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Japan: Guidelines for a Transparent and Predictable SEP Licensing Negotiation

Naho Ebata, Mami Hino (Abe, Ikubo & Katayama) · Friday, September 30th, 2022

On March 31, 2022, the Ministry of Economy, Trade and Industry (METI) publicized the “Good Faith Negotiation Guidelines for Standard Essential Patent Licenses” (hereinafter, the “METI Guidelines”). The METI Guidelines are not legally binding but were created as norms of good faith negotiations to be followed by SEP holders and implementers involved in SEP licensing negotiations including Japanese patents. They set out a four-step negotiation process, clarifying what is expected of the parties during licensing negotiations so that they are recognized to be acting in “good faith”. However, the METI Guidelines are not legally binding and do not guarantee that, even if followed, negotiations will be judged to have been made in good faith in future judicial rulings.

Click here for an [English translation of the METI Guidelines](#).

Further on June 30, 2022, the Japan Patent Office (JPO) also updated its “Guide to Licensing Negotiations Involving Standard Essential Patents” (hereinafter, the “JPO Guide”), which was revised for the first time in four years since its first publication on June 5, 2018. Unlike the METI Guidelines, the JPO Guide does not set out an expected norm. Rather it is a document that objectively summarizes various issues concerning SEP licensing negotiations based on domestic and foreign facts. The current update includes reference to the newly established METI Guidelines, reference to recent court decisions rendered in foreign countries, and elaboration on hot topics such as the issue of which entities in the supply chain should be parties to licensing agreements.

Click here for an [English translation of the JPO Guide](#).

Traditionally, SEP licensing negotiations took place mainly among Information and Communication Technology (ICT) companies, so issues were commonly resolved through cross-licensing, and it was easier for the parties to assess the scope, essentiality and value of each other’s patents. However, with the recent spread of Internet of Things (IoT), companies from a broad spectrum of industries are now finding themselves involved in SEP licensing negotiations, and it is becoming harder to resolve disputes. With such background in common, the METI Guidelines and the JPO Guide were created to enhance transparency and predictability of SEP licensing negotiations, facilitate negotiations between parties, and help prevent or quickly resolve disputes concerning SEP licensing. The two documents are expected to be updated from time to time, reflecting the most recent developments of court decisions, judgment of competition authorities, and industry practices.

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