

(Tentative Translation: only Japanese version is authentic)

Request for Public Comments on Partial Amendment of “Guidelines for the Use of Intellectual Property under the Antimonopoly Act” (Draft)

Date: July 8, 2015  
Japan Fair Trade Commission

In industries experiencing remarkable technological innovation, such as the information technology sector, those concerned often set standards jointly on the methods of information transmission and connection among different models in order for rapid launch and expansion of the market for new products. Under such circumstances, some cases occur where holders of patents essential for implementation of the functions and effects prescribed in the standards (including the other intellectual property rights) (hereinafter referred to as the “Essential Patent”) claim for injunctions against those who use such Essential Patent inside and outside of Japan.

In order to clearly show the principles about the use of intellectual property rights including patent right under the Antimonopoly Act, the Japan Fair Trade Commission (hereinafter referred to as the "JFTC") has stipulated “Guidelines for the Use of Intellectual Property under the Antimonopoly Act” (September 28, 2007) (hereinafter referred to as the “IP Guidelines”) and “Guidelines on Standardization and Patent Pool Arrangements” (June 29, 2005). Issues related to the Essential Patent under the Antimonopoly Act shall be basically judged based on these guidelines. However, these guidelines have limited descriptions about the acts found to constitute an exercise of right on its face (for example, claim for injunction by the patent holder) and any principle about the above case under the Antimonopoly Act is not clearly given.

Therefore, the JFTC has conducted a survey on the issues related to the Essential Patent as described above. Based on the result of that survey, the JFTC drafted the partial amendment of the IP Guidelines (Attachment 1), adding the case related to the FRAND-encumbered Essential Patent (Note). The JFTC decided to make that part of the IP Guidelines open to the public and request for public comments from various interested parties.

For the contents of the factual survey the JFTC have conducted, refer to the “Survey Report on Problems related to Essential Patent” (Attachment 2).

(Note) An Essential Patent holder’s declaration in writing to show that it is willing to grant licenses under FRAND (fair, reasonable and non-discriminatory) conditions to the SSO (Standard Setting Organization) is referred to as the “FRAND Declaration”.

1. How to obtain related materials

Related materials are available at:

- a. The e-Gov page of e-Government;
- b. The website of the JFTC; or
- c. Consultation and Guidance office at the Head Office (Tokyo), Regional Offices (Sapporo, Sendai, Nagoya, Osaka and Fukuoka) and Branch Offices (Hiroshima and Takamatsu) of the JFTC and the Fair Trade Office of the Okinawa General Bureau, General Affairs Division, Cabinet Office (Naha).

2. How to submit comments

Please clearly state your address, full name (in kana), name of affiliation (organization or company), and contact address (e-mail address, fax and telephone number), and submit your comments in JAPANESE by either of the following two methods. Please note that comments will not be accepted by telephone.

(1) By e-mail:

Submit your opinion in the text format and write "Comments on the Partial Amendment of the IP Guidelines (Draft)" as the subject if you use e-mail. Note that the JFTC cannot receive your opinion as an attached file or by any link to a URL.

E-mail address: [epat-〇-jftc.go.jp](mailto:epat-〇-jftc.go.jp)

(To prevent e-mail spam, the JFTC uses “-〇-” instead of “@” in the address.

When you send an e-mail, replace “-〇-” with “@”.

(2) By fax:

Clearly indicate "Person in Charge of the Partial Amendment of the IP Guidelines (Draft), Consultation and Guidance Office" as the addressee, and write "Comments on the Partial Amendment of the IP Guidelines (Draft)" as the subject of the fax cover sheet. Please note that comments sent without an addressee will

not be accepted.

Fax number: +81-(0)3-3581-1948

(3) By postal mail:

Send to:

Person in Charge of the Partial Amendment of the IP Guidelines (Draft),  
Consultation and Guidance Office, Trade Practices Division, Economic  
Affairs Bureau, Secretariat, Japan Fair Trade Commission  
Section B, No. 6 Central Joint Governmental Building,  
1-1-1, Kasumigaseki, Chiyoda-ku, Tokyo 100-8987 Japan

3. Submission deadline

Comments must arrive by 18:00 (JST), August 6, 2015.

4. Notes regarding the submission of comments

Submitted comments may be made public without the address, full name, and contact address such as e-mail address, fax number and telephone number. Please note that individual responses will not be made to submitted comments.

The address, full name, e-mail address, fax number and telephone number will only be used to contact the author of the comments to clarify ambiguous content if necessary. The personal information that is submitted will not be used for any purpose other than for this contact or clarification.