

# IP Law Update

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## Publication of “Guidelines for Standard Essential Patents Judicial Mediation (SEPJM)” by the Intellectual Property Divisions of the Tokyo District Court

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In January 2026, the Intellectual Property Divisions of the Tokyo District Court (the “**TDC IP Division**”) published their “Guidelines for Standard Essential Patents Judicial Mediation (SEPJM)” (the “**Guidelines**”)<sup>1</sup> which follows the earlier publication of the TDC IP Division’s “Guidelines for Patent Infringement Lawsuits Involving Standard Essential Patents” (the “**SEP Lawsuit Guidelines**”)<sup>2,3</sup>. The Guidelines announced the TDC IP Division’s decision to implement judicial mediation for dispute cases involving standard essential patents (“**SEPs**”; and such mediation, “**SEP Judicial Mediation**”), as a special procedure under the intellectual property judicial mediation procedure<sup>4</sup>, and set out important points regarding the SEP Judicial Mediation. According to the Guidelines, SEP Judicial Mediation is intended to resolve SEP-related disputes including disputes over the licensing royalty under fair, reasonable, and non-discriminatory (“**FRAND**”)

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<sup>1</sup> Our unofficial English translation of the Guidelines is provided as an annex to this newsletter for reference purposes only. The Guidelines (in Japanese) are published on the Tokyo District Court’s page on the website of the Courts in Japan (URL: [https://www.courts.go.jp/tokyo/saiban/minzi\\_section29\\_40\\_46\\_47/SEPJM\\_chizai\\_jiken\\_teiki/index\\_2\\_1.html](https://www.courts.go.jp/tokyo/saiban/minzi_section29_40_46_47/SEPJM_chizai_jiken_teiki/index_2_1.html)) (last accessed: April 1, 2026). As of April 1, 2026, the Intellectual Property Divisions of the Osaka District Court have not published similar guidelines for SEP-related judicial mediation.

<sup>2</sup> For an overview analysis of the SEP Lawsuit Guidelines, please see our firm’s newsletter “[Publication of the “Guidelines for Patent Infringement Lawsuits Involving Standard Essential Patents” by the Intellectual Property Divisions of the Tokyo District Court.](#)” (NO&T IP Law Update No.17 (March, 2026))

<sup>3</sup> To add some further context regarding SEP lawsuits in Japan, in the *Samsung Electronics Co., Ltd. v. Apple Japan GK* case, the Intellectual Property High Court, in its judgment of May 16, 2014, ruled that Samsung, the patent holder, was not entitled to seek an injunction against Apple to stop sales of certain Apple products based on its finding that “Apple Inc. and Apple Japan have a willingness to obtain a license on FRAND terms” and concluded that “the exercise of the injunction right based on the patent right in question constitutes an abuse of rights (Article 1(3) of the Civil Code).” After that decision, there were virtually no court decisions addressing this issue until early 2025. However, on June 23, 2025, in the *Pantech v. Google* case, the Tokyo District Court issued a judgment (the “**Tokyo District Court Judgment**”) granting an injunction based on a FRAND-committed SEP for the first time in Japan. For a summary of the Tokyo District Court Judgment and its significance, please see our firm’s newsletter “[The Japanese court first judgment to grant an injunction based on a FRAND-committed SEP](#)” (NO&T IP Law Update No.16 (November, 2025)).

