

METI JPO-RIETI国際シンポジウム
標準必須特許を巡る紛争解決に向けて
プレゼンテーション資料

宗像 直子
MUNAKATA Naoko

特許庁長官
Commissioner, Japan Patent Office

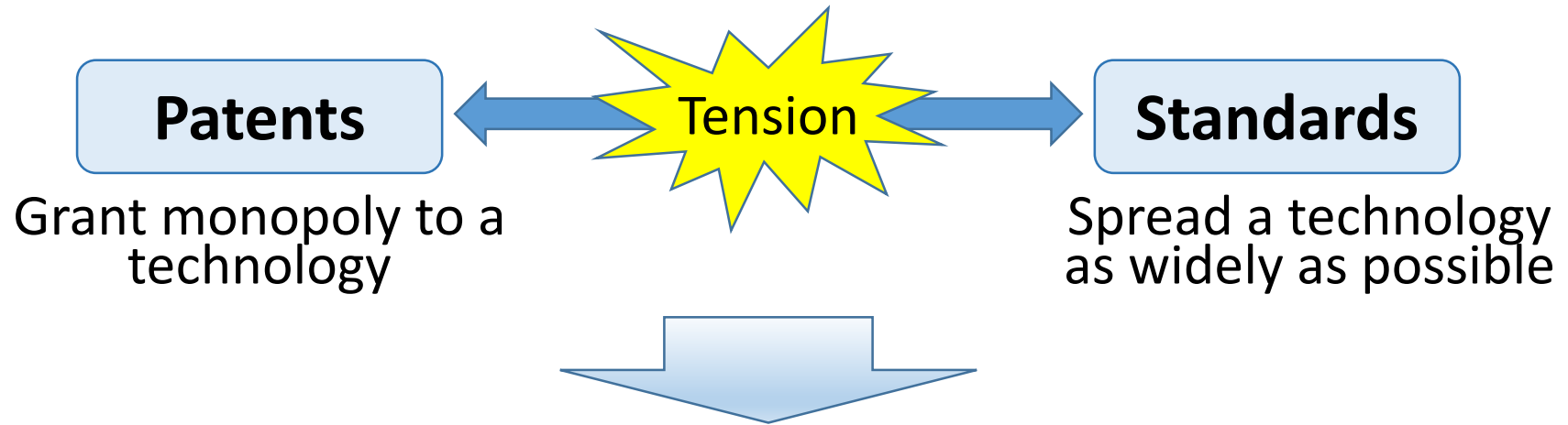
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Facilitating SEP Licensing -JPO's Approach-

March 13, 2018

Naoko MUNAKATA
Commissioner of the Japan Patent Office

1. Relation between Standards and Patents



Standards Setting Organizations (SSOs)

IPR Policy

Fair, reasonable and non-discriminatory (FRAND) terms

Legal precedents around the world

Injunction

Permitted only in limited situations

2. Changes in Parties to Licensing Negotiations

In the Past

**Negotiations among
ICT companies**

Telecommunications
company
vs
Telecommunications
company

In IoT Era

**Negotiations among parties
from different industries**

Telecommunications
company
vs
Company
in other industries



Cross-licensing

Possible

Difficult

Perspectives on license rate

**Basically
on the same page**

**Significantly
different**

Perspectives on essentiality

Have capability to assess

Lack capability to assess

3. Overview of this Guide

I. Purpose of this Guide

- Aiming to
 - Enhance transparency and predictability
 - Facilitate negotiations between rights holders and implementers
 - Help prevent or quickly resolve disputes concerning SEPs
- Not legally binding, Not intended to be prescriptive
- Not “recipes”

II. Licensing Negotiation Methods

A. Good Faith

- Issues relating to actions at each stage of negotiations
- Examples of actions in bad faith

B. Efficiency

- Factors for efficient negotiation
 - Parties to negotiation in supply chain

III. Royalty Calculation Methods

A. Reasonable

- Royalty Base
- Royalty rate

B. Non-discriminatory

- Is a use-based license discriminatory?

