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Sent Via Email to: [PA0A00@jpo.go.jp](mailto:PA0A00@jpo.go.jp)

Re: JPO SEP Guide Comments

Dear Japan Patent Office:

Intellectual Property Owners Association (“IPO”) appreciates the opportunity to provide comments in response to the Japan Patent Office’s (“JPO”) proposed *Guide to Licensing Negotiations Involving Standard Essential Patents* (the “Guide”). We commend JPO for its efforts and its attempts to reflect different viewpoints. We also note that IPO takes no position on aspects of the Guide not specifically referenced here.

IPO is an international trade association representing companies and individuals in all industries and fields of technology who own, or are interested in, intellectual property rights. IPO’s membership includes about 200 companies and more than 12,000 individuals who are involved in the association either through their companies or as inventor, author, law firm, or attorney members. IPO membership spans over 30 countries. IPO advocates for effective and affordable IP ownership rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current IP issues; providing information and educational services; and disseminating information to the public on the importance of IP rights.

There are two points that we would like to ask you to consider as you finalize the proposed Guide.

First, we understand JPO’s desire to provide guidance to businesses that are not familiar with some of the issues associated with licensing standard essential patents (“SEPs”). We note that the issues surrounding SEPs licensing continue to be an area of law being developed on a country-by-country basis. As a result, we appreciate statements in the Guide to the effect that it is “is not legally binding,” “is not intended to be prescriptive,” etc. The fact that JPO is issuing the Guide could, as a practical matter, cause businesses to put greater weight on the Guide’s authority than intended. This might lead parties away from consulting legal counsel or other reliable sources about SEP licensing issues.

## INTELLECTUAL PROPERTY OWNERS ASSOCIATION

IPO welcomes the JPO's approach of stating in the first section that the Guide is legally non-binding and including other disclaimers. We encourage JPO to avoid language elsewhere in the Guide that could be interpreted as a legally required course of action. In addition, we recommend including the following statements in Section I.B:

- The Guide ought not be given any greater weight than appropriate.
- The Guide is not a substitute for seeking advice from qualified legal counsel about specific issues presented in a particular SEPs licensing negotiation.
- Following the recommendations in the Guide does not guarantee that a party has met its obligations under the current law for the specific SEPs and countries at issue in a particular licensing negotiation.

Second, IPO suggests that the JPO include additional text in Section IIB(6) regarding patent pools. The current text states that patent pools might not necessarily increase efficiency "if rights holders who grant licenses individually participate in the patent pool as this may cause redundant royalty earnings on the part of such rights holders." We recommend inserting the following sentence just after this quoted text:

"However, in practice, a number of pools or pool members adjust the royalties paid by the licensee to avoid double payment."

We believe that this will add useful information and context for readers of the Guide.

We thank you for this opportunity to provide comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry Hadad", written in a cursive style.

Henry Hadad  
President