

广东省高级人民法院关于审理  
标准必要专利纠纷案件的工作指引（试行）

**Guidelines of Guangdong High People's Court  
on Adjudicating Cases of Disputes Over  
Standard-Essential Patents (Trial)**

为妥善审理通信领域标准必要专利纠纷案件，根据我国法律、行政法规、司法解释相关内容并参考商业惯例，结合审判实践，制定本指引。

For the purpose of appropriate adjudication of disputes concerning standard-essential patents (hereinafter referred to SEPs) in the field of communications, these guidelines are formulated in accordance with relevant provisions of the laws, administrative regulations, and judicial interpretations of the Supreme court, and with reference to business practices, and judicial practices.

一、关于审理标准必要专利纠纷案件的基本问题

1. 本指引所称标准必要专利，是指为实施某一技术标准而必须使用的专利。

The "standard-essential patent (SEP)" herein refers to a patent that is essential for implementing a certain technical standard.

2. 审理标准必要专利纠纷案件，要注意审查标准必要专利权利人和实施者从事与标准必要专利有关的活动时，是否遵循诚实信用原则。

For the adjudication of disputes concerning SEPs, attention shall be paid to review whether the patentee and the implementer of a SEP complied with the principle of good faith when engaging in activities related to the SEP.

3. 标准必要专利权人作出的公平、合理和无歧视声明，可以作为审理标准必要专利纠纷案件的依据。

The fair, reasonable, and non-discriminatory (hereinafter referred to FRAND) commitment made by the patentee of a SEP may serve as a basis for adjudicating disputes concerning the SEP.

4. 因承继、转让等原因发生专利权权属变更的，原专利权人作出的公平、合理、无歧视声明，对标准必要专利的承继人、受让人具有同等效力。该声明对其关联企业也具有约束力。

Where the ownership of a patent changes due to succession, assignment or other reasons, the FRAND commitment made by the original patentee has equal effects on the successor and the assignee of the SEP. This commitment also has binding effects on the associated enterprise thereof.

5. 审理标准必要专利纠纷案件，既要充分考虑标准必要专利权人对创新的贡献，依法保护专利权人的权利，也要平衡专利权人、实施者与社会公众的利益。

For the adjudication of disputes concerning SEPs, the patentee's contribution to innovation shall be taken into full consideration so as to protect the rights of the patentee pursuant to the law, and in addition, the interests of the patentee, the implementer, as well as the public interests shall also be balanced.

6. 审理标准必要专利纠纷案件，应考虑行业特点，结合商业惯例进行审查判断。

For the adjudication of disputes concerning SEPs, the examination and determination shall be made by taking industrial characteristics as well as business practices into consideration.

7. 标准化组织所实施的知识产权政策对其成员从事标准化活动具有约束力，可以作为审理标准必要专利纠纷案件的依据。

The intellectual property policies implemented by a standardization

setting organization have binding effects on its members for standardization activities and can be used as a basis for trial over disputes concerning SEPs.

8. 在审理标准必要专利纠纷案件中，关于公平、合理、无歧视原则的解释、确定相关标准必要专利的权利范围及行使、对相关行为性质进行定性等问题，一般需考虑适用被请求保护地法或法院地法。

For adjudication of disputes concerning SEPs, with regard to issues including, but not limited to, the interpretation of the FRAND principles, the determination of the scope and exercise of the rights of the relevant SEPs, and the definition of the nature of related actions, etc., the court shall in general, consider applying of the local laws of the place where the protection is claimed or the *lex fori*.

## 二、关于停止实施标准必要专利民事责任的问题

9. 标准必要专利纠纷的侵权判断可遵循以下路径：

- (1) 确定标准的具体内容并判断涉案专利是否为标准必要专利；
- (2) 有证据证明被诉侵权产品符合标准必要专利所对应的标准的，可推定被诉侵权产品落入标准必要专利权利保护范围；
- (3) 被诉侵权人否认被诉侵权产品落入标准必要专利权利保护范围的，须就未实施标准必要专利进行举证。

The determination of infringement in disputes concerning SEPs shall follow the method below:

(1) Identify the specific contents of the standard and determine whether the patent asserted in the case is a SEP.

