

**In the Matter of the
Appeal of Jerry Upton
Concerning the 802 Executive Committee Vote Disapproving the 802.20 Working
Group PAR Extension Request**

Date: 10 October 2006
Subject: Appeal Panel decision on the 802 Executive Committee
Vote Disapproving the 802.20 Working Group PAR
Extension Request
Appellant: Jerry Upton
Appellee: Paul Nikolich
Appeal Hearing Date: Sept. 13, 2006
Appeal Hearing Location: IEEE Operations Center, Piscataway, NJ

Attendees:

Appeal Panel members:
Chair: Richard Hulett
Member: Malcolm Thaden
Member: Howard Wolfman

Secretary: Rona Gertz

Appellant: Jerry Upton

Appellee: Geoff Thompson

IEEE-SASB Chair: Steve Mills

IEEE Legal Counsel: Claire Topp

IEEE-SA Staff: Judy Gorman
Karen Kenney
Mike Kipness

Others: Steve Mills
Bob Grow
David Law
Mark Epstein
Glenn Parsons
Radhakrishna Canchi

1.0 Background information

- 1.1 During the 802 Executive Committee (802 EC) closing session on March 10,2006, the 802 EC voted not to approve an 802.20 Working Group PAR extension request. This action was subsequently appealed by Jerry Upton to the IEEE-SA alleging that the decision of the 802 EC was arbitrary because it was without any procedural basis.
- 1.2 An Appeal Panel was formed by the SASB chair to hear the appeal to determine if the decision of the 802 EC was reasonable based on the evidence presented.
- 1.3
 - a. Name of Working Group (WG): IEEE 802.20 Mobile Broadband Wireless Access
 - b. Name of Working Group Chair: Jerry Upton
 - c. Name of Sponsoring Society and Committee: IEEE 802 LAN/MAN Standards Committee
- 1.4 The Appeal Panel held a hearing to provide an opportunity for oral testimony from both parties as well as for an opportunity for the Appeal Panel to inquire into the nature of the appeal and the facts surrounding the claims. Jerry Upton submitted a brief appealing the decision of the 802 EC to not approve the 802.20 PAR extension request and Paul Nikolich submitted a reply brief in response. Copies of these documents were provided to the Appeal Panel members by IEEE-SA.

2.0 The appeal agenda schedule

2.1 The following agenda and schedule was established for the hearing:

Item No.	Start	End	Description	By
2.2	4:00 PM	4:05 PM	Introduction	Richard Hulett - Chair Appeal Panel
2.3	4:05 PM	4:10 PM	Appeal Guidelines	Richard Hulett - Chair Appeal Panel
2.4	4:10 PM	4:30 PM	Appellant Opening Statement	Jerry Upton - Appellant
2.5	4:30 PM	4:40 PM	Q/A	Appeal Panel Members
2.6	4:40 PM	5:00 PM	Appellee Opening Statement	Paul Nikolich - Appellee
2.7	5:00 PM	5:10 PM	Q/A	Appeal Panel Members
2.8	5:10 PM	5:20 PM	Appellant Closing Statement	Jerry Upton - Appellant
2.9	5:20 PM	5:30 PM	Appellee Closing Statement	Paul Nikolich - Appellee
2.10	5:30 PM	5:40 PM	Follow up Questions	Appeal Panel Members
2.11	5:40 PM		Adjourn	
2.12	5:40 PM	6:00 PM	Discussion	Appeal Panel

3.0 Appeal Panel responsibility

IEEE-SA Standards Board Operations Manual Clause 5.8, reproduced below in part, describes the Appeal Panel responsibilities.

Clause 5.8.6 states that “The appeals panel shall not consider technical issues, but shall limit its consideration to procedural matters. The appeals panel shall render its decision in writing within 30 days of the hearing, stating findings of fact and conclusions, with reasons therefore, based on a preponderance of the evidence.”

