

Related Paragraph	Comments <b>*Proposed Changes are shown in red texts.</b>	Responses to Comments
3	There is little or no evidence of hold-up whereas courts have documented many cases of hold-out. The documented problem of hold-out should be a greater concern for regulators, rather than the theoretical concern of hold-up.	
4	Proposed Change: "Hold-up" is a situation whereby businesses using SEPs are forced to accept disadvantageous terms of license due to the threat of injunction for infringement of patent rights after the companies are locked into using a standard. <b>Because companies are locked into a standard, hold-up is particularly pernicious in the context of SEPs.</b> Legal precedents across the world seem to be converging toward permitting injunctions concerning FRAND-encumbered SEPs (i.e., SEPs for which a FRAND declaration has been made) only in limited situations. However, in cases when either party negotiates in bad faith, courts have continued to grant injunctions, and it can be said that hold-up remains an issue for implementers. Nonetheless, some doubt whether there is any hold-up, <b>though courts, regulators, and empirical studies consistently recognize that it exists. Most recently, the U.S. Federal Trade Commission's Chair Khan and Commissioner Slaughter filed a public interest letter with the U.S. International Trade Commission that recognized that SEP owner 'holdup' discourages "standards setting activities and collaboration, which can delay innovation."</b>	
4	In the last sentence beginning with, "Nonetheless, some doubt...", replace "any" with "truly evidence of," so the sentence will read "Nonetheless, some doubt whether there is <b>truly evidence of any</b> hold-up."	
4	Please note that hold-up supposes the use of market power to extract excessive rents. The use of such market power is depending upon the courts as the SEP holder can only enforce its patents via intervention by the courts and stop the unauthorized (and unlicensed) use of its technology.	It was underscored that there is still a gap between rights holders and implementers over "hold-up" and "hold-out," even as to whether they are a real problem or merely a concern. Therefore, we revised the description as in [004]-[005].
4	This is not accurate. Injunctions are, indeed, granted when the implementer acts in bad faith. If the SEP holder acts in bad faith (as well) it is questionable whether an injunction will be granted.	
5	We believe that the characterisation of hold-up as a situation is inaccurate given that there is still barely any evidence that it is anything beyond a theoretical concern. Hold-out on the other hand has substantial evidential backing and has been recognised by several courts in Europe.	
5	Add 2 footnotes this paragraph. New footnote : But see Brian J. Helmers & Christian Love, An Empirical Test of Patent Hold-Out Theory: Evidence from Litigation of Standard Essential Patents 3 (Santa Clara Univ. Legal Studies Research Paper Oct. 26, 2021) ("results provide little support for the mechanism proposed by theory that links SEPs and hold-out, particularly with respect to pre-litigation hold-out"). New footnote : Letter from 77 Former Government Enforcement Officials and Professors Regarding Speeches on Patents and Holdup to Makan Delrahim, Assistant Att'y Gen., U.S. Dep't of Just., at 2 (May 17, 2018) (explaining "[t]he potential for holdout exists on both sides of contracts, occurring 'when one side refuses to perform in good faith or negotiate reasonably.' In contrast, the holdup problem and accompanying lock-in value exist only on one side of the exchange").	
5	In the paragraph that begins with "On the other hand...", change the last part of the sentence so that it reads "...fails to engage in negotiations in good faith by rejecting or delaying licensing negotiations, <b>in-anticipation that an injunction will be denied on SEPs.</b> "	
4	We observe there is no one definition of patent hold-up or hold-out.	We acknowledge the fact that there is no one definition of hold-up and hold-out. The descriptions of hold-up and hold-out in [004] and [005] are not intended to be defined hold-up and hold-out.
6	We suggests the JPO to amend this reference to FRAND 'principles' or FRAND 'framework' given it is not a policy.	Based on the comments you kindly provided to the JPO, we reviewed and revised the description.
7	We encourages the JPO to remove references to over declaration. The Guide should contextualise the declaration process to an SDO.	We would like to maintain the description from the perspective of balancing the interests of concerned parties.
7	"At the same time, there is a strong call for enhancing transparency in relation to the essentiality and validity of SEPs. For some SSOs, if rights holders consider their patents <b>may be or become</b> SEPs during the standardization process,"	Based on the comments you kindly provided to the JPO, we reviewed and revised the description.
7	Some point out that such overdeclaration has been encouraged at least partly by the <b>industry practice</b> of determining royalties at least partly in proportion to the number of SEPs out of the total number held in relation to a certain standard.  Don't think this is industry practice.	Based on the comments you kindly provided to the JPO, we reviewed and revised the description.

11	In the sub-section on “Paradigm Shift in Licensing Negotiations”, in the paragraph starting with “With the spread of IoT...,” replace “may” with “are very likely to” in the sentence “In the future, ...” so the sentence instead would read “In the future, companies from other industries <b>may are very likely to</b> be involved in SEP licensing negotiations.”	We would like to maintain the description from the perspective of balancing the interests of concerned parties.
11	"Also, some companies that do not hold SEPs are entering the market." There are many more companies implementing standards than there are companies contributing to the creation of the standardised technologies.	We would like to maintain the description from the perspective of balancing the interests of concerned parties. We do not intend to evaluate whether the number of company that do not hold SEPs is large or small. We merely mentioned the existence of companies that do not hold SEPs.
11	For example, in addition to those telecommunications companies holding SEPs, negotiations <b>may now</b> involve end-product manufacturers, such as automobile makers, as a main implementer of standard technology. In the future, companies from other industries may be involved in SEP licensing negotiations.  As originally drafted, it seems to suggest that end-device manufacturers have just begun taking licences which is, however, not the case. In the ICT-field licences were traditionally taken by end-device manufacturers.	We would like to maintain the description from the perspective of balancing the interests of concerned parties.
12	In the following paragraph beginning with “Further there are now cases...,” add “purchased from third parties” after “patents,” so the sentence would read “Further, there are now cases in which Patent Assertion Entities (“PAEs”) that are not engaged in business operations but rather generate revenue solely by asserting patents <b>purchased from third parties</b> also become party to negotiations and disputes concerning SEPs.”	We would like to maintain the description because the body where PAEs purchase patents is irrelevant to this issue.
20	In the paragraph starting with “In these circumstances...,” add the acronym FRAND between “appropriate” and “compensation” so the sentence now reads “In these circumstances, this Guide aims to offer an explanation of what actions companies can take to make it more likely for them to be recognized as “negotiating in good faith,” helping implementers to avoid an injunction and rights holders to secure appropriate <b>FRAND</b> compensation.”	We would like to maintain the description because we declare in [017] that the SEPs addressed in this Guide are those presented by rights holder to an SSO as a FRAND-encumbered SEP.
21	<b>Our hope is therefore that this Guide might be used by qualified experts when advising small and medium enterprises (SMEs) and other parties with limited experience in dealing with SEP issues.</b>  Reinserting text from previous Guide.	We would like to maintain the description because background of the revision is stated in Chapter I Section C.
24	The draft goes in details on these matters and we do not see the need of high-level, incomplete summaries here. Suggest deleting.	We would like to maintain the description because the details are stated in Chapter II.
25	In Sisvel v Haier decision, the Court refers primarily to the notification of infringement not to the offer which could follow later. 'Notification of infringement' is preferable. Adding "at least in that case" seems inaccurate.	We would like to maintain the description. Generally speaking, a court decision refers to individual cases.
26	If kept, change with <b>“suggested, without binding effect, by some members of the SEP Expert Group organized by the EC...”</b> There was no unanimous support for this suggestion.	In the footnote, it was clearly stated that the report is not binding on the European Commission, nor is it supported by all the members of the Expert Group. Moreover, the descriptions in [022]-[025], [027] are the official opinions of the CJEU, the German Supreme Court and the METI, and for the sake of balance, we have decided to delete the description pertaining to the report from the SEP Expert Group that do not correspond to those opinions mentioned above.
27	METI guidelines are the result of a semi-closed study group through an untransparent process that was not object to public review. Our understanding is also that such guidelines are not yet finalized. Furthermore, they cannot and should not be compared to case law and do not carry the same weight. We suggest removing all references to it.	We would like to maintain the description because “Good Faith Negotiation Guidelines for Standard Essential Patent Licenses” was officially established by Japanese government.
28	Given the now appointed USPTO and NIST leadership did not contribute to the 2021 Draft Policy Statement, we encourages the JPO to revise the footnote to indicate only the DoJ released the 2021 Draft Policy Statement for public comment, and that this policy statement did not reflect a whole of government approach or US law on remedies for standard essential patent subject to volumtary F/RAND commitments. The 2019 Joint Statement remains in force, which should also be noted.	Based on the annoucement of withdrawal of 2019 Policy Statement of the US, we reviewd and revised the description in footnote 9.
28	Any comment on draft decisions or positions should be deleted.	