(2) Where evidence indicates that the accused infringing product is in line with the standard corresponding to the SEP, it shall be deemed that the accused infringing product falls within the protection scope of the SEP.

(3) The accused infringer who denies that the accused infringing product falls within the protection scope of the SEP shall bear the burden of proof of not having implemented the SEP.

10. 标准必要专利权人提出停止实施标准必要专利请求的，依照公平、合理、无歧视原则和相关商业惯例，对标准必要专利权人和实施者的主观过错作出判断，以此决定是否支持停止实施标准必要专利的请求。

Where the patentee of a SEP initiates a claim against the implementer that forbids the implementer from the implementing the SEP, the court shall determine the subjective faults of the patentee and the implementer of the SEP in accordance with the FRAND principles and relevant business practices, to determine whether such claim of

forbidding implementing the SEP shall be supported thereon.

11. 按照商业惯例评判各方当事人主观过错时，审查内容包括：

(1) 当事人之间谈判的整体过程；(2) 各方当事人谈判的时间、方式和内容；(3) 谈判中断或陷入僵局的原因；(4) 其他情节。

When determining subjective faults of the involved parties in accordance with business practices, the following shall be examined: (1) the overall history of negotiation between the involved parties, (2) the time, manner, and contents of negotiation between the involved parties, (3) the reason for the interruption or impasse of the negotiation, and (4) other details.

12. 综合考虑标准必要专利权人是否符合公平、合理、无歧视声明的要求，实施者是否有过错，按照以下情形分别决定是否支持停止实施标准必要专利的请求：

(1) 标准必要专利权人的行为不符合公平、合理、无歧视声明的要求，而实施者无明显过错的，不支持停止实施标准必要专利的请求；

(2) 标准必要专利权人的行为符合公平、合理、无歧视声明的要求，实施者存在明显过错的，可以支持停止实施标准必要专利的请求；

(3) 标准必要专利权人的行为符合公平、合理、无歧视声明的要求，实施者也无明显过错的，如果实施者及时提交合理担保，可以

不支持停止实施标准必要专利的请求；

(4) 标准必要专利权人与实施者在谈判中均有过错的，综合考虑各方过错程度、有无采取补救措施、过错对谈判进程的影响、过错与谈判破裂的关系等因素，决定是否支持停止实施标准必要专利的请求。

With comprehensive consideration of whether the patentee of the SEP meets the requirements of the FRAND commitment and whether the implementer is at fault, the court shall determine whether the request for forbidding implementing the SEP shall be supported respectively according to the following situations:

(1) Where the conducts of the patentee of the SEP do not meet the requirements of the FRAND commitment and the implementer is not at obvious fault, the claim for forbidding implementing the SEP shall not be supported.

(2) Where the conducts of the patentee of the SEP meet the requirements of the FRAND commitment and the implementer is at obvious fault, the claim for forbidding implementing the SEP may be supported.

(3) Where the conducts of the patentee of the SEP meet the requirements of the FRAND commitment and the implementer is not at obvious fault, if the implementer deposits proper securities in a timely manner, the request for terminating the exploitation of the SEP may not be supported.

(4) Where both the patentee and the implementer of the SEP are at fault in the negotiation process, whether the claim for forbidding implementing the SEP shall be supported will be determined by comprehensively considering factors including, but not limited to, the degree of fault of each party, whether remedies have been taken, the impact of the faults on the negotiation process, and the relationship between the faults and the breakdown of the negotiation.

