



JAPAN LEGAL UPDATE

Antitrust

Partial Amendment of Guidelines for the Use of Intellectual Property under the Antimonopoly Act

On January 21, 2016, the Japan Fair Trade Commission ("JFTC") issued a partial amendment to the "Guidelines for the Use of Intellectual Property under the Antimonopoly Act" ("IP Guidelines"). The JFTC has stipulated the IP Guidelines and the Guidelines on Standardization and Patent Pool Arrangements in order to clearly show the principles governing the use of intellectual property rights, including patent rights under the Antimonopoly Act. Although issues related to the Standard Essential Patents ("SEPs") under the Antimonopoly Act are to be evaluated based on these guidelines, these guidelines contain limited detail regarding the exercise of rights relating to SEPs (e.g., bringing an action for an injunction by the SEP holder).

Under the amended IP Guidelines, in cases where a company wishes to obtain an SEP license under fair, reasonable and non-discriminatory conditions ("FRAND conditions"), if an SEP holder refuses to license under FRAND conditions and/or brings an action for an injunction, the acts may constitute (a) Private Monopolization if such act results in the exclusion of a company from the market and thus substantially restricts fair competition, or (b) an Unfair Trade Practice if such act does not meet the standard of Private Monopolization but has an adverse effect on fair competition.

Whether an offer from a company to grant an SEP license is genuine should be determined carefully by taking into consideration various factors, such as whether or not the company negotiates in good faith.

Accordingly, companies which are members of a standard alliance or organization should consider the amended IP Guidelines before they take any action against competitors relating to SEPs.

Intellectual Property

Enforcement of the Amended Patent Act (April 1, 2016)

The 2015 Amended Patent Act, which includes an amendment to the employee invention system as described in the August 2015 issue of this newsletter, will come into force on April 1, 2016. Guidelines concerning the determination of the reasonableness of

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"reasonable benefits" given by employers in exchange for the inventions of employees will be issued after the amended Act comes into force. Such guidelines are to be established by the Ministry of Economy, Trade and Industry under the amended Act.

Antitrust

Publication of the Final Versions of the Cabinet Office Ordinance and Guidelines on the Amended Act against Unjustifiable Premiums and Misleading Representations ("Act")

The amended Act introduces a new surcharge system that will come into force on April 1, 2016. Under the new system, a business operator who misleads a consumer into believing that a good or service is vastly better or more advantageous than it actually is can be required to pay a surcharge equal to 3 percent of the amount of sale of the relevant good or service. In anticipation of the amended Act coming into force, the final versions of the Cabinet Office Ordinance, which provides details on how to report violations and guidelines on how to calculate the surcharge amount, were published on January 29, 2016.

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