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Federal Trade Commission
Office of the Secretary
Room H-113 (Annex X)
600 Pennsylvania Avenue
Washington, DC 20580

Re: FTC Project No. P111204

Corning appreciates the opportunity to submit comments in response to the Request for Comments regarding the treatment of patented technology in standards.

The RAND Licensing Commitment

Corning is actively involved in a variety of standards organizations, both as a contributor and an implementer. In particular, Corning is active in a variety of standard setting organizations (SSO's) having voluntary, open consensus-based processes in which patent holders may make commitments to offer licenses to essential patented technology on reasonable and non-discriminatory (RAND) terms and conditions. Corning believes that such intellectual property (IP) policies have successfully provided access to member IP for implementers, yet also protect the rights of patent holders such that they are encouraged to continue to innovate and contribute those innovations to the SSO's for use in standards. The policies of these SSO's fairly balance the interests of all stakeholders, whether they are, like Corning, an innovation company, or a large integrator company which may be more concerned with merely being able to practice a standard that may require the IP of a variety of companies in order to practice.

Some companies have suggested that membership on SSO's should be based on first agreeing to mandatory licensing obligations, sometimes royalty free. Obviously, such companies have business models which are profitable regardless of whether they receive royalties for their own IP that may be implemented into the standardized product. This is not the case with all companies that participate in standards process. Although many innovator companies are often willing to contribute their IP for use in standards, these companies invest significant amounts to develop technology and associated IP, and expect some consideration in return for having their IP implemented into a standard. Moreover, it may no doubt benefit integrator companies to not have to pay royalties that they might otherwise have to pay to smaller innovation and other companies that might hold IP, but we believe the proliferation of SSO's requiring mandatory licensing obligations to join would have a chilling effect on the ability of some, particularly smaller companies, to

participate. This in turn could reduce the diversity of companies participating within standards, and cause companies to choose between having a voice in standards which may be particularly useful in their industry and potentially having to contribute their IP on a royalty free basis.

Ex Ante Disclosure Policies

Corning supports voluntary ex ante disclosure of specific licensing terms. We believe that mandating ex ante disclosure could, like mandatory royalty free policies, deter rather than expedite the standards process. Mandatory ex ante disclosure would disincentivize innovator companies from contributing IP to the standards process, particularly in standards groups in which large integrator companies and/or competitors could easily group together to pressure patent holders to reduce royalties or risk not having their technology included or adopted into the standard.

Public Policy Considerations

Over the past few years, Congress has engaged in a vigorous debate over patent reform legislation, including proposals which would have reduced compensation for intellectual property through an elevation of "apportionment of damages" as a more prominent factor of consideration in damages calculations Ultimately, Congress rejected the apportionment of damages proposal, reflecting a clear and conscious decision by the legislative branch to avoid such changes to U.S. patent law.

Corning additionally believes that the proposed incremental value approach to capping royalties may not fairly compensate patent holders, and cannot possibly result in a fair assessment for appropriate royalty compensation in all of the various complicated situations that occur when new technology is implemented and sold in products. For example, companies that implement a new technology may choose to price that new technology at, or even below, the price of previous technology, in order to gain market adoption by favorably pricing their new technology. In such a situation, under an incremental value approach, that company's reward for providing a new technology to consumers at a reasonable price might be that they would obtain little or no royalties from licensees.

Now, in this FTC review of standard-setting issues, some have proposed imposing mandatory or even royalty-free licensing, regimes on SSO members. In our view, such proposals would move patent policy in the opposite direction of that chosen by Congress.

Moreover, such proposals would undermine the position of the United States internationally. The U.S. government is a vigorous advocate of strong protections for intellectual property rights. To this end, the U.S. government has consistently resisted efforts of foreign governments to undermine these rights by invoking compulsory licensing. The U.S. intervened in the 1990s in Europe and in 2009 in China to modify proposals

advocating compulsory licensing or reduced compensation. Most recently, the U.S. government continued to aggressively resist calls for compulsory licensing or reduced compensation in the global climate negotiations. The U.S. government has consistently encouraged international adherence to the voluntary, industry-led disclosure and use policies established by SSOs.

Sincerely,

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