29	Given the referral was not considered by the CJEU and did not result in a decision, references to the Nokia v Daimler CJEU referral should be removed from the Guide.	Based on the comments you kindly provided to the JPO, we have removed the description "also drew attention." We would like to maintain the description pertaining to the referral to the CJEU as a fact that had occurred prior to the revision of the Guide.
29	We do not see any value in including this here, as this case did not produce any outcome.	
35	In the paragraph beginning "One is contracts..." delete "In some countries...", at the beginning of the second sentence, so the sentence instead reads " <del>In some countries,</del> That commitment, is contractually binding between the SSO and rights holder, and the contract will be governed by a particular (e.g. French law in case the case of a contract with ETSI)."	Since it cannot be concluded that the commitment is binding in all the countries, we would like to maintain the description.
38	This framework details the rules of negotiations from the perspective of competition law in Europe, and not every court decision <del>in each country outside of Europe</del> follows this framework. In Europe they do (and have to).	We would like to maintain the description because it is stated that "this framework details the rules of negotiations from the perspective of competition law in Europe".
38	Courts (in the UK, Netherlands and lately also Germany) have interpreted Huawei v ZTE as a 'safe harbour', this means that if parties comply with this ruling they are on the safe side.	Based on the comments you kindly provided to the JPO, we reviewed and revised the description.
39	Proposed Change: The framework, however, does not provide specific details about negotiations, such as the scope of information that the parties should submit at each stage of the negotiation and the period given to make a response. In recent years, some court decisions in <del>some countries</del> determined some specific details, but there are still unclear parts, <del>and agencies in other countries, such as the United States, continue to recognize that a good-faith negotiation can be accomplished in more than one way.</del> While some parties regard the lack of specific detail as increasing the flexibility of negotiations, others suggest that it undermines the predictability of licensing negotiations.	Based on the announcement of withdrawal of 2019 Policy Statement of the US, we would like to maintain the description.
39	Proposed Change: In Sisvel v Haier (Germany, Supreme Court, 2020), the court made judgment based on the framework presented by the CJEU. The court stated that when a rights holder offered a licensing negotiation, but if it took several months for an implementer to express its willingness to obtain a license, such silence would <del>typically</del> mean no interest in the license. Based on this, the court ruled that an implementer who did not respond to licensing negotiation offer for one year did not have intention to obtain a license. Nonetheless, the court did not clarify specifically how long a period to respond to the offer should be allowed. <del>In a more recent case IP Bridge v. Ford (Germany, Munich Regional Court, 2022), the court similarly found the car manufacturer Ford to be unwilling to license on FRAND terms when it did not submit a counteroffer to Avanci.</del>	We would like to maintain the description because the text of the court decision has not yet been published as of June 2022.
39	<del>However, the CJEU decision in Huawei v ZTE rightfully provided a generally-applicable framework, and left it to local courts to decide on specifics matters that are more fact-specific, but there are still unclear parts.</del>	We would like to maintain the description because the court did not clarify specifically how long a period to respond to the offer should be allowed as explained in footnote 19.
42	<del>"Once again, this Guide is not intended to be prescriptive, and "</del> Reinserted from previous Guide. Useful statement.	We would like to maintain the description because the points you raised is already stated in [018].
43	When there is a patent pool through which the SEP holders are licensing, it should be the implementer's obligation to reach out to the patent pool to open licensing negotiation, rather than the obligation of the pool to reach out to the implementer.	Since this Guide is not intended to be prescriptive, we would like to maintain the description.
44	(Footnote 23) <del>Besides these, there is a view that rights holders may demonstrate their good faith by, for example, presenting evaluations by third-party experts and examples from past cases, etc.</del> We do not recall a single case where a court has said something similar. This should be deleted.	We would like to maintain the description from the perspective of balancing the interests of concerned parties. Not all the contents of this Guide are based on court decisions.
47	Meanwhile, by presenting claim charts, the rights holders may demonstrate that they are providing information in good faith to implementers <del>and that the duty of notification was met.</del>  According to Sisvel v Haier (and several other German cases), this goes one step further: by sharing claims it is regularly assumed that the notification duty was met.	We would like to maintain the description because the points you raised is already stated in footnote 26.
48	Last sentence of Footnote 26 should be deleted because the court did not say this.	We would like to maintain the description of the last sentence in footnote 26 because it is clear that it is not part of the court decision.

48	It should be noted that FCJ in the Sisvel v. Haier decision held that a SEP holder's obligation to provide information does not go beyond what they are reasonably required to provide in contractual negotiations for a portfolio license.	We would like to maintain the description because the points you raised is already stated in footnote 26.
48	Footnote 13 of "Good Faith Negotiation Guidelines for Standard Essential Patent Licenses" (the METI Guidelines) should be reflected in the Revised Guide.	We would like to maintain the description because we decided to cite only the main text of the METI Guidelines.
48	Footnote 26 is an understatement and not entirely correct: According to German case-law, presenting claim charts is just an option which the SEP holder can use to make sure that the notification is adequate; if the SEP holder does not provide claim charts, (German) courts have never identified bad faith conduct so far, but just focus on the content of the actual notification of the SEP holder in detail.	We would like to maintain the description because it is clearly stated in footnote 26 that "claim charts would be sufficient as documentation to be presented but not mandatory."
51	In Higher District Court of Karlsruhe, 09.12.2020, 6 U 103/19, the court considered the fact that the implementer refused to sign an NDA without providing any compelling reasons swiftly as an (additional) indication of unwillingness.	We would like to maintain the description because the points you raised is already stated in footnote 42.
52	The Revised Guide should reflect that the European Commission has also communicated its desire to establish a system of essentiality checks and that whether such systems would provide the benefits.	We would like to maintain the description because it is not confirmed that European Commission provide a system of essentiality checks.
52	Delete paragraph [052] and [053]. There is no link with the notification of infringement.	We would like to maintain the description because they are related to "Documents Demonstrating the Essentiality of SEPs".
54	"(2) Not clarifying how SEPs are being infringed, such as documents identifying the SEPs and the standards, when offering licensing negotiations to an implementer" This is not what the Sisvel v Haier decision quoted said. It seems also to be a confusion between claim charts and other 'documents' such as lists of portfolio patents or information on which standards are involved.	We would like to maintain the description because (2) does not directly cite the Germany court decision.
54	"(3) Claiming that it will not provide documentation mapping SEP claims to the standards and/or products to the implementer unless the implementer concludes a confidentiality agreement, even though the documentation does not include confidential information; " Industry practices have made this point obsolete and incorrect. Moreover, to our knowledge this is not supported by case-law.	We would like to maintain the description from the perspective of balancing the interests of concerned parties. Not all the contents of this Guide are based on court decisions.
56	Another important clarification arising from the FCJ's decision in Sisvel v Haier relates to the conduct requirements of a willing licensee. The Court pointed out that a potential licensee must actively engage in the licensing negotiations with the clear, distinct and unconditional intention of obtaining a license. A mere statement of willingness without real engagement is not sufficient. The potential licensee must engage in target-oriented negotiations with the intention of concluding a license on FRAND terms. This should be reflected to the Guide.	We would like to maintain the description because the points you raised is already stated in footnotes 34 and 43.
57	"After receiving documents including those identifying the SEPs and as well as eventually claim charts from the rights holder, " The current wording could give the impression that providing claims charts along with the notification of infringement is mandatory.	Based on the comments you kindly provided to the JPO, we reviewed and revised the description.
58	"Others take the view, however, that parties should first conduct discussions about essentiality, validity, and infringement before the implementer expresses its willingness to obtain a license." This view has not been confirmed by the courts.	We would like to maintain the description because there certainly is the view. Not all the contents of this Guide are based on court decisions.
59	"In practice, a rights holder and an implementer in licensing negotiations may not see eye-to-eye, and may fail to reach an agreement on essentiality, validity or infringement."  It is important to highlight the decision of the UK Supreme Court in Unwired Planet v Huawei, and Conversant v ZTE, where the Supreme Court states in paragraph 60 of its decision: Operators in the telecommunications industry or their assignees may hold portfolios of hundreds or thousands of patents which may be relevant to a standard. The parties accept that SEP owners and implementers cannot feasibly test the validity and infringement of all of the patents involved in a standard which are in a sizeable portfolio. An implementer has an interest in taking its product to the market as soon as reasonably possible after a standard has been established and to do so needs authorisation to use all patented technology which is comprised in the standard. The implementer does not know which patents are valid and infringed by using the standard but needs authority from the outset to use the technology covered by such patents. Similarly, the owner who declares a SEP or SEPs does not know at this time which, if any, of its alleged SEPs are valid and are or will be infringed by use pursuant to the developing standard. The practical solution therefore is for the SEP owner to offer to license its portfolio of declared SEPs. That is why it is common practice in the telecommunications industry for operators to agree global licences of a portfolio of patents, without knowing precisely how many of the licensed patents are valid or infringed. It is a sensible way of dealing with unavoidable uncertainty.	We would like to maintain the description because the points you raised is already stated in [128]-[131].

