

The American Chamber of Commerce in Japan Public Comments on the Draft of “Guide to Licensing Negotiations involving Standard Essential Patents”

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Submitter	The American Chamber of Commerce in Japan
Comments	<p>[The heading the comments relate to]</p> <p>Purpose of the Guide</p> <p>[Comments]</p> <p>This comment is submitted in response to the Japan Patent Office’s (“JPO”) invitation for public comments on the Draft of “Guide to Licensing Negotiations involving Standard Essential Patents”. The American Chamber of Commerce in Japan (“ACCJ”) appreciates the opportunity to comment and commends the JPO for its transparency and willingness to consider input on these issues from interested stakeholders. The ACCJ also applauds the JPO for making extra efforts in examining various legal precedents and actively engaging in discussions with the business, academic and legal communities to develop the Guide.</p> <p>The ACCJ is a non-profit membership organization committed to furthering the development of commerce between the United States of America and Japan, promoting the interests of U.S. companies and ACCJ members, and improving the international business environment in Japan. The ACCJ is driven by its approximately 3,500 members from over 1,000 companies and 40 countries.</p> <p><u>Purpose of the Guide</u></p> <p>The ACCJ appreciates the efforts expended by the JPO to synthesize in a single Guide the various interpretations applied by the courts, fair trade agencies, and standard setting organizations (“SSO”) around the world struggling to articulate FRAND (Fair, Reasonable and Non-Discriminatory) principles as they relate to standard essential patents (“SEP”), which are intrinsic to the standard setting process.</p> <p>Nevertheless, because the Guide prepared by the JPO relies heavily on the laws and court decisions of the United States, Germany, the United Kingdom and the People’s Republic of China, with only a few references to Japanese court precedent, the applicability of the obligations to patent holders in Japan under Japanese law is unclear. Furthermore, because the foreign court decisions cited by the JPO are based on different legal principles, such as contract law, unfair competition law and</p>

	<p>antitrust/antimonopoly laws, and no attempt is made in the Guide to explain the differences in these laws and the results reached by courts in the cited decisions, readers may be given an inaccurate view of their obligations under the laws of Japan and these other countries. Finally, the Guide fails to adequately explain the legal and substantive differences between SEPs and non-SEPs and why a patent holder's legal obligations vary, often significantly. This, again, may give readers an inaccurate view of their obligations under the laws of Japan.</p> <p>For this reason, the ACCJ recommends that the Guide should be referred to as a brochure or explanatory document and not be titled a "guide".</p> <p>Again, the ACCJ appreciates the opportunity to provide these comments. Please contact us if you would like us to provide additional information on any issues discussed above.</p>
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