

# Steven G. Mednick

## Recommendation #13-02

To: Management Council  
Committees of the IDESG  
From: Steven G. Mednick  
Ombudsman  
Date: 13 March 2013  
Re: Committee Participation

**Issue.** Over the past few weeks a number of questions have arisen regarding participation in committees including the following issues raised by the Standards Coordinating Committee:

1. **How is committee membership established?** In the case of the SCC the approach has been to define "membership broadly, by including "...any IDESG member who signs up for the SCC mail list".
2. **Does the status of "plenary membership" factor into the role of a committee member?** Again, the SCC has moved in the direction of opening committee membership to both "voting" and "non-voting" members without distinction. In other words all SCC members may vote. The committee has raised concerns about the difficulty of attaining quorum under this practice.
3. **Do committee members vote as individuals or as representatives of IDESG Members?** The SCC is presently considering whether to permit voting by individual committee members regardless of affiliation with an organizational member.
4. **What levels of participation are permitted in Committees?**

### Question #1

#### HOW IS COMMITTEE MEMBERSHIP ESTABLISHED?

**Answer:** The Rules of Association ("ROA") are silent on how committee membership is established. We know that there is authority for the creation of committees, as ROA §2.1.3 states: "There shall be such Committees, as set forth in or as otherwise established by the Plenary in accordance with these Rules". We also recognize that the governance of committees is circumscribed by the Committee Charter which, at a minimum requires the following information: (1) the mission and jurisdiction; (2) operational principles; (3) decision making procedures; (4) leadership selection processes; (5) interrelationships with other committee activities; and, (6) deliverables. However, as to the selection of committee members the ROA are silent<sup>1</sup>.

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<sup>1</sup> Although it should be noted that, by action of the Plenary in approving the Membership Agreement and IPR Policy, a committee that adopts a patent policy can restrict "membership" and "participation" on a committee.

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On the other hand, the following provision of ROA §2.1.3.4 establishes an expansive participation standard: "Participation in and meetings of the Committees shall be open to all Members". Thus, it is clear that you must be an IDESG Member in order to serve on a committee.

The issue of how you become a committee member is a different matter. The ROA side-stepped the issue of the traditional selection processes<sup>2</sup> and, as a general rule, the organization has informally adhered to an "open field" self selection method for committee membership. While "self-selection" may be unwieldy it is not without limitation. The most significant limitation is "IDESG Membership". Those who have chosen to equate "participation" and "membership" have no foundation for doing so under the ROA<sup>3</sup>.

In light of the silence on the method of appointment of committee members Committees may seek the guidance of the Chair of the Plenary with regard to the determination of who is a member of the Committee and how to maintain an effective committee roster for purpose of proceeding with Decision Making.

## Question #2:

### DOES THE STATUS OF "PLENARY MEMBERSHIP" FACTOR INTO THE ROLE OF A COMMITTEE MEMBER?

**Answer:** At the point where a committee establishes its "membership" the issue of the level of participation or involvement comes into play. The issue is not tied to "plenary membership" or "plenary participation" but rather to Membership in the IDESG of which the plenary is the governing body. In this case the ROA is more evident. ROA §2.1.3.4 states: "...only Voting Members may *vote* on work products and recommendations" (emphasis added). Voting Member is a defined term and a plain reading of the definition will clarify its application to the Committee process. ROA §12.7.7, states, as follows:

Members that *actively participate in the IDESG and the work of the Plenary and its Committees*. Voting Members shall participate in Decision Making, including, but not limited to the *right to a vote in Plenary-wide or Committee proceedings* and in the elections of Officers and delegates. The requirements for qualification as a Voting Member are set forth in these Rules.

Thus, "active participation" in the work of "the Plenary and its Committees", including the "right to a vote in Plenary-wide or Committee proceedings" is conferred only upon Voting Members of the IDESG. The choice made when an

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<sup>2</sup> Traditional appointment methods: (a) Election by ballot; (b) Nominations from the Floor; (c) Nominations by the Chair (confirmed by members); or, (d) Appointment by the Chair.

<sup>3</sup> This relaxed approach has populated IDESG committees; however, the self selection of committee membership raises other issues that impact on the need for balanced representation within the IDESG.

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individual or organization becomes a Member of the IDESG actually has meaning.

On the other hand, ROA §2.1.3.4 is silent on the rights of "Non Voting Members" since it only refers to a "vote on work products and recommendations". However, elsewhere the ROA is clear, as a matter of first order, that the Decision Making provisions apply to Committees; although "...a Committee of the Plenary may adopt Decision Making protocols in its Charter, consistent, with these Rules, as may be approved by the Plenary". So, unless a Plenary-approved Committee Charter establishes an alternate protocol the rule is as follows:

- IDESG Voting Members who serve on the committee may "vote" and participate in consensus
- IDESG Non- Voting Members may only participate in consensus (See ROA, 12.7.6)<sup>4</sup>. .

### Question #3:

#### DO COMMITTEE MEMBERS VOTE AS INDIVIDUALS OR AS REPRESENTATIVES OF IDESG MEMBERS?

**Answer:** In this case the ROA is clear. ROA §2.1.3.4 states: "...Members can participate in an unlimited number of Committees; however, *in such Committee each Voting Member shall have only one vote in each Committee*" (emphasis added). Thus, if you are participating as the representative of the Organizational Voting Member, one is entitled to only one vote. In my view the same rule would apply to participation in the consensus process.

### Question #4:

#### WHAT LEVELS OF PARTICIPATION ARE PERMITTED IN COMMITTEES?

ROA §1.5 states: "Participation and attendance by members of the public in meetings of the IDESG may be permitted". The rule is expansive; however, it is not an unfettered right<sup>5</sup>. One of the functions I am mindful in my role as Ombudsman is my responsibility to "facilitate balanced representation within the IDESG" and to "...ensure that underrepresented groups are represented and advocated". However, I cannot, by fiat, change the ROA. Likewise, the Committees cannot change the rules. Thus, without the benefit of a plenary-

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<sup>4</sup> Definition of "Non-Voting Member": "Members that do not meet the criteria for Voting Members, but that wish to maintain a formal and ongoing presence in the IDESG. Non-Voting Members may still contribute to the work of the Plenary and its Committees. While they may participate in the Consensus process, they shall not be permitted to vote in Plenary or Committee proceedings and in the elections of Officers and delegates. The requirements for qualification as a Non-Voting Member are set forth in these Rules."

<sup>5</sup> As stated several times, even participation by Members may be restricted if the Member fails to sign off on a patent policy.

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wide “participation policy” Committees may, through their Charter, establish participation requirements; however, the right to vote and participate in consensus may not be affected.

The issue of participation is an issue that the Management Council should address with an eye on establish a common standard for IDESG.