13. 下列行为可以认定标准必要专利权人违反公平、合理、无歧视义务，存在明显过错：

(1) 未向实施者发出谈判通知，或虽发出谈判通知，但未按照商业惯例和交易习惯列明所涉专利权的范围；

(2) 在实施者明确表达接受专利许可谈判的意愿后，未按商业惯例和交易习惯向实施者提供示例性专利清单、权利要求对照表等专利信息；

(3) 未向实施者提出具体许可条件及主张的许可费计算方式，或提出的许可条件明显不合理，导致无法达成专利实施许可合同；

(4) 未在合理期限内作出答复；

(5) 无正当理由阻碍或中断谈判；

(6) 其他明显过错行为。

The patentee of the SEP shall be deemed to have violated the FRAND obligation and thus be at obvious fault if the patentee has conducted any of the following behaviors:

(1) Failing to send a negotiation notification to the implementer, or failing to list the scope of the involved patent rights in accordance with business practices and course of dealing notwithstanding sending the negotiation notification;

(2) Failing to provide patent information such as the sample patent list and claim charts to the implementer in accordance with business practices and course of dealing after the implementer has clearly expressed the willingness to accept the patent licensing negotiation;

(3) Failing to provide specific licensing terms and calculation methods for the alleged royalty to the implementer, or proposing obviously unreasonable licensing terms, resulting in the failure to conclude a patent implementation licensing agreement;

(4) Failing to give a reply within a reasonable time limit;

(5) Obstructing or suspending the negotiation without justifiable reasons;

(6) Other obviously faulty behaviors.

14. 下列行为可以认定实施者存在明显过错：

(1) 拒绝接收标准必要专利权人的谈判通知，或收到谈判通知后未在合理时间内作出明确答复；

(2) 无正当理由拒绝签订保密协议，导致无法继续谈判；

(3) 未在合理期限内对标准必要专利权人提供的示例性专利清单、权利要求对照表等专利信息作出实质性答复；

(4) 收到标准必要专利权人许可条件后，未在合理期限内作出实质性答复；

(5) 提出的实施条件明显不合理，导致无法达成专利实施许可合同；

(6) 无正当理由拖延或拒绝进行许可谈判；

(7) 其他明显过错行为。

The implementer shall be deemed to be at obvious fault if the implementer has conducted any of the following behaviors:

(1) Refusing to receive the negotiation notification sent by patentee of the SEP, or failing to give an specific reply within a reasonable time limit after receiving the negotiation notification;

(2) Refusing to enter into the non-disclosure agreement without justifiable reasons, resulting in the discontinuation of the negotiation;

(3) Failing to give a substantive reply within a reasonable time limit to the patent information such as the sample patent list and the claim charts provided by the patentee of the SEP;

(3) Failing to give a substantive reply within a reasonable time limit after receiving the licensing terms sent by the patentee of the SEP;

(5) Proposing obviously unreasonable terms for implementation, resulting in the failure to conclude a patent implementation licensing agreement;

(6) Delaying in or refusing to carry out the licensing negotiation without justifiable reasons;

(7) Other obviously faulty behaviors.

### 三、关于确定标准必要专利许可使用费的问题

15. 标准必要专利权人与实施者在标准必要专利许可谈判中就许可使用费的确定发生的争议，属于标准必要专利许可使用费纠纷。

标准必要专利权人与实施者已经充分协商，但仍无法就许可使用费达成一致的，可以依法提起诉讼。

Disputes over the determination of the royalty arise in the SEP licensing negotiation between the patentee of a SEP and the implementer pertain to disputes over royalties for SEPs.

Where the patentee of the SEP and the implementer have negotiated with full consultation but still cannot reach a consensus on the royalty, a lawsuit can be filed pursuant to law.

16. 标准必要专利权人或实施者一方请求裁判的有关标准必要专利的许可地域范围超出裁决地法域范围，另一方在诉讼程序中未明确提出异议或其提出的异议经审查不合理的，可就该许可地域范围内的许可使用费作出裁判。

Where the claimed territory scope of the related licensed SEPs on which judicial determination is requested by the patentee or the

implementer of the SEP exceeds the territory scope of the court, and the other party does not explicitly raise an objection in the judicial proceedings or the objection raised is deemed unreasonable after examination, determination can be made on the royalty for such claimed territory scope.