C. Other Factors

- Lump-sum or Running royalty

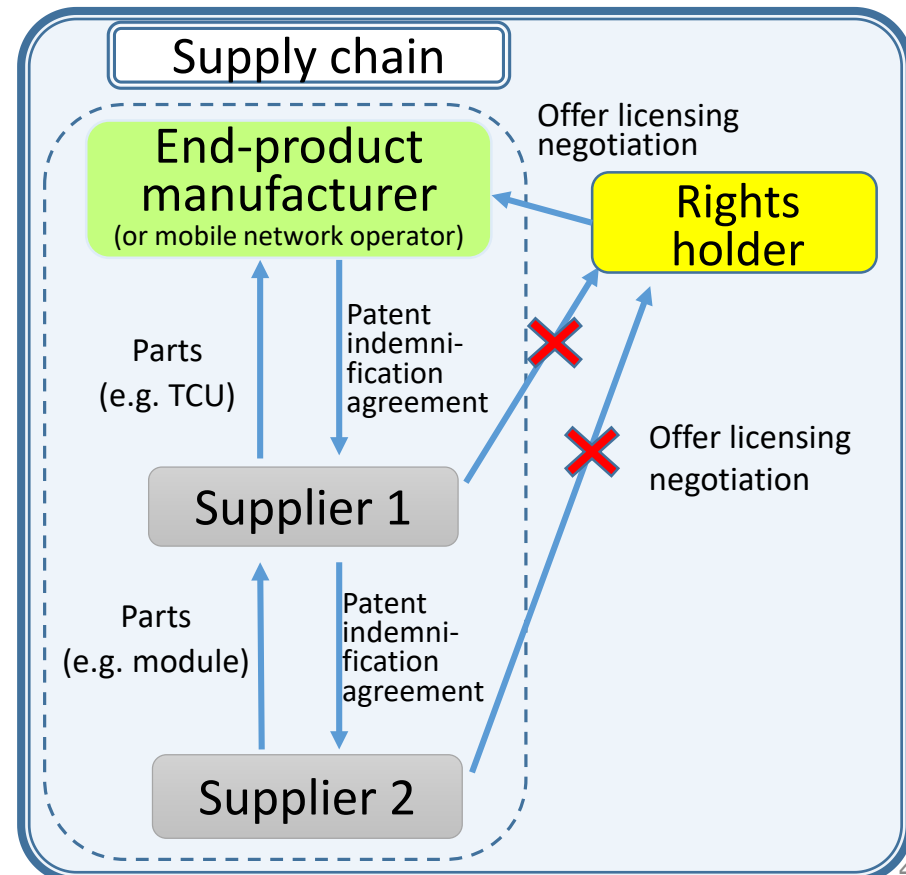
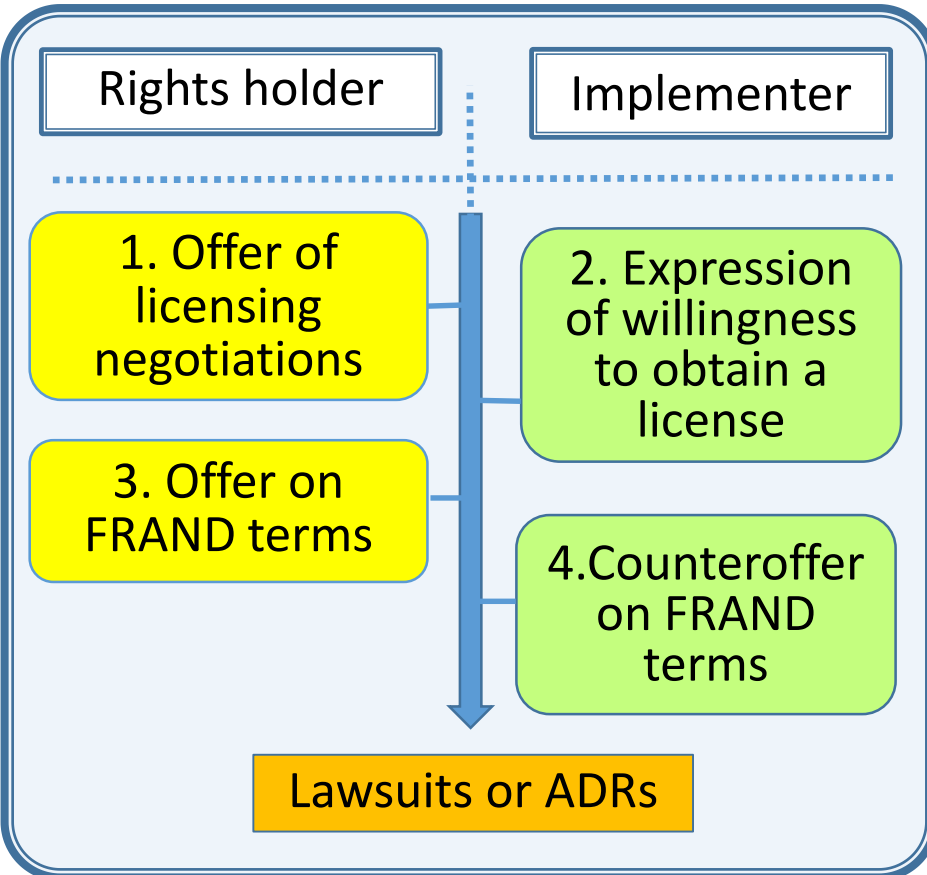
4. Panel 1 and 2: How to Conduct Good Faith Negotiations