60	<p>"(6)Whether the patents have not been exhausted." The only case cited in the footnote said rather the opposite.</p> <p><del>Nonetheless, in LG v. TCL (Germany, District Court of Mannheim, 2021), the implementer presented a counteroffer of licensing terms including a condition to exclude products, for which the patents were exhausted[MORE PRECISELY: 'WERE ALLEGEDLY EXHAUSTED ON GROUNDS OF A (IN THE MEANTIME EXPIRED) LICENCE WITH A CHIPSET MANUFACTURER.'], from the calculation of the license fees, but the court held that the counteroffer would reserve a right to be exempted from the payment of the license fees by raising the issue of patent exhaustion did not clarify the royalty amount payable and thus not satisfy FRAND terms.</del></p>	<p>The citation in footnote 40 is intended to explain that there are exceptions of (6). We reviewed and revised the description as in footnote 40.</p>
62	<p>Regarding the negotiation timeframe or response period, strict timelines may be difficult to determine given the different factors that can come into play in relation to SEP licensing negotiations. However, in "standard cases", our experience shows that the entire process should be achieved within 1 year. With regard to the appropriate timeframe for SEP licensing negotiations, reasoning of the German Federal Court of Justice in Sisvel v Haier should be detailed in this guide.</p>	<p>We would like to maintain the description because the points you raised is already stated in footnotes 43 and 71.</p>
63	<p>The reasonable amount of time needed for the implementer to express its willingness to obtain a license after receiving such information from the rights holder may vary depending on various factors, such as the number of patents at issue, the complexity of the technology, the level of knowledge the implementer may have about the technology, any prior relationship, business transactions, and the state of a dispute on essentiality, validity, and infringement between the parties. <del>Although no strict deadlines have emerged and a case-by-case assessment is needed, courts, especially in Germany, have clearly indicated that the respective time period is rather short:</del></p> <p>Portfolio license does not necessarily require a negotiation over each individual patent (cf. UK Supreme Court decision in Unwired Planet v Huawei).</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties. Also, details of the timeframe is already stated in [093]-[099].</p>
65	<p>On the other hand, if there are a significant number of patents at issue and the implementer is unfamiliar with the technology, several months or more may be a more reasonable time frame. <del>For example, when a SEP implementing component supplied by a third party is used in an end product, the end product manufacturer, if involved in the negotiations on the implementers' side, may need to obtain technical details about that component from the third party supplier and thus may need more time to respond:</del> If the initial substantive response requires more time, it may help to</p> <p>This is not supported by case-law so far.</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties. Not all the contents of this Guide are based on court decisions.</p>
66	<p>We suggest that a complete lack of response of any kind from the implementer, particularly in the context of patent pool licensing given the amount of information about the particular pool's licensing known to the implementer, should be included in the list of "examples of actions by an implementer that may increase the likelihood of the implementer being perceived as acting in bad faith"</p>	<p>We would like to maintain the description because the points you raised is already stated in [066]. (1) of [066] states "refusing to negotiate at all, even while continuing to use the infringing technology."</p>
66	<p>A great deal more than a mere statement that it is willing to license on FRAND terms should be required of an implementer in engagement with a patent pool that has met the threshold of reasonably broad acceptance in the market. After initiating engagement with the patent pool the implementer should have an ongoing obligation to act in a manner consistent with a desire to obtain a license at each step of the process.</p>	<p>We would like to maintain the description because the points you raised is already stated in footnote 34.</p>
66	<p>In Step 2, in the section on Notes on Implementers' Actions (4), starting with "Refusing to conclude a confidentiality agreement...", add the word "unreasonable" between "repeated" and "revisions," so the sentence would read "Refusing to conclude a confidentiality agreement, while demanding that the rights holder provide claim charts, including detailed claim interpretations containing confidential information, or making repeated <b>unreasonable</b> revisions to confidentiality agreement conditions to delay negotiations;"</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties.</p>
66	<p>Proposed Change: U.S. Dept of Justice and U.S. Patent and Trademark Office, Policy Statement (2013); In Apple v. Motorola (U.S., CAFC, 2014), the court stated that an injunction may be justified where an infringer unilaterally refuses a FRAND royalty or unreasonably delays negotiations to the same effect. After that, the Policy Statement (2013) was withdrawn, and new Policy Statement (2019) was jointly released by U.S. DOJ, USPTO, and the National Institute of Standards and Technology (NIST). <del>As in the case of the Statement (2013), in this new Statement (2019), an injunction can be justified. Note that the 2013 DOJ and PTO and 2019 DOJ, PTO, and NIST Policy Statements referenced are currently being redrafted. The draft revised statement notes that under prevailing U.S. precedent, injunctive relief for SEP holders subject to a FRAND commitment functionally is unavailable because "[a]s a general matter . . . monetary remedies will usually be adequate to fully compensate a SEP holder for infringement." See U.S. Dep't of Just., U.S. Pat. &amp; Trademark Office, Nat'l Inst. of Standards &amp; Tech., Draft Policy Statement on Licensing Negotiations and Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments, at 8 (Dec. 6, 2021).</del></p>	<p>Based on the announcement of withdrawal of 2019 Policy Statement of the US, we reviewed and revised footnote 41.</p>

66	<p>"The following are examples of actions by an implementer that may increase the likelihood of the implementer being perceived as acting in bad faith:"</p> <p>Add: table counter-offers that are obviously unreasonable and unacceptable for the rights holder (e.g. a licensing rate of just 0.001 per cent per patent family) and/or tabling a counter-offer only once litigation has been initiated.</p>	<p>We would like to maintain the description because the points you raised is already stated in [077].</p>
68	<p><del>"When discussions about essentiality, validity, and infringement of the SEPs are still ongoing, it may not necessarily be viewed as acting in bad faith if an implementer does not promptly express its willingness to obtain a license. On the other hand, s</del>Some courts have ruled..."</p> <p>We cannot recall a decision where was articulated like this. The actual state of case-law is rather mirrored in the following sentence.</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties. Not all the contents of this Guide are based on court decisions.</p>
69	<p>We request that the JPO remove the reference to the METI Guidelines and incorporate the Phoenix v. Harting decision into the Guide which affirms the Huawei v. ZTE framework for the provision of effective patent protection and timely enforcement of intellectual property rights.</p>	<p>We would like to maintain the description because "Good Faith Negotiation Guidelines for Standard Essential Patent Licenses" was officially established by Japanese government and Phoenix v. Harting decision is not related to the paragraph.</p>
69	<p>An implementer engaging with a patent pool may have been able to obtain an exemplar copy of the pool's license agreement. The implementer should have the obligation to obtain and study all this information.</p> <p>Implementer should not be entitled to begin discussions with the pool as if working from a blank sheet of paper, asking broad, general questions; rather, the implementers must be prepared to engage on the basis of having read and studied the information, and therefore, if it has questions, to ask focused questions about specific issues on which it needs clarification.</p>	<p>Since this Guide is not intended to be prescriptive, we would like to maintain the description.</p>
69	<p>"Nonetheless, in some court decisions, the court stated that <del>such the obligation would not arise</del>to make an offer is not triggered until an implementer clearly expresses its willingness to obtain a license. "</p> <p>Not the obligation to substantiate the FRAND conformity of the offer.</p>	<p>We would like to maintain the description because it is clear what the obligation refers to.</p>
71	<p>Delete the footnote referring to Germany court decisions. The court rather noted that a comparison with third licensing programs can be made only when the other portfolios are comparable to the SEP's portfolio in terms of quaity and scope.</p>	<p>We would like to maintain the description because this paragraph assumes existence of comparable license program with "if any" in (2).</p>
72	<p>"(3) Presenting an initial offer that is clearly unreasonable given court rulings and comparable licensing terms, and sticking to that offer during the negotiation process ;"</p> <p>It seems strange make this statement here and then cite only cases which actually say the opposite. SEP holder's offer is just the 'starting point' of negotiations; the implementer must review the offer, even if it is not 'perfectly FRAND' in every aspect, since otherwise license negotiations would be obsolete. The implementer should, basically, also react when the SEP holder's offer is 'evidently un-FRAND'. In this case, it will be, however, sufficient to just identify why the offer is 'evidently un-FRAND'.</p>	<p>We would like to maintain the description because the description refers to an unreasonable offer and sticking to it, this Guide does not state the situation as you pointed out.</p>
73	<p>It is suggested that the FRAND licensing framework be described as referring to conduct, and the overall licensing terms and conditions.</p>	<p>We would like to maintain the description because the points you raised is already stated in [041].</p>
73	<p>Once a patent pool has met the threshold of reasonably broad acceptance in the market its licensing terms should be presumed to be FRAND.</p> <p>Also, in the context of negotiations with a pool that has met the threshold of reasonably broad acceptance, the counteroffer must be as specific and detailed as the pool offer, and the "grounds demonstrating that its counteroffer is on FRAND terms" must be as specific as the grounds offered by the pool demonstrating that its offer is on FRAND terms.</p>	<p>Since this Guide is not intended to be prescriptive, we would like to maintain the description.</p>
74	<p>Not sure how an implementer is expected to come up with comparable licenses? By different licensors?</p>	<p>We would like to maintain the description because we clearly stated "including royalties paid to, or received from, other companies for equivalent technologies, royalties by patent pool, etc."</p>
75	<p>The Guide should recognise that what constitutes a reasonable amount of time to provide a counteroffer may also depend on the level of technical expertise and knowledges that a potential licensee possesses.</p> <p>We recommends JPO to include the level of technical knowledge the potential licensee has and to which extent it has the necessary information about the implementation of the standard available as an additional important factor that will determine what may constitute a reasonable timeframe to respond to a FRAND offer.</p>	<p>We would like to maintain the description because the points you raised is already stated in [063] and [094].</p>