17. 在标准必要专利许可使用费纠纷案件的审理过程中，标准必要专利权人与实施者均同意给予一定时间继续谈判协商的，可以中止诉讼。

标准必要专利权人或实施者任何一方认为继续谈判协商已无必要的，应及时恢复诉讼。

Where both the patentee and the implementer of the SEP agree to have a specific period of time for restoration of negotiation during the trial of the case concerning disputes over the royalty for SEPs, the action may be stayed.

Where either the patentee or the implementer of the SEP holds that it is unnecessary to restore the negotiation, the action shall be resumed in a timely manner.

18. 确定标准必要专利许可使用费可参照以下方法：

- (1) 参照具有可比性的许可协议；
- (2) 分析涉案标准必要专利的市场价值；
- (3) 参照具有可比性专利池中的许可信息；

(4) 其他方法。

The royalty for SEPs may be determined with reference to the following methods:

- (1) Referring to comparable licensing agreements.
- (2) Analyzing the market value of the SEPs asserted in the case.
- (3) Referring to license information in the comparable patent pool.
- (4) Other methods.

19. 在审理标准必要专利许可使用费纠纷案件中，若当事人有证据证明对方持有确定标准必要专利许可使用费的关键性证据的，可以请求法院责令对方提供。如对方无正当理由拒不提供，可以参考其主张的许可使用费和提供的证据进行裁判。

For adjudication of disputes over the royalty for SEPs, where one party has evidence showing that the other party has crucial evidence for determining the royalty, the former party may petition the court to order the other party to provide such evidence, and if the other party refuses to provide such evidence without justifiable reasons, the court may determine the royalty with reference to the royalty proposed and the evidence provided by such former party.

20. 许可协议是否具有可比性，可综合考虑许可交易的主体、许可标的之间的关联性、许可费包含的交易对象及许可谈判双方真实意

思表示等因素。

Whether a license agreement is comparable may be determined by comprehensively considering factors including, but not limited to, the parties to the license transaction, the relevance of the licensed objects, the transaction targets comprised in the royalty, and the genuine expressions of intentions of both parties in the license negotiation, etc.

21. 专利池的许可信息是否具有可比性，应考虑该专利池的参与主体、许可标的组成、对产业的控制力和影响力及许可政策等因素。

Whether license information in a patent pool is comparable may be determined by comprehensively taking into consideration factors including, but not limited to, the participant parties, contents of licensed objects, control power on the industry and influence of the said patent pool, as well as licensing policies, etc.

22. 以具有可比性的许可协议或专利池中的许可信息确定标准必要专利许可使用费的，应以该许可使用费为基础，并考虑本案许可与该许可的差异程度，对其予以合理调整。

比较相关许可与本案许可的差异程度，可以考虑两者在许可交易背景、许可交易内容及许可交易条件等方面的差异。

Where the royalty for certain SEPs is determined based on the license information in a comparable license agreement or patent pool, such royalty shall be used as the criterion and be properly adjusted

considering the degree of discrepancy between the license of the current case and the said comparable license.

During the comparison for the degree of discrepancy between the comparable license and the license of the current case, discrepancies in aspects including, but not limited to, the backgrounds of license transactions, contents of the license transactions, and terms and conditions of the license transactions may be taken into consideration.

23. 分析涉案标准必要专利的市场价值,需确定涉案标准必要专利占全部相关标准必要专利的比值及全部相关标准必要专利的许可使用费。

为确定涉案标准必要专利占全部相关标准必要专利的比值,标准必要专利权人或实施者可以就涉案标准必要专利在全部相关标准必要专利的数量占比及贡献程度情况进行举证。

全部相关标准必要专利的许可使用费的确定,可以参考相关产业参与者声明的累积许可费情况。

To analyze the market value of the SEPs asserted in the case, the court shall determine the ratio of the SEPs asserted in the case to the total relevant SEPs and the royalties for the total relevant SEPs.