4.0 Appellant's basis of appeal

4.1 The vote by the 802 EC was arbitrary because it was without any procedural basis. No specific 802 Policies and Procedures violations were cited for the non-approval. The 802.20 Working Group did not violate any 802 Policies and Procedures in approving the PAR extension request and in directing the Chair to complete and forward the PAR extension form for 802 EC approval. Note the PAR Extension request does not change the PAR Scope, Purpose or any other sections of the PAR except as to the expected completion date.

4.2 The instructions given by the 802 Chair to the Chair of 802.20 following the non-approval vote cannot be executed. The Chair of 802.20 Working Group was instructed to have a re-vote of the PAR Extension completed form at an Interim or a Plenary. The Chair of 802.20 cannot unilaterally and arbitrarily overrule a valid motion passed by the Working Group members.

4.3 Disapproving a legitimate PAR Extension Request made by a Working Group that has a draft specification in Working Group Letter Ballot is without precedent.

5.0 Sequence of events

January 2006	IEEE 802.20 WG members voted to direct the Chair to complete a form for a PAR extension and to submit it to the 802 EC for approval.
March 10, 2006	802 EC voted down the PAR extension request.
April 7, 2006	Appeal Brief filed by Jerry Upton
May 31, 2006	Reply Brief filed by Paul Nikolich
July 21, 2006	802 EC approved a six month PAR extension
September 13, 2006	Appeal hearing convened at IEEE Operations Center in Piscataway, NJ

6.0 Appeal Panel Decision

The Appeal Panel carefully considered all the evidence presented to the panel and reached the following decision based on the evidence and a review of the applicable provisions of the operating documents governing such appeals.

The Appeal Panel concludes that the action of the 802 EC in not approving the motion for the 802.20 PAR extension was a reasonable conclusion based on a preponderance of the evidence and the appeal is denied. A detailed response to each of the appellant's concerns and the Appeal Panel findings of fact and conclusions are included in the next section.

7.0 Appeal Panel's findings of fact and conclusions

As the panel understood, the appellant had three specific concerns in his appeal.

7.1 Concern 1 by the appellant:

The vote by the 802 EC was arbitrary because it was without any procedural basis. No specific 802 Policies and Procedures violations were cited for the non-approval. The 802.20 Working Group did not violate any 802 Policies and Procedures in approving the PAR extension request and in directing the Chair to complete and forward the PAR extension form for 802 EC approval. Note the PAR Extension request does not change the PAR Scope, Purpose or any other sections of the PAR except as to the expected completion date.

Remedial action requested by the appellant:

Rule the 802 EC vote was in error because the 802.20 Working Group did not violate any IEEE 802 Policies and Procedures in approving their PAR Extension Request. Based on that ruling, the requested PAR Extension should be forwarded to NesCom for its approval. If the Appeal Panel remands this matter to the 802 EC for another vote, it is requested that the 802 EC members, by a roll call, state their procedural rationale for not approving the PAR extension if they vote "NO" or "Abstain" on the motion.

Panel Conclusion:

The Appeal Panel finds for the Appellee.

Findings of Fact:

The Appeal Panel in its review of the evidence does not find the action of the 802 EC in disapproving the PAR extension request to be arbitrary. The Appeal Panel finds that it was reasonable for the 802 EC to expect to have a completed PAR extension request form, approved by the 802.20 Working Group, submitted for its approval. Clause 2.1 "IEEE 802 Approval Guidelines" of the 802 LMSC Guidelines indicate that PAR extensions require the approval of the working group, the working group Chair, the 802 EC and the 802 EC Chair. Without a completed form having made its way through the approval hierarchy, it was reasonable for the 802 EC to conclude that the PAR extension request form submitted to the 802 EC, but never seen or voted upon by the 802.20 Working Group, should be sent back to the 802.20 Working Group for its approval. There is adequate documentation to conclude that the 802.20 Working Group did not vote on the approval of a completed PAR extension form. While the description under the "Item" column in 2.1 says "PAR Extension", it is reasonable to conclude that the 802 EC's

expectation would be that this means that a completed PAR extension form go through the approval process not just the decision to submit a PAR extension form.