Stages in Licensing Negotiations

- Provides specific issues based on the CJEU framework
 - Scope of Information to be provided
 - Reasonable amount of time for response

Parties to Negotiations in the Supply Chain

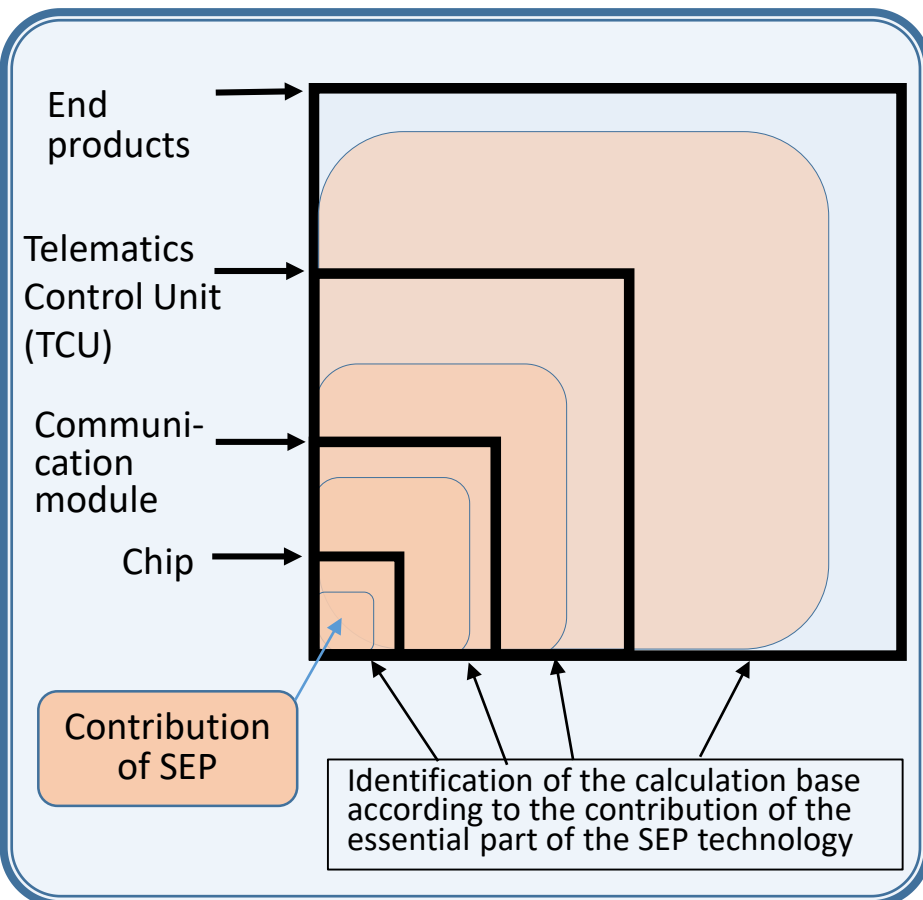
- Identifies elements to be considered
 - which entities in the supply chain should be the parties in licensing negotiations