75	<p>The reasonable time period from when an implementer receives an offer on FRAND terms from a rights holder until the implementer presents a counteroffer is determined on a case by case basis. <del>When the technologies of the SEPs are not complicated, the implementer may present its counteroffer in a relatively short period of time. When technological complexity or other issues require a certain amount of work to prepare a response, it may be deemed reasonable for an implementer to respond in several months or more.</del></p> <p>We do not recall a case where this was said in this form. It seems to me that the time requirements for the declaration of willingness and those for making a counteroffer are mixed up here. Maybe it would be valuable to remind that Huawei v ZTE requires the counteroffer to be made 'promptly' (this can hardly be 'more' than several months.)</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties. Not all the contents of this Guide are based on court decisions.</p>
78	<p>An implementer who does not provide a counteroffer on FRAND terms may not immediately be viewed as being in bad faith <del>when further discussions are needed to determine the technical relationship between the subject patents and the standards as well as the validity of the patents, or</del> when a rights holder does not provide any specific offer on FRAND terms or the basis thereof.</p> <p>We do not recall a case where this was articulated in this form.</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties. Not all the contents of this Guide are based on court decisions.</p>
79	<p>The Guide notes that many arguments have been made in favor of arbitration as a mechanism for resolving issues in the negotiation, particularly in preference to litigation. We respectfully disagree. We do not believe that either arbitration or mediation is a useful or effective resolution mechanism in SEP disputes, for several reasons.</p>	<p>As indicated in [084], the guide acknowledges the disadvantages of ADR.</p>
85	<p>The Guide ought not to endorse mandatory Alternative Dispute Resolution (ADR) as part of a willingness standard. It states, "Either way, while the refusal of ADR options may not immediately be viewed as bad faith, continuing to do so may be seen as bad faith in some cases". ADR is, and must remain, a voluntary endeavour in order to preserve both parties' fundamental rights.</p>	<p>The Guide does not endorse mandatory ADR. Based on the comments you kindly provided to the JPO, we reviewed and revised the description.</p>
86	<p>Under the framework presented in the CJEU decision in the case between Huawei v. ZTE, the court stated that when an alleged infringer has used SEPs before concluding any licensing agreements, from the time its counteroffer is refused, the alleged infringer is required to provide appropriate security in accordance with recognized commercial practices "in <del>Europethe field</del>", for example by providing a bank guarantee or by placing the necessary amounts on deposit. It also stated that "[t]he calculation of that security must include, inter alia, the number of the past act of use of the SEP, and the alleged infringer must be able to render an account in respect of those acts of use." This is based on the idea that it would be contradictory and therefore unfair for the implementer to assert its willingness to pay the license fee but actually fail to do so even while using the <del>productpatent</del>.</p>	<p>Based on the comments you kindly provided to the JPO, we reviewed and revised the description.</p>
87	<p>Although providing such security may be a factor in considering good faith, an implementer's failure to offer security may not necessarily increase the likelihood of being viewed as bad faith in regions outside Europe, such as Japan and the United States. <del>There is a view, however, that where an implementer lacks the financial capability to meet its financial obligations under a license ultimately to be concluded, the implementer could be viewed as acting in bad faith for not providing appropriate security.</del></p> <p>This seems a bit inconsistent: If the implementer has no money to pay for the licence, it will act in bad faith if it does not have the money for a security payment?</p>	<p>We would like to maintain the description because there certainly is the view stated in the paragraph.</p>
89	<p>The obligations of an implementer, and therefore the actions of an implementer, must be different where the implementer is dealing with a patent pool than when the implementer is dealing with an individual rights holder. In short a "willing" implementer should be obligated to act differently in dealing with a patent pool than in a bilateral negotiation, and its conduct "as a whole" must be consistent with what is required of it in dealing with a patent pool.</p>	<p>Since this Guide is not intended to be prescriptive, we would like to maintain the description.</p>
90	<p>The Revised Guide misses one important point; damages are almost never an adequate remedy for the infringement of a large portfolio of SEPs. A SEP owner can only litigate a limited number of patents in any given lawsuit. Damages for the infringement of those asserted patents may only represent a fraction of a F/RAND royalty for a SEP portfolio – and would be typically looking only to past, not future, damages for the patent owner. Therefore, damages on their own are unlikely to be an adequate remedy in the context of a large SEP portfolio because the patent owner cannot cost effectively litigate its entire portfolio in every relevant jurisdiction.</p>	<p>We would like to maintain the description because [090] does not say monetary damages is the sufficient remedy as your comment. Reasonable royalties are stated in chapter III.</p>
90	<p>In Huawei v. ZTE (EU, CJEU, 2015), the court <del>established mutual affirmative conduct obligations for both sides of licensing negotiations, making the availability, respectively defence against an injunction subject to the fulfillment of those duties identified the steps that the rights holder must take before seeking injunctive relief, such as alerting the implementer or presenting a specific, written offer for a license on FRAND terms. The court held that if the implementer improperly delays after these steps are taken by the rights holder, an injunction will not violate competition law and seeking injunctive relief will be justified.</del></p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties.</p>

91	<p>We agree that, in the U.S., antitrust policies toward SEPs have varied with changes in administration, and the current approach outlined by the U.S. antitrust agencies may be revised again. But it is also important to note that U.S. courts have remained consistent when addressing issues related to SEPs and, as of today, no U.S. court has found an SEP holder’s request for an injunctive relief to be in violation of U.S. antitrust laws.</p> <p>It bears emphasis that even in Europe, courts have recognized that an SEP holder’s request for an injunction would trigger antitrust liability only in very rare circumstances. The refusal to impose broad antitrust liability reflects the acknowledgement that holding a patent right inherently confers the lawful right to exclude, and the use of such right can be considered abusive only in “exceptional circumstances.”</p> <p>The JPO might consider softening the language in the Guide, so that the statement about the competition law violation is appropriately contextualized.</p>	<p>We would like to maintain the description because the language is already softened with "may".</p> <p>Also, based on the announcement of withdrawal of 2019 Policy Statement of the US, we reviewed and revised the description.</p>
91	<p>We suggest deleting the sentence below (together with its two footnotes):</p> <p><del>The competition authority in the United States does not agree that this conduct comprises the basis for a competition violation, although it might be reviewed after the change of administration.</del></p>	<p>We would like to maintain the description in [091] as a fact that had occurred in the U.S. by the time of the revision of the Guide.</p>
91	<p>The competition authority in the United States does not agree that this conduct comprises the basis for a competition violation, <del>although it might be reviewed after the change of administration.</del> Attention must be paid to the future trends of how the authorities in each country respond to this situation.</p>	<p>Based on the announcement of withdrawal of 2019 Policy Statement of the U.S., we reviewed and revised the description in footnote 70.</p>
91	<p>Also, competition authorities in Japan and Europe <del>have suggested</del> that demanding an injunction against an entity that is willing to obtain a license on FRAND terms may be a violation of competition law.</p> <p>In Europe the decisions precede the CJEU decision in Huawei/ZTE.</p>	<p>Based on the comments you kindly provided to the JPO, we reviewed and revised the description.</p>
92	<p>"To conduct licensing negotiations smoothly, it is also important to consider efficiency along with good faith. The following sections address key points that should be considered for the efficient conduct of FRAND-based negotiations. "</p> <p>What is meant by that? Is this an additional criterion on top of good faith? What are the consequences if no 'efficiency' is given?</p>	<p>Based on the comments you kindly provided to the JPO, we reviewed and revised the description.</p>
96	<p>We do not think that specific timelines for negotiation processes are appropriate, because each negotiation varies, and many are quite different depending on a broad range of factors. Therefore, we propose deleting the content of that footnote.</p> <p>• Proposed Change: <del>While the overall negotiation timeframe will vary by case, some suggest as a rough reference to what timeframe needed for prompt completion might look like that complex cross licenses with vast portfolios might complete in 12 months, oneway licenses with fewer SEP families at stake in 9-12 months, and simple one-way licenses with a few patents in 6-9 months. Others, however, do not like the idea of any numerical benchmark for negotiation timeframes.</del></p>	<p>Based on the comments you kindly provided to the JPO, we reviewed and revised the description in footnote 71 to reflect various views.</p>
98	<p>Patent owners cannot force implementers to accept any terms. So this concern is unfounded.</p>	<p>Based on the comments you kindly provided to the JPO, we reviewed and clarified the description that the price hike of products is related to a situation where the licensing term is not FRAND.</p>
100	<p>Any discussion on licensing level must begin with the recognition that FRAND is not a compulsory licensing regime. Patent holders commit to offer a license on FRAND terms if they seek compensation from an implementer, they do not agree to license as implementers demand. FRAND commitments permit patent holders to obtain maximum FRAND value for their patents, and therefore there is nothing contrary to FRAND in leaving the power to choose licensing level for SEPs the same as it is for all patents: in the hands of the patent holder.</p> <p>In addition, it might be helpful to note that, in practice, the question about the licensing level is generally unproblematic if companies recognize that a FRAND royalty does not change simply because the patent holder agrees to license its SEPs at a different level of the value chain. Disagreements arise if a company refuses to acknowledge this concepts and argue level of licensing to decrease the royalty payment for SEPs.</p>	<p>We would like to maintain the description because the points you raised is already stated in [102], [169] and footnote 72.</p>
100	<p>A challenge is that it is often (some would say “nearly always”) the case that a particular component does not practice all the claims of a patent (or all the claims of all the patents in the patent pool license), for example claims covering interaction between the component and others components or portions of a system. This, in turn, would necessitate licensing both at the component level and also at a minimum at one additional level, likely the complete ready-to-sell end product.</p> <p>A related challenge is that it is virtually impossible to ensure that there is no “double dipping” if licenses are available at all levels of the value chain. Therefore, licensing at multiple levels of the value chain would increase the complexity, difficulty, cost, and uncertainties of SEP licensing. It is exactly to avoid those effects that patent pools in general have chosen to license at the finished product level.</p> <p>At the same time, because we (and many other patent pools) charge a stated amount (rather than a percentage) we avoid the consequences that flow from a percentage-based royalty being applied to end products of widely different selling prices, and therefore avoid the debate between EMV and SSPPU as the base.</p>	<p>We would like to maintain the description because the points you raised is already stated in [109]-[116] and [208]-[209].</p>