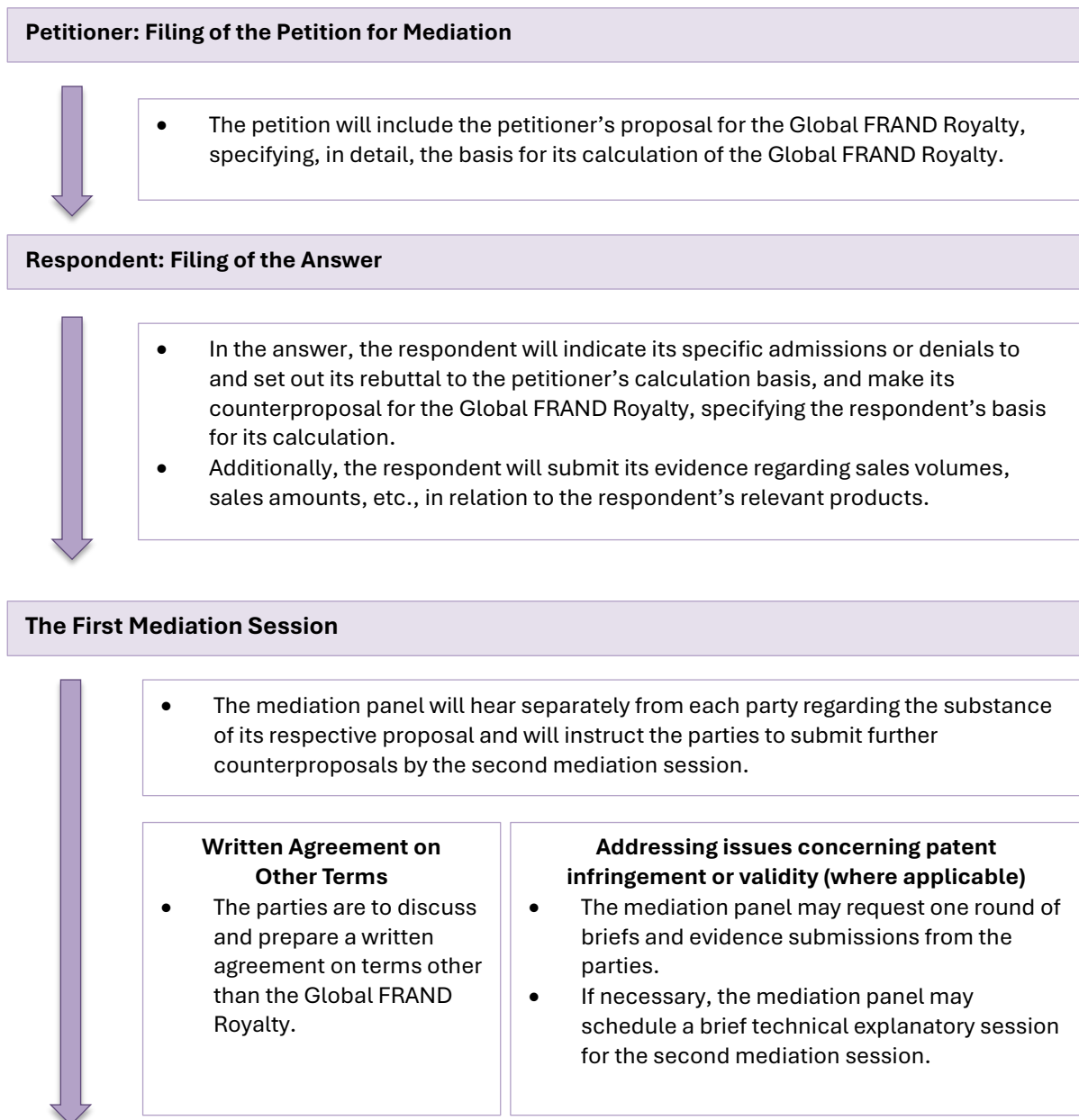
<sup>4</sup> The “Operation of the Intellectual Property Mediation Procedure” (in Japanese) setting out the TDC IP Division’s guidelines for intellectual property judicial mediations, is published on the Tokyo District Court’s page on the website of the Courts in Japan (URL: [https://www.courts.go.jp/tokyo/saiban/minzi\\_section29\\_40\\_46\\_47/tizaityoutei/index.html](https://www.courts.go.jp/tokyo/saiban/minzi_section29_40_46_47/tizaityoutei/index.html)), and a corresponding English guide, “Guide to IP Conciliation Proceedings,” is published on the Intellectual Property High Court’s page on the website of the Courts in Japan (URL: [https://www.courts.go.jp/ip/eng/vc-files/eng/file/Guide\\_to\\_IP\\_Conciliation\\_Proceedings.pdf](https://www.courts.go.jp/ip/eng/vc-files/eng/file/Guide_to_IP_Conciliation_Proceedings.pdf)).

terms for the SEP holder’s entire global SEP portfolio (such royalty hereinafter referred to as the “**Global FRAND Royalty**”), on a global basis (i.e., not limited to disputes that arise in Japan) in a more expeditious manner than a SEP Lawsuit administered under the SEP Lawsuit Guidelines. In addition, where a settlement is not reached through mediation, the Guidelines address a point that is expected to influence consideration of the abuse of rights defense (the so-called FRAND defense) in a subsequent lawsuit or preliminary injunction proceeding. Accordingly, the Guidelines will likely have a significant impact on strategies for SEP-related disputes including whether parties should choose to bring a SEP Lawsuit initially or file a petition for SEP Judicial Mediation.

We provide below a basic flowchart (with comments) describing the presumed progression of proceedings in a SEP Judicial Mediation in light of the Guidelines, and notable points regarding the Guidelines.

## I. Presumed progression of SEP Judicial Mediation proceedings in light of the Guidelines

The Guidelines do not provide details on the procedure for implementing SEP Judicial Mediations. However, based on the information provided, the following progression of proceedings appears to be contemplated.



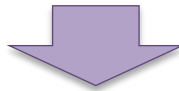
**The Second Mediation Session (the third mediation session if a brief technical explanatory session is held at the second mediation session)**



- Based on the calculation bases for the Global FRAND Royalty submitted by both parties, the mediation panel will either present its settlement proposal or instruct both parties to submit their final proposals.
- If the parties are instructed to submit final proposals, they will do so by the third mediation session.