In order to determine the ratio of the SEPs asserted in the case to the total relevant SEPs, the patentee or the implementer of the SEPs may provide evidence concerning the quantitative ratio of SEPs asserted in the case to the total relevant SEPs and the contributions thereof.

The aggregate royalties for the total relevant SEPs may be determined with reference to the accumulated royalties stated by relevant industry participants.

24. 通过分析涉案标准必要专利的市场价值来确定许可使用费，可考虑以下因素：

(1) 涉案标准必要专利对产品销售与利润的贡献，该贡献不包括专利被纳入标准所产生的影响；

(2) 涉案标准必要专利对标准的贡献；

(3) 在标准制定之前，该专利技术较之于其他替代技术的优势；

(4) 使用涉案标准必要专利的产品所交纳的全部标准必要专利许可使用费情况；

(5) 其他相关因素。

The following factors may be taken into consideration when determining the royalty by analyzing the market value of the SEPs asserted in the case:

(1) Contribution of the SEPs asserted in the case to product sales and profits, whereas such contribution does not include the impact exerted by the inclusion of said patents into the standard.

(2) Contribution of the SEPs asserted in the case to the standard.

(3) Advantages of the patented technology over other alternative technologies before the standard is developed.

(4) Information of royalty of the total relevant SEPs paid for the

products implementing the SEPs asserted in the case.

(5) Other relevant factors.

#### 四、关于审理标准必要专利垄断纠纷案件的问题

25. 审理标准必要专利垄断纠纷案件，应当遵循以下基本方法：

- (1) 遵循《中华人民共和国反垄断法》的基本分析框架；
- (2) 充分考虑标准必要专利特点；
- (3) 根据个案具体情况分析界定相关市场及判断相关行为主体是否具备市场支配地位；
- (4) 根据个案情况考虑相关行为对市场竞争的影响，关注行为对创新和效率、消费者福利的影响。

The basic methods below shall be followed in the adjudication of monopoly disputes over SEPs:

- (1) Following the basic analysis framework of the Anti-Monopoly Law of the People's Republic of China.
- (2) Taking into full consideration the characteristics of SEPs.
- (3) Defining the relevant markets and determine whether the relevant party has the dominant market position according to the specific situations of individual cases.
- (4) Determining the impact of relevant conducts on market competition according to specific situations of individual cases and paying attention to the impact of the conducts on innovation, efficiency,

and consumer welfare.

26. 对相关市场的界定，可依据《国务院反垄断委员会关于相关市场界定的指南》在个案中确定。在划分市场问题上，应重点考虑相关许可对象的可替代程度。关于可替代程度的判断，可考察标准必要专利的基本属性、市场竞争状况、下游产品市场对上游技术市场所涉相关标准必要专利的依赖性等因素。

界定许可行为所涉相关市场，一般需界定相关地域市场并考虑知识产权的地域性。当相关交易涉及多个国家和地区的标准必要专利时，还需要考虑交易条件、各国采用的标准及限制等因素对相关地域市场界定的影响。

The relevant market shall be defined in individual cases in accordance with the Guidelines of the Anti-Monopoly Commission of the State Council on the Definition of the Relevant Market. In terms of market division, key attention shall be paid to the extent of substitutability of the relevant licensed object. With respect to the determination of the extent of substitutability, factors including, but not limited to, the basic attribute of the SEP, the market competition status, and the dependency of the downstream product market on the relevant SEP in the upstream technology market may be considered.

The definition of the relevant market involved in the licensing act generally requires the definition of the relevant geographical market and needs to consider the territorial nature of intellectual property rights.

When the relevant transaction involves SEPs of multiple countries and regions, the impact of factors including, but not limited to, the transaction terms and the standards and restrictions adopted by each country, on the definition of the relevant regional market shall also be taken into consideration.