100	<p>With the spread of IoT, the use of standards has become more common. One issue often arising during negotiations is <del>which entities who</del> in the manufacturing supply chain <del>is entitled to a licence as a beneficiary under the FRAND commitment-should be parties to licensing negotiations</del></p> <p>The actual issue is who will take the licence, respectively who is entitled to a licence as a beneficiary under the FRAND commitment (and not who will participate in negotiations: suppliers could, e.g., exceptionally be consulted on technical issues)</p>	<p>Based on the comments you kindly provided to the JPO, we reviewed and revised the description.</p>
101	<p>Footnote 72 should be deleted</p> <p>This is unsubstantiated. In fact, evidence from Qualcomm v Apple points in the opposite direction: royalties paid by manufacturers are very reasonable as compared with the price of user devices. Avanci's royalty rates also support this position.</p>	<p>We would like to maintain the description because there certainly is the view.</p>
103	<p>Delete this paragraph. This debate has been settled and clarified by recent court decisions.</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties.</p>
104	<p>We invite the JPO to also consider the US Court of Appeal decision in FTC v Qualcomm. The Court considered the question whether Qualcomm had an antitrust duty to license its SEPs to rival chipmakers. The Court found that there was no duty in antitrust to license to rival chipmakers, and that Qualcomm's business model of end-product licensing was not an anticompetitive violation of the Sherman Act.</p>	<p>We would like to maintain the description because the court does not determine exactly who in the supply chain should be licensed. FTC v. Qualcomm was added in footnote 107.</p>
104	<p>The Revised Guide discusses the competing concepts of "license to all" and "access for all". It should be noted that 'license to all' is an unclear concept, and one that has never been tried. To the extent that the concept is understood, it seems to involve an obligation to grant licences to all members of a value chain or to all members of a value chain who request a licence.</p> <p>'License to all' seems to wilfully ignore that it is not legally possible to provide the same licence, for the same technology, to multiple levels of the value chain. The rules of patent rights exhaustion preclude this, even if it is requested by the putative licensees. Therefore, a 'license to all' obligation is from a legal point of view not possible to implement.</p>	<p>We would like to maintain the description because this Guide does not state "license to all" is a clear concept and it is explained in footnote 73 that "[t]he idea... is commonly referred as "license to all."</p> <p>The points you raised is also stated in [109]-[110].</p>
104	<p><del>In one of these cases, the referral was made to the CJEU, seeking preliminary ruling as to whether they had an obligation to license suppliers on a priority basis. Nonetheless, since the initial litigations reached settlement, the referral was withdrawn, and the CJEU did not provide any views in this regard.</del> Meanwhile, there are some cases in which suppliers conducted negotiations as the party and obtained a license. Seems unnecessary as the referral did not result in any outcome.</p>	<p>We would like to maintain the description concerning the referral to the CJEU as a fact.</p>
104	<p>"Meanwhile, there are some cases in which suppliers conducted negotiations as the party and obtained a license."</p> <p>Not sure that this is a relevant 'counter-example'. The previous sentence refers to court cases where the courts established that the patent holder was free to choose the level in the supply chain where it would license. This sentence is a further example of that.</p>	<p>We would like to maintain the description because the sentence refers to examples where suppliers obtained license.</p>
104	<p>Continental v Avanci (US Court of Appeals for the 5th Circuit) should be added.</p>	<p>Based on the comments you kindly provided to the JPO, we reviewed and revised the description as in footnote 77.</p>
105	<p>This paragraph should be deleted because it seems to be difficult (and rather confusing) to determine what an 'essential part' is.</p>	<p>We would like to maintain the description because there certainly is a view stated in the paragraph.</p>
106	<p>"In any case, since there is a risk that injunctive relief against infringement may be granted against entities regardless of whether they are suppliers or end-product manufacturers if no entity in the supply chain obtains the license, all supply chain entities need to be aware of the status of conclusion of licensing agreements."</p> <p>Unclear what the consequences are. Information duty of the SEP holder or the implementer?</p>	<p>We would like to maintain the description because the description is not intended to be created a duty or an obligation.</p>
110	<p>[110] should be deleted.</p> <p>This cannot occur, when licences are granted only at one level of the supply chain, the end-device level. When did this 'problem' actually emerge in practice?</p> <p>Also, please refer to the have made rights that are foreseen in article 6.1 of the ETSI IPR Policy</p>	<p>We would like to maintain the description because there certainly is the view stated in the paragraph.</p> <p>Also, the points you raised is already stated in [104] and its footnotes.</p>
113	<p>"When the rights holder requests payment of licensing fees after the product is sold, how this payment burden should be distributed within the supply chain sometimes becomes an issue."</p> <p>This can be an issue, but it has nothing to do with FRAND and the conduct duties of the SEP holder. In case the implementer (end product manufacturer that sells the product) would make sure to have a license before commercializing its products, this situation cannot occur. Our view is that the whole chapter (sharing the burden of licensing fees) is not really relevant for this Guide, as it refers only to the relationship between the OEMs and their suppliers.</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties.</p>

114	<p>"There are certain industries in which a patent indemnification agreement may be concluded whereby the supplier shoulders the payment of licensing fees. In such situations, <del>even when the license fee negotiated by the end-product manufacturer as the party is excessive and disproportionate to the price of the component,</del> the supplier may be requested to bear the burden."</p> <p>As long as the fees are FRAND, it is irrelevant whether they are 'disproportionate' with respect to the price of the component.</p>	We would like to maintain the description from the perspective of balancing the interests of concerned parties.
115	<p>"To avoid such a situation, some patent indemnification agreements exempt SEPs. Some argue that, in order to avoid an excessive burden on suppliers, licensing fees should be apportioned out across the supply chain according to the essential parts of the invention within the scope of the patent claim."</p> <p>This is not practically feasible and, at a minimum, will increase the licensing costs.</p>	We would like to maintain the description because there certainly is the view stated in the paragraph.
116	<p>"Others suggest that it may be reasonable to incorporate in a patent indemnification agreement a provision to exempt the supplier from responsibility to pay the licensing fee if the supplier was not given the chance to be involved in the licensing negotiations. Some have also suggested that it might be reasonable to include a provision that exempts suppliers from the responsibility to pay more than an amount corresponding to the price of the component . "Another opinion is that if suppliers are required to shoulder licensing fees, the price for their components should reflect the technical value of the SEP."</p> <p>There is no relationship between the price of a component and the value of the standardised technology. Cellular standards enable devices to be connected to networks; the value of that technology bears no relationship whatsoever with the price of making a chip. German courts have pointed to that fact in relation to TCUs (Nokia v Daimler case).</p>	We would like to maintain the description because there certainly is the view stated in the paragraph.
125	We encourage the JPO remove the reference to the METI Guidelines on Page 36.	We would like to maintain the description because "Good Faith Negotiation Guidelines for Standard Essential Patent Licenses" was officially established by Japanese government.
127	<p><del>On the other hand, often the existence and the content of the licensing agreement are not treated as confidential so that the agreement may be assessed as a "comparable license" in the future.</del> The parties may want to consider, in view of the above, for example, whether all terms and the existence of an agreement will be confidential, whether only its monetary terms will be confidential, or whether only sales volume information (e.g., past sales) will be confidential, etc.</p> <p>In our experience, it is not true that especially the 'content' of the licensing agreement is 'often' not treated as confidential.</p>	Based on the comments you kindly provided to the JPO, we reviewed and revised the description.
130	As an example, in a case involving several hundred SEPs, the parties may hold discussions on just part of those patents deemed the most valuable, or select random samples to efficiently assess the total value. They might also independently categorize the patents into tiers, analyze the top few from each tier to get an idea of the topology of the overall portfolio's quality, and get together to compare results. In such cases, one view is that concluding <del>all licensing agreements</del> <del>a license covering all SEPs for a given standard,</del> including those SEPs that were not the subject of discussion, as a single package is an efficient approach in terms of administration.	Based on the comments you kindly provided to the JPO, we reviewed and revised the description.
131	<p>"The parties may also discuss whether the negotiations will include non-SEPs in addition to SEPs. While it is up to the parties to choose which particular patents will be included, it may, for example, be efficient to include in the negotiation a commercially essential patent (a patent for which there exists a technical alternative but which is practically inescapable due to cost/performance issues) or non-SEPs. There are also cases of licensing through frameworks whereby implementers can choose which SEPs they wish to license."</p> <p>Couldn't this wording create the false impression that there is SEP by SEP licensing? Even in the case described in the footnote, i.e. the optional parts, it is still a question of portfolio licensing, i.e. all SEPs that read on the/are relevant for the optional part of the standard that is meant.</p>	We would like to maintain the description because of footnote 88 clarifies the points.
133	It is necessary to elaborate that the UK courts will set terms for a global license without ASI.	We would like to maintain the description because the points you raised is already stated in [136]-[140].
136	<p>"Regarding the geographical scope of licensing agreements, we will introduce a jurisdiction of international litigations of SEPs."</p> <p>This is unclear.</p>	Based on the comments you kindly provided to the JPO, we reviewed and revised the description.
137	We suggests that the JPO to include reference to declaratory judgments of global FRAND rates through reference to the 2021 Sharp v. Oppo decision.	We would like to maintain the description because the points you raised is already stated in footnote 94.
137	<p>Patent rights are independent in each country, and in applying the Patent Law to patent rights, the principle of territoriality <del>may be</del> appropriate. <del>For jurisdiction of international litigations, whether or not the jurisdiction is appropriate shall be determined, apart from the territoriality principle.</del></p> <p>There is not much doubt that national courts can exercise jurisdiction only on national patents.</p> <p>As long as patent infringement is part of the proceedings, I do not think that one court set aside the territoriality principle.</p>	We would like to maintain the description because whether or not the jurisdiction is appropriate shall be determined, apart from the territoriality principle.