5. Panel 3: How to Calculate Royalties

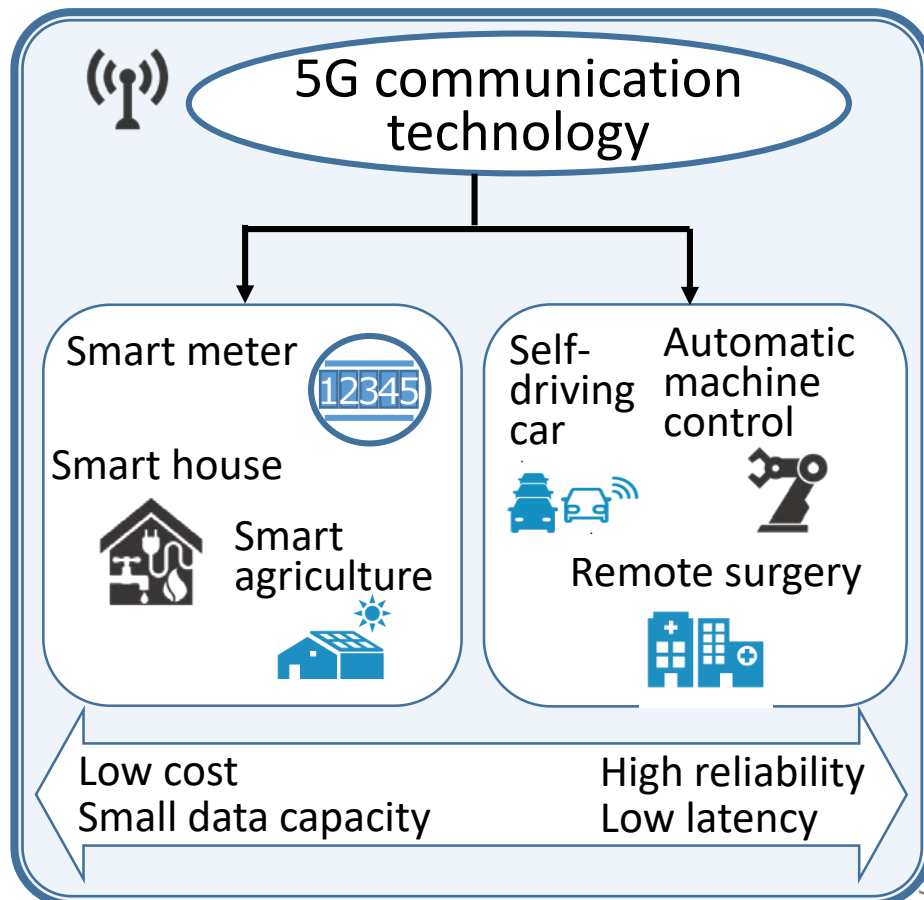
Contribution of SEP and royalty base

- Identifies elements to be considered in determining the basis for calculating royalties
 - SSPPU or EMV?



Royalties for Different Use

- Identifies elements to be considered
 - whether the use-based approach is discriminatory



6. Panel 4: Utilization of International Arbitration

Current Situation and Issues

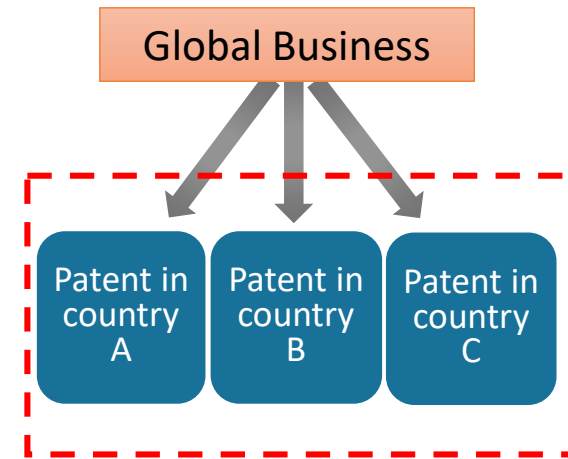
- Disputes involving SEPs for int'l standards:
→ happening at the same time in multiple countries
- Filing lawsuits in courts around the world:
→ different judgements in different countries
→ longtime / high cost

Advantages of Arbitration

- One-time settlement over multiple rights around the world
- The New York Convention enables global enforcement

Tokyo as a Venue?

- Mock int'l arbitration in Tokyo on June 29, 2018 with leading experts across the world as arbitrators
 - To show the benefit
 - To give you a sense of int'l arbitration in Tokyo



Patent dispute trials in each country are conducted independently