27. 市场份额并非判断标准必要专利权人在相关市场上是否具备市场支配地位的唯一因素。根据个案情况,可考虑相关市场的竞争状况,公平、合理、无歧视承诺的约束力,涉案专利在交易条件中所受限制,交易相对人对标准必要专利经营者的依赖程度和制衡能力等其他因素。

The market share is not the only factor for determining whether the patentee of a SEP has a dominant market position. According to the situations of individual cases, other factors may be taken into consideration, including, but not limited to, the competition status in the relevant market, the binding force of the FRAND commitment, the constraints of the transaction terms on the patent asserted in the case, and the transaction counterpart's dependency on and counterbalance capability over the operator of the SEP.

28. 标准必要专利权人违背公平、合理、无歧视承诺,并不必然构成滥用市场支配地位。相关行为是否属于反垄断法的规制对象,需

要根据反垄断法相关规定，结合案件具体情况审查，以判断该行为是否会对市场竞争产生排除、限制的后果。

Violation of the patentee of the SEP against the FRAND commitment does not necessarily constitute abuse of the dominant market position. Whether the relevant conduct is regulated by the Anti-Monopoly Law needs to be examined according to relevant provisions in the Anti-Monopoly Law and based on the specific situation of the case, in order to determine whether the conduct leads to effect of eliminating and restricting market competition.

29. 标准必要专利权人请求停止实施标准必要专利的行为本身并不必然构成滥用市场支配地位。其是否构成滥用市场支配地位，应审查其是否没有正当理由对善意的实施者寻求停止实施标准必要专利，是否迫使实施者接受其提出的不公平的过高许可费或其他不合理的许可条件，相关行为是否导致排除、限制竞争的后果。

The conduct that the patentee of the SEP petitions to forbid implementing the SEP does not necessarily constitute abuse of the dominant market place. During the determination of whether the conduct of patentee constitutes abuse of the dominant market position, the court shall examine whether the patentee has no justifiable reasons to request an implementer with good faith to stop implementing the SEP without justifiable reasons, whether the patentee forces the

implementer to accept unfairly high royalties or other unreasonable license terms, and whether the relevant conduct leads to effect of eliminating and restricting competition shall be examined.

30. 判断标准必要专利权人是否滥用市场支配地位以不公平的高价进行许可，应审查标准必要专利权人是否无合理理由明显不公平地索要过高的许可使用费，从而造成排除、限制竞争的后果。在个案中，可综合考虑标准必要专利权人历史许可协议的签订情况、许可费偏离正常市场价格情况、相关谈判过程及相关产品所承担的整体许可费情况等，以判断相关行为对市场竞争的影响。

In the determination of whether the patentee of the SEP abuses the dominant market position, carrying out licensing at an unfairly high price, the court shall examine whether the patentee of the SEP requests obviously unfair overpriced royalties without justifiable reasons which leads to the effect of eliminating and restricting competition. In individual cases, factors, including, but not limited to the history license agreements of the patentee of the SEP, the status of royalties deviating from the normal market prices, the relevant negotiation processes, and the overall royalties borne by relevant products. shall be comprehensively considered, to determine the impact of relevant conducts on market competition.

31. 判断标准必要专利权人基于专利包或专利组合的一揽子许可交易模式是否属于滥用市场支配地位的“搭售”行为，应审查相关一揽子许可交易模式是否具有胁迫性，是否具有合理性与必要性，相关行为是否造成排除、限制竞争后果。

In the determination of whether the package license transaction mode of the patentee of the SEP based on patent portfolio falls within the "tie-in sale" conduct of abusing the dominant market position, the court shall examine whether the relevant package license transaction mode is threatening, whether the mode is reasonable and necessary, and whether the relevant conduct leads to consequences of eliminating and restricting competition.

## 五、关于本指引的适用范围

32. 本指引适用于通信领域标准必要专利纠纷案件的审理，其他领域标准必要专利纠纷案件可根据行业特点参照适用。

These Guidelines are applicable to the adjudication of disputes concerning SEPs in the field of communications, and may be applicable, by reference, to disputes concerning SEPs in other fields according to the respective industrial characteristics.