138	<p>We suggest that the JPO consider including further context to the sections of the Guidelines addressing anti-suit injunctions. We suggest adding an explanation to highlight how courts in the U.S. have approached anti-suit injunctions to footnote 96 on page 40:</p> <ul style="list-style-type: none"> <li>Proposed Change: Regarding ASI, there are various activities such as the request of consultations from the EU to China in the dispute settlement process of the WTO and attention should be paid to the future trends. <del>In the United States, however, Microsoft v. Motorola remains an instructive precedent, where the court issued an anti-suit injunction to stop German injunctions that would have interfered with the RAND-rate setting proceeding that the court was undertaking. Microsoft v. Motorola, 871 F.Supp.2d 1089, 1103-04 (W.D. Wash. 2012), aff'd, 696 F.3d 872 (9th Cir. 2012). See also Jorge L. Contreras, Anti-Suit Injunctions and Jurisdictional Competition in Global FRAND Litigation: The Case for Judicial Restraint, 11 N.Y.U J. of Intell. Prop. &amp; Ent. Law 171, 174-180 (2021) (discussing the benefits and protections that anti-suit injunctions allow parties, including, that in some cases, courts have found that anti-suit injunctions are a legitimate means to protect their jurisdiction from parties engaged in vexatious litigation across multiple forums).</del></li> </ul>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties.</p>
139	<p>However, in some cases, an order to further prohibit ASI in the foreign country (Anti-ASI) is issued, <del>and courts have found that the filing or the threat of filing a motion for an ASI impacting national infringement proceedings can be considered as a sign of unwillingness on the side of the implementer which would, in turn, prevent the latter from successfully raising a FRAND-defence by claiming ASI, the court determined to be in bad faith.</del></p>	<p>Based on the comments you kindly provided to the JPO, we reviewed and revised the description.</p>
140	<p><del>Regarding the international jurisdiction, some argue that ASIs could restrict the exercise access to courts by rights holders of their exclusive rights and create barriers to legitimate trade and early settlement is desirable.</del></p>	<p>We would like to maintain the description because there certainly is the argument.</p>
142	<p>"Where a rights holder participates in a patent pool, the general practice is for that rights holder to approach licensing negotiations with implementers through the body managing the patent pool." We do not believe that this is entirely correct. Antitrust/competition law generally requires that licences be available from both a pool and from the patent owner. And in many instances pool members do license outside of the pool. We believe that it is too strong to state that it is the "general practice" to license through the pool.</p>	<p>Based on the comments you kindly provided to the JPO, we reviewed and revised the description.</p>
142	<p>"Where a rights holder participates in a patent pool, the general practice is for that rights holder to approach licensing negotiations with implementers through the body managing the patent pool. <del>We note that bilateral licensing is still an option for those implementers that would prefer it.</del>"</p>	
143	<p>In sub-section 6 on Patent Pool Licensing, in the paragraph starting with "Additionally,..." change the paragraph so it instead reads, "Additionally, <del>at least some of the</del> patent rights that are registered in a pool are <del>normally</del> checked to some extent for essentiality by a third party. Although this does not <del>necessarily</del> guarantee essentiality, it is expected that it may lead to greater SEP transparency."</p>	<p>We would like to maintain the description from the perspective because the language is already softened with "to some extent."</p>
144	<p>[144] should be deleted. This whole paragraph seems confusing. It seems to imply that there should be one single pool granting licenses exclusively (=no bilateral licensing, no other pools?) and covering also non-SEPs ("commercially essential patents"?) as well. This is, however, not feasible, especially since (a) it is required to keep the option for bilateral licensing open and (b) in principle, you cannot "bundle" SEPs (=technically essential) and non-SEPs (=commercially essential").</p>	<p>We would like to maintain the description because it does not say there should be one single patent pool.</p>
146	<p><del>"Implementers aiming to resolve disputes through cross licensing must bear in mind that this will not be possible with bodies managing patent pools that are not implementing the invention. There is also a view that p</del>Patent pool participation does not rule out cross licensing, and that an implementer can simply pay the royalties of those pool members with which it does not have a cross licensing agreement."  There are mechanisms to account for cross licenses or other incumbrances. This is routine in pool agreements.</p>	<p>We would like to maintain the description because it does not say cross licensing is always impossible.</p>
147	<p>"Enhancing transparency in regard to the essentiality and validity of SEPs <del>could improve efficiency in licensing negotiations, provided that it is accompanied by measures further enhancing incentives to negotiate, for instance, measures to constrain hold-out leads to more efficient licensing negotiations.</del> The European Communication <del>encouraged SDOs to improve quality and accessibility of existing databases expects SSOs to promote the development of databases with information on SEPs.</del> It also expects rights holders to provide information on SEPs to SSOs, so the SSOs can then update their information."</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties.</p>
148	<p>"With SSOs building up databases and widely providing information on SEPs, it will become easier for rights holders to obtain the necessary documents when presenting offers for licensing negotiations or FRAND licensing terms. It will also become easier for implementers to obtain information on SEPs related to relevant standards. "  Not clear what these necessary documents are. SEP holders should in general have the relevant information concerning their own patents.</p>	<p>Based on the comments you kindly provided to the JPO, we reviewed and revised the description.</p>
151	<p>FRAND licensing terms include not only royalties but also non-monetary aspects such as cross-licensing, but because there are no established criteria for reasonable and non-discriminatory royalties in SEP licensing negotiations, the parties often disagree on the appropriate FRAND <del>terms rates.</del>  This paragraph seems to mix and match FRAND terms and conditions and FRAND royalties. It would be better to consistently mention FRAND terms and conditions.</p>	<p>Based on the comments you kindly provided to the JPO, we reviewed and revised the description.</p>

153	We strongly encourages the JPO to refrain from providing guidance on royalty calculation – in particular SSPPU - and amend the footnotes referring to CSIRO v. Cisco to include the below statement from the Court: The rule Cisco advances—which would require all damages models to begin with the smallest saleable patent-practicing unit—is untenable.	Based on the comments you kindly provided to the JPO, we reviewed and revised the description as in footnote 107.
153	There is an extended discussion in the Revised Guide of royalty calculations and of the entire market value rule (EMVR) and of the smallest saleable patent practicing unit (SSPPU). What often gets lost in the discussion of EMVR and SSPPU is that what we are really trying to figure out is the value of the technology in question. Independently determining the value of cellular connectivity for a given product is a better approach. Licences seek to accommodate for the value attributable to the use of the technology by means of a royalty calculation, which may be on a per unit basis or based on the product(s) that are the subject of the licence – or by some other means.	We would like to maintain the description because the points you raised is already stated in [157] and [162].
153	A. Comparable Licenses v. Top-Down Method Currently, in most disputes involving SEPs, courts have based the determination of FRAND royalties on the analysis of comparable licenses. Although the top-down method and the comparable licenses analysis were initially considered equally reliable methodologies to determine FRAND royalties, over time, courts have opted to rely on comparable licenses whenever available. These decisions inherently recognize the fundamental economic principle that the price agreed upon by parties in a voluntary transaction best reflects what market participants consider to be a fair price for the sold good or service. <del>Patent counting is not an appropriate methodology to determine a portfolios' value because it, incorrectly, treats every patent the same.</del>	We would like to maintain the description because the points you raised is already stated in footnote 107 and [194].
153	We state the royalty as a fixed amount, with a different fixed amount for product categories. The use of fixed amounts focuses the licensee immediately on the core pricing proposition. Moreover, stating royalties as fixed amounts avoids the contentious debates both over how to calculate the royalty base and how to calculate the percentage royalty rate. Stating royalties as a fixed amount rather than a percentage is common among all the most successful pools operated over the past decades, and is likely a major factor in the ability to sign up hundreds of licensees with comparatively little litigation.	We would like to maintain the description because the points you raised is already stated in [209].
153	"This approach may also be applied to the calculation of SEP royalties. There has been intense discussion, however, on issues such as how to <del>handle deal with</del> the value added after a technology has been incorporated into a standard, how to identify the calculation base, and how to calculate the royalty rate. These issues are discussed further below."	Based on the comments you kindly provided to the JPO, we reviewed and revised the description.
154	"There is a view that SEP royalties should reflect only the value of the patented technology before the standard is widely adopted in the market (generally called "ex ante"). This is based on the idea that, when a technology is being considered to form part of a standard, it is selected from multiple technological options, while once it is incorporated into the standard, it is used only out of necessity to adhere to the standard."  It is strange to value a technology that is chosen (and thus preferred) by reference to a technology that is rejected (and thus of lesser value); also, standards are used in many different products/services/applications, many of which are not known at the moment of standardization.	We would like to maintain the description from the perspective of balancing the interests of concerned parties.
155	"Based on this premise, <del>there are cases wheresome argue that</del> the royalty is assessed at a point in time before the standard is widely used and set promptly after the standard is announced, then kept at that level regardless of the success or failure in the markets of the products implementing the SEPs."  Not clear what these cases are (and there is nothing referenced)	Based on the comments you kindly provided to the JPO, we reviewed and revised the description.
156	<del>On the other hand, there is a view that the "ex ante" approach is not practical in calculating the damages for infringement of patent rights because the amount of damages should incorporate the value of the patented invention at the time of implementation, and a part of such value is created by the technology successfully becoming the standard.</del> Furthermore, there is also a view that it is inappropriate to adopt the "ex ante" approach because it would lead to the profit from standardization being distributed only to implementers and not to rights holders.  This seems out of place here: The chapter is about royalty calculation not determination of damages for patent infringement. These are different exercises and should not be mixed up, since the discussion commences at a different starting point.	We would like to maintain the description because the approach to calculating damages could be used as a reference to determine reasonable royalties as stated in [159].
156	"In Unwired Planet v. Huawei (UK, high court, 2017), the court stated that the rights holder could appropriate some of the value that is associated with the inclusion of the technology into the standard and the value of the products using the standards."  We should add Nokia v Daimler decision of the District Court of Mannheim.	We would like to maintain the description because the points you raised is already stated in footnote 113.

