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FSA welcomes METI's forward-looking guide on SEP license valuation

Brussels, 27 May 2020 – Fair Standards Alliance welcomes a forward-looking guide of Japanese Ministry of Economy, Trade and Industry on licensing of standard essential patents.

In May 2020, the Ministry of Economy, Trade and Industry (METI) published its “Guide to Fair Value Calculation of Standard Essential Patents for Multi-Component Products” and its [English translation](#).

Fair Standards Alliance (FSA) welcomes the extensive research METI has conducted on valuation of standard essential patents (SEPs), underlying its policy recommendations that are key to ensuring continued investments in research and innovation, in particular, in the area of the IoT, in Japan and beyond.

As pointed out by METI, “[w]hile IoT is spreading across various industries and will bring benefits to people’s lives, the increasing risk of licensing negotiations on SEPs will not only make it difficult to invest in IoT and harm both SEP holders and implementers, but also may hinder economic and social development”.

Indeed, the broad FSA membership ranging from automotive, broadcasting, networking, smart energy solutions, mobile telephony to manufacturing of personal computers clearly indicates that businesses from different sectors share these concerns.

In the guide, METI highlights three important “principles for calculating the fair value of SEP[s] for multi-component products”:

- *“The parties to a licensing agreement should be decided based on the concept of “license to all”;*
- *“A ‘Top down’ approach which determines the appropriate rate by calculating the ratio of contribution by all SEPs to the standard can avoid this “Royalty Stacking” problem”;* and
- *“Royalty should be calculated based on the portion to which the SEP technology contributes (contribution ratio) in the value of the main product that implements the SEP technology”.*

FSA strongly agrees with METI’s conclusions. FSA has advocated for a long time that the commitment SEP holders voluntarily make to license their SEPs on fair, reasonable and non-discriminatory (FRAND) basis precludes them from unilaterally determining that licenses can only be available at the end-device level.

As technology standards are most often implemented higher in the value chain, suppliers have more detailed knowledge about the technology and are better placed to determine whether a given patent is valid, essential to the standard or infringed. Limiting SEP licenses to end-device manufacturers poses a risk of taxing downstream innovation, enabling SEP holders to extract revenue from innovations they did not make.

As highlighted recently in the CEN CENELEC Workshop Agreement ([CWA](#)), that was endorsed by over 55 organisations, royalty stacking is a significant concern. FSA is pleased to see this supported in METI’s guide as well.

FSA applauds the important clarification in the guide recognising that royalty should be calculated based on the portion to which SEP technology contributes (contribution ratio) in the value of the main product that implements the SEP technology. FSA also:

- commends METI's acknowledgement in the guide of the impact SEP licensing practices can have on small and medium-sized enterprises in particular.
- supports METI's recommendation that injunctions should not be part of early stages of a licensing negotiation process. Indeed, given the significant impact injunctions may have on innovators, and the availability of alternative remedies, injunctions should only rarely be available for SEPs – irrespective of the size of the company, and irrespective of the stage of the negotiation process.
- appreciates METI's call to provide meaningful transparency on SEP licenses – a principle, which is widely supported in the [CWA](#) guide that includes, among other useful materials, a list of documents that an SEP holder should provide to allow the negotiation between parties to proceed on a common base of information and facts.

FSA has a number of additional observations and questions on the draft, which it hopes to clarify with METI.

As mentioned above, we very much appreciate the extraordinary efforts that METI has gone through to develop this informative guide that we believe brings much desired additional clarity on SEP licensing.

About the Fair Standards Alliance (FSA)

[FSA](#) is an alliance of 47 European and global companies, large and small, that advocates fairer licensing of standardised technology in the development and rollout of the IoT. FSA members significantly contribute to European innovation and the European economy. Annually, the aggregate turnover of FSA members is more than EUR 2 trillion, and in aggregate our members spend more than EUR 140 billion on R&D and innovation. Alliance members directly employ just over 2.5 million people within Europe alone, and have more than 500,000 patents, including SEPs, that are either granted or pending.