Guidelines of SEP License for Automotive Industry

Introduction

SEP, or Standard Essential Patent, means a patent that is necessary for the implementation of a technical standard. SEP owners have the obligation to license their SEPs to implementers on fair, reasonable and non-discriminatory terms (FRAND terms). This paper presents the guidelines for automotive industry licensees to adopt reasonable terms when negotiating with SEP owners.

I. Essential Patent License for Automotive Industry

1. Definitions

- **SEP**: Standard Essential Patent
- **SEP Virtual Value**: The actual value contributed by SEP technology to the licensed product
- **SEP Royalty**: Royalty paid by SEP owners to implementers for use of their SEPs
- **SEP Relevance**: The relevance of a SEP to a specific technical standard

2. Principle of Fairness

- The SEP license fees shall be reasonable, and the actual SEP Royalty shall not be significantly different from the value of SEP Virtual Value.

3. Principle of Business Custom

- The automotive industry chain is a complex system with tens of thousands of parts and components involved in a vehicle. In the current mature industrial practice, the prevailing business custom in the automotive industry is to adopt a vertical licensing model along the industry chain, where automotive enterprises usually license SEPs for specific automotive products.

II. Essential Patent License for Automotive Industry

1. When there are discrepancies or differences between SEP licensing model and current licensing model

- In terms of intellectual property protection and patent licensing models, there are different laws and regulations, as well as different practices among industries. For example, the automotive industry involves complex systems where tens of thousands of parts and components are involved, while the technology and research center is relatively concentrated.

2. SEP Royalty

- When calculating SEP royalties, methods may be adopted such as "cap and floor" method, where the royalty should not differ significantly among various license levels. In addition, the interests of the public should also be taken into consideration.

3. SEP Relevance

- The SEP Relevance of a SEP is a key factor when determining its value. SEP owners should make efforts with their successors or assignees to ensure that the SEP Relevance of their SEPs is in line with the technical standard.

4. SEP Royalty Calculation Method

- The SEP Royalty Calculation Method should be based on the SEP Relevance. This method should be transparent, reasonable, and without the implementation of unreasonable economic conditions or terms, and unreasonable refusal or attachment of unreasonable licensing conditions.

5. SEP Relevance

- The SEP Relevance is determined based on the technical standard, the specific automotive product, and the actual value contributed by SEP technology.

6. SEP Royalty Fixing

- When determining SEP Royalty, the SEP Royalty should be calculated repeatedly, positively, and without unreasonable economic conditions or terms.

7. SEP Royalty Fixing

- The SEP Royalty should be determined based on the SEP Relevance, the actual value contributed by SEP technology, and the interests of the public.

8. SEP Royalty Fixing

- When negotiating with SEP owners, the SEP Royalty should be reasonably determined. This method should be transparent, reasonable, and without the implementation of unreasonable economic conditions or terms.

9. SEP Royalty Fixing

- SEP owners should make efforts with their successors or assignees to ensure that the SEP Royalty is in line with the technical standard.

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