157	We requests that the JPO to amend Footnote 106 by removing the text after the first sentence.	
157	We invites the JPO to note as well that the US Court of Appeal in FTC v Qualcomm also discussed the issue of whether the smallest salable patent-practicing unit (SSPPU) is the appropriate royalty base.	Based on the comments you kindly provided to the JPO, we reviewed and revised the description as in footnote 106 and 107.
157	Cellular and Wi-Fi chips are available for purchase on the open market, and a U.S. court has held that a baseband chip is the proper SSPPU for cellular devices and rejected an argument that the patent related only to end-products. Proposed Change: In many cases, the price of “components” is assumed to be “SSPPU” while the price of “end product” of the supply chain downstream is assumed to be “EMV.” <del>Nonetheless, in reality, since components are not saleable, end products can be SSPPU in theory. Also, since patent claims are for end products, inventions are being worked only in end products from the wording. As a result, in some cases, end products can be considered as SSPPU.</del>	
157	Although it is correct that the court in CSIRO v. Cisco declined to accept Cisco’s argument that royalties must be based on using the SSPPU as a royalty base, the court did not explicitly state a preference for using comparable licenses. Further, it is incorrect to say that “in most court rulings in the U.S.” the comparable license approach is used. Proposed Change: In Cornell Univ. v. Hewlett-Packard (U.S., District Court, 2009), <del>decided by Chief Judge Rader of the U.S. Court of Appeals for the Federal Circuit</del> , in which an infringement case was disputed over non-SEP patents, SSPPU was introduced, as the smallest unit of calculation base related to patent technologies should be selected so that excess damage amounts would not be calculated under the jury system. Nonetheless, in most court rulings in the U.S., when there are sufficient comparable licenses, <del>courts may evaluate royalties using comparable licenses instead of SSPPU.</del> (CSIRO v. Cisco (U.S., CAFC, 2015)).	Based on the comments you kindly provided to the JPO, we reviewed and revised the description as in footnote 107. As for the name of the Judge, we would like to maintain the description because it is not mentioned in other citation of court cases.
157	We note that the Revised Guide states the following: In court rulings, such as Nokia v. Daimler (Germany, District Court of Munich, 2020), Sharp v. Daimler (Germany, District Court of Munich, 2020), Conversant v. Daimler (Germany, District Court of Munich, 2020), the court determined that the price of end products should be royalty base. We believe that this is incorrect. Neither court determined that the price of the end products (the automobiles) should be the royalty base. This should be corrected in the Revised Guide.	Based on the comments you kindly provided to the JPO, we reviewed and revised the description as in footnote 113.
157	We note that global courts have widely rejected the contention that the SSPPU must be used as a royalty base for FRAND royalties—a note that the JPO might consider adding to the Guide. By now, courts around the world have recognized that “[s]ophisticated parties routinely enter into license agreements that base the value of the patented inventions as a percentage of the commercial products’ sales price,” and “[t]here is nothing inherently wrong with [that].” Already in Ericsson v. D-Link, the U.S. Court of Appeals for the Federal Circuit found that it is appropriate to rely on comparable licenses that used the end-products price as the royalty base to calculate damages for the infringement of FRANDcommitted SEPs. In HTC v. Ericsson, a U.S. district court rejected the contention that a FRAND commitment made to the European Telecommunications Standards Institute (ETSI) requires the use of the SSPPU as a royalty base. In FTC v. Qualcomm, the U.S. Court of Appeals for the Ninth Circuit rejected the contention that a royalty was “unreasonable” because it used the price of the end-product as the royalty base. And in Nokia v. Daimler, the Mannheim Regional Court found that the end -product price was the correct royalty base for a FRAND royalty. In sum, there is a general recognition that a FRAND royalty does not need to use the SSPPU as a royalty base.	We would like to maintain the description from the perspective of balancing the interests of concerned parties. As for FTC v. Qualcomm, based on the comments you kindly provided to the JPO, we reviewed and revised the description in footnote 107.
157	Proposed Change: In LaserDynamics v. Quanta (U.S., CAFC, 2012), the court stated that it is generally required that royalties be based on the SSPPU approach, citing the concept of “the smallest salable infringing unit” in Cornell University v. Hewlett-Packard (U.S., federal district court, 2009), but stated that if it can be shown that the patented feature drives the demand for an entire multicomponent product, <del>there is a narrow exception to the SSPPU rule that allows that the entire product (EMV) could be used as the royalty base, and rights holders may be awarded damages as a percentage of revenues or profits attributable to the entire product.</del> See LaserDynamics, Inc. v. Quanta Computer, Inc., 694 F.3d 51, 67 (Fed. Cir. 2012).	We would like to maintain the description from the perspective of balancing the interests of concerned parties.
157	"In the U.S., as for the calculation base of damages equivalent to a reasonable implementing fee in infringement litigations for patents, including SEPs, debate has centered on whether the smallest salable patent practicing unit (“SSPPU”) or the entire market value (“EMV”) should be adopted. <del>This debate has, however, taken a very clear direction against the use of SSPPU after the FTC v Qualcomm case (US CoA 9th Circuit, 11.08.2020, 19-16122).</del> Also in countries ..."  Referring to methods for the calculation of damages for patent infringement is, in principle, not proper when it comes to the determination of FRAND royalties.	We would like to maintain the description from the perspective of balancing the interests of concerned parties. The approach to calculating damages could be used as a reference to determine reasonable royalties as stated in [159].
157	Footnotes of [157] Is it still relevant to cite all these older cases in light of the clarity provided in the recent ones mentioned above and below?	We would like to maintain the description because those cases are cited to explain how the concept of SSPPU was developed.

159	<p>"As stated above, <del>while</del> the SSPPU and EMV are approaches devised by the US courts in calculating damages equivalent to a reasonable implementing fee in patent infringement cases, <del>they could also be used as a reference to determine reasonable royalties in actual licensing negotiations</del>. <del>In some licensing negotiations, for example, the price of "components" is assumed to be "SSPPU" while the price of "end product" of the supply chain downstream is assumed to be "EMV."</del> "</p> <p>This is not in line with current case-law. Unwired Planet v Huawei in the UK, the German automotive cases against Daimler (Nokia v Daimler, Mannheim; Conversant v Daimler, Munich) and the FTC v Qualcomm case of the US CoA 9th Circuit all indicate that the end-device (that is the 'EMV' approach) is decisive. What is more, in the German Daimler-cases in Mannheim and Munich, the courts have highlighted that making a (counter)offer based on the price of the TCU is not FRAND and could render the licensee 'unwilling'.</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties. The description is merely intended to introduce each example of SSPPU and EMV.</p>
160	<p>There are many cases in which the rights holder has insisted that the EMV should be used as royalty base, from the view point that the <del>value of the technology is only realized at end-product level</del>, SEP technology contributes to the function of the entire end product and drives product demand. Likewise, there are many cases in which the end-product manufacturer has insisted that the SSPPU should be used as royalty base, <del>from the view point that the contributions of the SEP technology are confined to just a portion or component of the overall end product</del>.</p> <p>Not sure that that is a correct statement. Technically the software is flashed onto the chip, but the invention is not confined to the chip. The standardised technology is not confined to the chip; we do not standardize chips. The standardised technology enables a device to connect to a network and interoperate with other devices via that network.</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties.</p>
161	<p>"In the days when debate focused on cellular phones, where communication technology was central to functionality, <del>many parties consolidated industry practices</del> supported the use of EMV as royalty base. <del>The emergence of products such as smart phones and connected cars for which communications technology accounts only for a part of the product's functions, however, has raised debate over the use of SSPPU or EMV as royalty base.</del> "</p> <p>This seems a bit outdated given the many court cases mentioned above that have provided clear and uniform guidance on this question.</p>	<p>We would like to maintain the description because there is still debate ongoing over SSPPU and EMV as can be seen from this public comment process.</p>
162	<p>The Guide should recognise that cognitive biases such as "anchoring" can affect the outcome of a royalty determination when the royalty base is too large. "Anchoring": information and data first introduced acts as a reference point for an individual's decision making process. The results of this bias are evident in United States court decisions where juries tend to award damages in patent infringement cases close to 10 percent regardless of the royalty base chosen. Choosing a large royalty base, such as an end product, runs a high risk that a royalty demand based on the end product will systematically overvalue the patents that cover only a small portion of the component's features. For this reason, we believes, that unless warranted by the patent claims in specific cases, the royalty base selected as part of the royalty calculation should not be the end product, but the relevant component thereof in order to accurately ascertain a fair and reasonable royalty rate for the infringed SEPs.</p>	<p>We would like to maintain the description because the points you raised is already stated in footnote 107.</p>
162	<p>This paragraph is unclear. Delete.</p>	<p>Based on the comments you kindly provided to the JPO, we reviewed and revised the description.</p>
163	<p>What is the other option?</p> <p>The second sentence also seems to suggest that it could be ok to use SSPPU if the circumstances of the individual case allow, but this does not mirror the recent case-law mentioned above, where courts have dismissed SSPPU theories as a matter of principle.</p>	<p>We would like to maintain the description because the points you raised is already stated in [164]-[169].</p>
166	<p>"Even when the SEP technology goes beyond a particular chip, there is a view that the SSPPU is an effective starting point for discussion in accumulatively and elaborately analyzing the product portions to which the SEP technology contributes. This view emphasizes that the basis of the calculation should not exceed the scope of the contribution of the essential part of the SEP technology for which a license is being sought." Delete this paragraph.</p>	<p>We would like to maintain the description because there certainly is the view.</p>
169	<p>This sentence is unclear.</p>	<p>Based on the comments you kindly provided to the JPO, we reviewed and revised the description.</p>

