

关于 AVS 专利池许可的建议性规定

Advisory Guidelines for Patent Pool License of AVS Standards

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Advisory Guidelines for Patent Pool License of AVS Standards (for Reference)

为便利产业界对 AVS 技术标准的采用，根据 AVS 工作组章程第三章第 7 条和 AVS 工作组知识产权政策第五章的相关规定，AVS 工作组对于 AVS 专利池的许可原则做出如下建议性的规定。

由于 AVS 专利池初次创建，所以 AVS 工作组做出如下为期四年的起动时期的相应规定。这些规定在起动期之后会根据实际情况进行修订。

一、收费对象

In order to promote the adoption of AVS standards by the industry, according to Chapter 3, Item 7 of the AVS Workgroup Constitution and Chapter 5 of the AVS IPR Policy, the AVS Workgroup wishes to provide guidance for the principles of the patent license of the AVS patent pool.

The AVS patent pool is being established for the first time. Therefore, the AVS Workgroup has established a start-up period of four years and provides the following initial advisory guidelines for that period. These guidelines will be revised after the initial period:

I. Object of the Royalties

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1、对编解码器收费。AVS 标准的使用者对 AVS 编解码器或包含 AVS 编解码器的终端产品缴纳专利费。AVS 编解码器包括编解码芯片、编解码软件等体现 AVS 标准（即 AVS 视频、音频、系统、DRM，或以上标准的组合）所有特征的完整实现者。

对上述编解码器的收费应当只有一次，即如果编解码芯片或编解码软件已经缴纳过专利费，则包含编解码芯片或编解码软件的终端产品不必再次缴纳专利费。

2、内容提供商或运营商在应用符合 AVS 标准的技术将内容提供给用户的时候，可不予以缴纳专利费。

二、打包许可或菜单许可的模式

1、被许可人可以选择采用所有标准涉及的必要专利。

AVS 专利池提供的专利许可应当遵循有竞争力的许可费用原则。

1. The royalty will be charged for encoders/decoders. Implementers of the AVS Standards should pay a royalty for the AVS encoders/decoders, or end products containing such encoders/decoders. The AVS encoders/decoders include any chip or software that is a complete implementation of all normative requirements of AVS Standards, i.e., AVS Standard of Video, Audio, System, DRM, or any combination thereof.

Royalty should be paid once for all encoders/decoders. That means if royalty has been paid for a chip or software, the end product containing such chip or software need not pay the royalty again.

2. In the course of implementing AVS compliant technology by content providers or service providers for supplying content to consumers, patent royalty may not be charged.

II. Package License or License Menu

1. The licensee may choose to obtain a Package License for all the Necessary Claims of the AVS Standards.

The license to be provided through the AVS Patent Pool should comply with the Competitive License Fee Principle.

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2、被许可人可以选择标准涉及的部分专利。

专利池管理机构可以提供视频、音频以及其他部分的标准许可菜单供被许可人选择，其相应的专利许可费为整体打包费的一定百分比。该比例待定，但原则上不超过整体打包费 80%。

三、年封顶费

专利池管理机构应考虑根据市场情况就许可费设立相应的封顶上限。包括整体打包许可的年封顶费以及上述单项菜单许可的封顶费。年封顶费原则上为每年一定数额。单项菜单许可的封顶费按总封顶费的相应比例计算。

四、许可的地域性

1、提供的许可可以考虑按照许可地域进行细分，并确定不同的收费标准。即许可不必限定为全球许可。被许可人可以选择只取得某一区域，例如中国的专利许可。专利池运行的初始阶段，专利许可将只在中国进行。

2. The licensee may select to get licenses for portions of the Necessary Claims of the AVS Standards.

The Administrator of the AVS Patent Pool may offer Separate Licenses for Video, Audio, or other Portions of the AVS Standards for the licensees to select from. The royalty for each of the Separate Licenses should be a percentage of the royalty for Package License. The percentage needs to be fixed, but should not exceed 80% of the royalty for Package License.

III. Cap

The PPA should consider caps for the royalties based on market conditions. Royalty caps involve a cap for the Package License and a cap for each Separate License. The cap for a Package License should be a certain amount of royalty per year. The annual cap for each Separate License should be a certain percentage of the annual cap for the Package License.

IV. Territory of License

1. Licenses may be considered to be granted with respect to specific territories and the royalties may vary accordingly, i.e., the AVS license does not need to be a global license. The licensee may elect to obtain a license only for the territory of a certain region, e.g., the People's Republic of China. Initially the license will be offered only in the PRC.

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2、在中国的许可，其收费标准应当体现中国的国情。原则上，在中国为使用 AVS 标准的消费者级编解码器提供的专利许可的费用为人民币 1 元/台。

3、在中国之外其他国家和地区的许可标准，可由各方在最有竞争力以及公平、公正的原则下另行协商确定。

五、专利许可遵循非强制性原则

用户可以通过专利池管理机构获得授权，用户也可以通过与专利持有人直接协商获得与 AVS 相关的个别授权。

根据 AVS 会员协议第 7.2 条，AVS 会员应支持符合 **AVS 技术标准** 的产品设计、开发和应用。根据该会员协议的精神，AVS 会员也会为其实施或符合 **AVS 技术标准** 的产品，通过 AVS 专利池得到专利许可，或直接同专利权人联系得到独立的许可。

六、关于专利池管理机构在专利许可协议中的身份

2. For license within the territory of the People's Republic of China, the royalty standard should accommodate the special circumstances in China. In principle, the royalty for consumer-level encoders/decoders within the territory of the People's Republic of China that use AVS Standards should be 1 RMB Yuan per unit.

3. Royalties for license outside of the territory of the People's Republic of China should be determined by related parties in accordance with the Competitive License Fee Principle.

V. Non-compulsory Principle

The end users may obtain a patent license through the AVS Patent Pool. They may also contact the patent holders directly for independent patent license.

According to the AVS Member Agreement Article 7.2, AVS Members are expected to support the design, development or application of AVS products. In the spirit of the agreement, AVS Members are expected to obtain a patent license through the AVS Patent Pool or by contacting the patent holders directly for independent patent licenses for its products which implement or comply with the AVS standards.

VI. The status of the Patent Pool Administrator in the Patent License

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1、专利池管理机构对与工作组创建的 AVS 标准有关的必要专利要求的专利许可管理 AVS 专利池，提供有关专利许可。该单位为在中国注册成立的非营利性法人机构。

2、所有将专利放入 AVS 专利池的专利权人，应与专利池管理机构签订代理协议，专利池管理机构作为其代理人 与用户签订许可协议提供许可。专利池管理机构也可以直接取得专利权人的授权，然后以分许可的方式提供许可。具体采用何种方式最佳，应由各方协商确定。

3、专利池管理机构许可协议的具体内容受工作组会员大会通过的知识产权管理政策以及关于专利池许可原则的指导。

1. The Patent Pool Administrator should be an independent entity that manages the AVS Patent Pool and grants patent licenses for essential patents related to the AVS standards created by the AVS Workgroup. The Administrator should be a non-profit legal entity registered in China.

2. All the AVS licensors who put their patents into the AVS Patent Pool should enter into an agreement with the Administrator. The Administrator may issue licenses as the agent of the licensors by executing the License Agreement with the users. The Administrator may also receive licenses from patent holders first and then grant sub-licenses to the users. Related parties should determine through consultation which licensing approach is preferred.

3. The terms and conditions of the Patent Pool License should be guided by the IPR Policy and the Advisory Guidelines of Patent Pool License for the AVS Standards as adopted by the Working Group.