Finally, even if it was not reasonable for the 802 EC to conclude that the actual PAR extension request form submitted to the 802 EC should be sent to the 802.20 Working Group for its approval, the IEEE 802 EC is not required to demonstrate specific authoritative procedural grounds for denial of a motion. EC motions are settled by vote, and members base their votes on a variety of perspectives after participating in open debate. A member of the EC moving to adopt a particular motion requesting EC action has the burden of documenting, to the satisfaction of the EC members, the justification for that action. In the absence of convincing documentation, the EC is within its right to reject the proposal without citing a rationale.

7.2 Concern 2 by the appellant:

The instructions given by the 802 Chair to the Chair of 802.20 following the non-approval vote cannot be executed. The Chair of 802.20 Working Group was instructed to have a re-vote of the PAR Extension completed form at an Interim or a Plenary. The Chair of 802.20 cannot unilaterally and arbitrarily overrule a valid motion passed by the Working Group members.

Remedial action requested by the appellant:

See “Remedial action requested by the appellant” in 7.1.

Panel Conclusion:

The Appeal Panel finds for the Appellee.

Findings of Fact:

The Appeal Panel in its review of the evidence finds that the EC’s requiring an approval vote on the completed PAR extension form by the 802.20 Working Group does not override the motion of the 802.20 Working Group to have the form completed and submitted for approval, since the two actions are independent. The Appeal Panel finds that the 802.20 Working Group Chair should have followed the direction of the Working Group’s motion to complete the PAR extension form by beginning the approval process as outlined in Clause 2.1 “IEEE 802 Approval Guidelines” of the 802 LMSC Guidelines, which requires approval of the PAR extension form by the Working Group and as elaborated upon in the “Finding of Fact” in 7.1.

As an aside, Appellant’s characterization of the 802 EC Chair’s response to a question regarding the ability of the 802.20 Working Group to approve the

completed PAR extension form by the 802.20 Working Group as “instructions” is misleading to the Appeal Panel. The minutes of the 802 EC meeting of March 10 indicate after the vote on the appellant’s motion that: “A question was asked as to whether a vote at an interim session where a quorum is present is acceptable. After querying the EC, Paul Nikolich determined that it would be appropriate for the 802.20 PAR extension request to be considered for approval at either a Working Group Interim Session with quorum or a Plenary Session.” A response to a direct question regarding a vote at an interim session does not constitute instructions.

7.3 Concern 3 by the appellant:

Disapproving a legitimate PAR Extension Request made by a Working Group that has a draft specification in Working Group Letter Ballot is without precedent.

Remedial action requested by the appellant:

See “Remedial action requested by the appellant” in 7.1.

Panel Conclusion:

The Appeal Panel finds for the Appellee.

Findings of Fact:

Appellant assumes that the PAR Extension Request advanced by the 802.20 Working Group Chair to the 802 EC is “legitimate” and raises the question of precedence. The legitimacy of the PAR extension request was discussed in the 7.1 “Findings of Fact”, resulting in a finding for the Appellee that the PAR Extension Request was not “legitimate”.

Even if the PAR Extension Request were “legitimate”, Appellant did not present any evidence to support his claim that the 802 EC has not disapproved a legitimate PAR Extension Request made by a Working Group that has a draft specification in Working Group Letter Ballot.

The Appeal Panel members are in unanimous agreement as to the foregoing Findings of Fact, Conclusions and Remedial Actions granted or denied.

Richard Hulett	Chair, Appeal Panel
Malcolm Thaden	Member, Appeal Panel
Howard Wolfman	Member, Appeal Panel

Issued on behalf of the panel by: Richard Hulett
Dated: 10 October 2006