170	<p>"Of the many different approaches to determining an appropriate royalty rate, two frequently identified in court decisions are (i) determining the royalty rate, by independently evaluating the value of <del>individual a SEP portfolios</del> (bottom-up/comparable licenses approach) ; and (ii) calculating the share in the calculation base of the contribution of all SEPs for a given standard and then allotting a share to individual SEPs (top-down approach). "</p> <p>Judging from the following analysis, it appears the approach based on comparable licensing agreements is meant here. If this is so, I think it is not precise to say that this approach focuses on the value of individual SEPs. The language previously in the GUIDE was much clearer. Suggest reverting back.</p>	We would like to maintain the description. As stated in [173] in this Guide, comparable licenses approach is explained as one of bottom-up approach.
173	<p>"In the bottom-up approach, the value of <del>individual a SEPs portfolio</del> might be evaluated by, for example, referring to comparable licenses. Specifically, examples of comparable licenses to be referred to include those of patents owned by the same rights holder and patents owned by others essential to the same standard or a similar standard."</p> <p>Again (see previous comment), this is not accurate, since the question is not the value of individual SEPs (this would amount to a patent-by-patent valuation, which the courts have not done so far, to my knowledge).</p>	
174	<p>Delete (3), (6), (8) and (9). We are not aware of case law using these criteria.</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties. Not all the contents of this Guide are based on court decisions.</p>
180	<p>Although pool licenses might be informative to determine a FRAND royalty, there is a need for caution when comparing the value of patent portfolios based on numerical proportionality. Counting the number of patents is not a reliable methodology to determine a portfolio's value, because it fails to account for the heterogeneity in the value of patents. Determining a FRAND royalty based on the number of SEPs would lead to royalty determinations that overcompensate SEPs of marginal value and undercompensate those that cover foundational technologies. In addition, "negotiating rates by counting patents within a portfolio creates a perverse incentive to over-declare. Pool rates may not be an appropriate benchmark if most licensing in an industry is done outside of pools.</p>	<p>We would like to maintain the description because the points you raised is already stated in [194]. This Guide does not promote particular method for calculation.</p>
180	<p>We respectfully suggest that the text is not a productive approach for judging rates of bilateral licenses. The reason is that patent pool rates are a function of many forces, one of which is the inherent efficiencies of patent pool licensing. Bilateral licensing lacks those same efficiencies; as a result bilateral licensing rates are FRAND at several multiples of pool rates.</p>	<p>We would like to maintain the description because the points you raised is already stated in [182]-[183].</p>
181	<p>It may also be necessary to note that, in some patent pools, a <del>relatively low</del> (than individually negotiated, aggregate) royalty is set as a result of taking into account the fact that negotiations, contracts, and the management of royalties are streamlined in many patent pools.</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties.</p>
183	<p>There may also be cases where the patent pool situation differs from that of licenses negotiated bilaterally because the rate is set by multiple rights holders. <del>It should also be noted that some rights holders are inflating SEP numbers through divisional patent applications.</del> Generally pools set a limit on the number of family members that can count towards distribution precisely to obviate to this potential problem.</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties.</p>
184	<p>Does this sentence tries to indicate the denominator but there seems to be no reference to the numerator? Perhaps delete the first sentence as the second sentence provides a better description?</p>	<p>We would like to maintain the description because the second sentence details the first sentence which explain the essence of the approach.</p>
184	<p>Add Unwired Planet v Huawei in UK High court in footnote 127.</p>	<p>We would like to maintain the description because the points you raised is already stated in footnote 117.</p>
186	<p>"As the extent of the contribution of all SEPs to the standards defines the total rate, there is a view that the top-down approach is effective in avoiding such royalty stacking. From this standpoint, when the bottom-up approach is used, it may be beneficial to check for royal stacking by also <del>making a calculation</del> performing a cross-check using the topdown approach. <del>However, this cross-check is not straightforward. It requires, at a minimum: 1. an equally thorough assessment of the relative value of the individual SEP portfolio over the aggregate SEPs in industry; 2. a clear understanding of the minimum statistical requirement for assessing the aggregate SEPs in industry, and the corresponding limitations, if statistical sampling is used; 3. a sound and thorough understanding of what a reasonable/unreasonable aggregate royalty would be to achieve the objectives of the IPR policy.</del>"</p>	<p>We would like to maintain the description from the perspective of balancing the interests of concerned parties.</p>
194	<p>We would note here that this approach is rather not viable when it comes to licensing very large global portfolios, since reverting to a patent-by-patent evaluation would make licensing negotiations impossible. This has also been recognised in Unwired Planet v Huawei, UK Supreme Court, 26.08.2020, (2020) UKSC 37.</p>	<p>We would like to maintain the description because the points you raised is already stated in [195].</p>

196	<p>One of the most important of the JPO’s contributions to the discussion of SEP licensing is the statement in the Guide that the negotiation history between the parties is a factor relevant to royalty determination.</p> <p>This recognition—that it is important to provide the correct incentives for implementers to act in good faith because good faith is determined by the overall course of conduct of the party—adds important substance to the Guide’s observation that “simply satisfying the various elements noted in this Guide provides no guarantee of recognition of good faith.”</p>	We believe that you are basically in support of the contents of this Guide.
199	<p>On the other hand, some argue that because FRAND terms require rights holder to license SEPs to a wide range of parties, it is not suitable to give discounts to parties acquiring licenses early, or to demand high royalties from parties who delayed negotiations or took the rights holder to court. <b>It is worth noting, however, that the UK Supreme Court has accepted that it is reasonable to offer lower rates to the first ever party taking a licence ('first mover advantage'): Unwired Planet v Huawei, 26.08.2020, (2020) UKSC 37.</b></p>	We would like to maintain the description because the points you raised is already stated in [196].
200	<p>We strongly agree with the Guide’s statements that the requirement that FRAND licensing terms be non-discriminatory “does not mean that all potential licensees must obtain licenses at the same royalty rate and amount” but rather means that “similarly situated licensees should not be treated differently.”</p>	We believe that you are basically in support of the contents of this Guide.
201	<p>Regarding the differential treatment of SEP implementers, we note that there is broad agreement indicating that the non-discrimination limb of the FRAND commitment is interpreted to mean that similarly situated licensees should generally have access to the same licensing terms. Therefore, SEP implementers who do not qualify as similarly situated cannot expect to be offered the same terms.</p>	We would like to maintain the description because the points you raised is already stated in [201].
201	<p>Add Sisvel v Haier in footnote for [201].</p>	We would like to maintain the description because the points you raised is already stated in footnote 135.
204	<p>The current Guidelines make numerous references to use-based licensing. Such licensing practices are not FRAND. So-called “use-based” or “end-product based” royalties where valuation is based on the price of the end-product using the standard are an improper means to tax innovations that are unrelated to the standard. Rather, FRAND licensing fees should be determined based on ex ante value – i.e., value of the patented technology prior to its incorporation in, and adoption of a standard and without the inherent lock-in value that accrues after a standard is adopted. Any argument for valuing a SEP license based on developments that take place after adoption of a standard – and after the commercialization by various implementers of diverse products and services – cannot be FRAND.</p> <p>Specifically, we suggest revising the paragraph beginning “On the other hand,” on page 56 as follows:  Proposed Change: On the other hand, some implementers argue that the same royalty rates and amounts should be applied for the same standard technology regardless of the means by or extent to which it is used. <b>Further, use-based licensing is generally not considered FRAND licensing.</b></p>	We would like to maintain the description from the perspective of balancing the interests of concerned parties.
204	<p>Delete [204]  If this is applied, there might be difficulties to argue that terms are non-discriminatory, given that one would treat "unequal" situations uniformly.</p>	We would like to maintain the description because there certainly is the view stated in [204].
208	<p>"There is a fixed royalty rate and a fixed royalty amount. <del>A fixed royalty rate is determined as a ratio of the price of the whole product and the price of product components.</del> It is necessary for implementers to know the price of products at all times when the price fluctuates according to market conditions, involving complicated procedures. "</p> <p>One could also have a fixed royalty rate in the form of a (fixed) amount per device, not necessary a percentage  Not sure that that is correct. Consider deleting.</p>	We would like to maintain the description because the points you raised is already stated in [209].
209	<p>Caps and floors are routinely used to address this concern.</p>	We would like to maintain the description because the points you raised is already stated in [214].
-	<p>We encourages the JPO to approach any revisions to its guidelines from a global perspective.</p>	We tried to approach this revision from a global perspective.
-	<p>We encourages the JPO to incorporate an express reference to the scenario where a licence is sought before launching a product to market which implements standard essential patents.</p>	We would like to maintain the description because the points you raised is already stated in footnote 22.
-	<p>We propose that once a patent pool has met a threshold of reasonably broad acceptance in the market, thus demonstrating that its rates and terms are FRAND, the pool and its SEP holders should be entitled to a rebuttable presumption to that effect and implementers should be subject to a heightened level of obligations when negotiating with the patent pool as compared with when they are negotiating bilaterally.</p>	Since this Guide is not intended to be prescriptive, we would like to maintain the description.
-	<p>There are a few instances in the Guidelines where additional citations should be provided if available.</p>	We are trying to be transparent, and would appreciate if you understand that some opinions are provided on an anonymous basis.
-	<p>Change all instances of “implementer” or “implementers” to “product innovator” or “product innovators,” respectively.</p>	We would like to maintain the description because the word “Product innovator(s)” is less relevant to patents than “implementer(s)”.