking reasonable precautions and actions to avoid such conflicts, including modifying the Proposed HART Specifications to avoid alleged conflicts with Private IPR.

5. Foundation Intellectual Property

All right, title and interest in and to any and all IPR developed by the HCF staff or individuals employed or retained by the Foundation shall be owned by and assigned to the Foundation. The Foundation shall be free to use and publish any research results, ideas, algorithms, techniques and other information developed for or by the Foundation.

HCF members shall have access to Foundation IPR subject to the fee schedules and license terms established by the Foundation as being necessary for administration, management and technical support to maintain and preserve the IPR in accordance with HCF standards.

The Foundation shall not knowingly use or incorporate any information or data into the HART Specifications or any other elements of the HART Communication Technology which the Foundation does not own or have lawful rights to use through license or assignment of title under Sections 1, 2, or 3 of this policy.

The Foundation shall consult with intellectual property counsel to register and protect such patents, copyrights, trademarks or other intellectual property of the Foundation as deemed reasonably necessary or appropriate to further the purposes of the Foundation and promote widespread use of the HART Communication Technology.

6. Term of Licenses in Event of Dissolution

Licenses granted to the Foundation under Section 3 of this policy are perpetual, meaning that should the Foundation be acquired or merged into another entity or legally dissolved or otherwise ceases to do business, such licenses shall inure to the benefit of any successors or assigns and shall in any case have a term of not less than twenty (20) years from the effective date of such event or the maximum life of any patent, as applicable.

With regard to other licenses granted to the Foundation under this policy, those licenses shall be assignable or terminable, as the case may be, in accordance with their respective terms, provided however, that any such permitted assignment or required termination shall not terminate, shorten, limit, modify, or otherwise affect any sublicenses of rights granted by the Foundation to others prior to the effective date of any such dissolution event.

ANNEX A. REVISION HISTORY

A1. Revision 1.0 Initial Revision