**The Third Mediation Session (the fourth mediation session if a brief technical explanatory session is held at the second mediation session)**

- If the mediation panel has presented its settlement proposal, it will ask both parties if they accept the proposal.
- If the mediation panel has instructed both parties to submit final proposals, the mediation panel will present its settlement proposal based on those final proposals and ask both parties if they accept the mediation panel's proposal.



**Settlement reached?**



Yes.

**Settlement concluded**

- The mediation is concluded and the written agreement, with the Global FRAND Royalty terms added, is attached as an annex to the court's mediation record.



No. SEP mediation is terminated.

**Filing of a subsequent SEP lawsuit**

- If a settlement is not reached through mediation due to the unwillingness of the petitioner, the respondent to agree to the proposal(s) made, this result will be recorded in the mediation record.
- If a mediation settlement proposal is presented, the proposal and the mediation panel's opinion will be attached to the mediation record.
- Both parties may submit the mediation record in the subsequent lawsuit or preliminary injunction proceeding, for consideration with respect to an abuse of rights defense issue.
- Both parties will promptly file their written briefs addressing infringement and invalidity, which were submitted to the mediation panel during the mediation, in the subsequent lawsuit.

## II. Notable points regarding the Guidelines

Special attention should be paid to the following points regarding the Guidelines:

- **Expedited Proceedings:** Under the Guidelines, a SEP-related dispute is to be resolved expeditiously, in principle, within three mediation sessions (or four mediation sessions if a brief technical explanatory session is scheduled). In a case where there are disputed issues concerning patent infringement or validity, the Guidelines indicate that, in some cases, there will be only one round of briefs and evidence submissions. Given such expedited procedure for SEP Judicial Mediation, parties may need to identify and analyze the relevant issues and prepare and submit their proposals within a shorter timeframe than in a SEP Lawsuit.
- **Use of Mediation Record for Abuse of Rights Defense consideration in a subsequent lawsuit or preliminary injunction proceeding:** As mentioned in the flowchart above, the Guidelines state that both parties may submit the mediation record in a subsequent lawsuit or preliminary injunction proceeding as evidence to support their arguments relating to an abuse of rights defense. This is significant because the contents of the mediation record may have a significant impact on the court's determination on whether or not a SEP implementer (normally, the respondent) has a willingness to obtain a license from the SEP holder under FRAND terms, in the subsequent lawsuit or preliminary injunction proceeding. In light of this, and taking into account, among others, features of SEP Judicial Mediation (for example, that it is a non-public procedure), parties should carefully consider whether to proceed with SEP Judicial Mediation. If they decide to proceed with SEP Judicial Mediation, both parties (especially the respondent) need to carefully consider the arguments and evidence to be submitted, as well as the settlement proposals made, in the course of the mediation (including their responses to proposals from the mediation panel and to requests for disclosure of materials), which may be reflected in the mediation record prepared in cases where settlement is not reached.

The Guidelines have similarities with the SEP Lawsuit Guidelines in the following two respects:

- **The Global FRAND Royalty:** As with the SEP Lawsuit Guidelines, the Guidelines provide that the parties are to make proposals for the Global FRAND Royalty and provide the concrete calculation basis for their respective proposals, in the SEP Judicial Mediation. This is to occur in the early stage of the mediation proceedings.
- **Calculation Methods:** As with the SEP Lawsuit Guidelines, the Guidelines provide that as long as the basis for the petitioner's calculation of its proposed Global FRAND Royalty is provided, the petitioner may use either the top-down approach, the comparable approach, or a combination of the two as its calculation method.

## III. Comments

As with the SEP Lawsuit Guidelines, the Guidelines highlight the TDC IP Division's proactive and expedited approach to resolving SEP-related disputes. Introduction of SEP Judicial Mediation under the Guidelines may make resolving SEP-related disputes in Japan more attractive, particularly where a comprehensive resolution of the Global FRAND Royalty and related issues is sought. In particular, SEP Judicial Mediation under the Guidelines offers an expedited procedure for resolving SEP-related disputes which is contemplated to be faster than the litigation procedure under the SEP Lawsuit Guidelines. In this respect, the Guidelines are expected to significantly impact decisions on the choice of procedures for resolving

future SEP-related disputes. Having said that, since the Guidelines were just recently published, their practical application and impact will need to be carefully considered.

We will continue to provide updates on related developments.

April 1, 2026

## Annex

### Guidelines for Standard Essential Patents Judicial Mediation (SEPJM)

January 2026

Intellectual Property Divisions of the Tokyo District Court  
(29th, 40th, 46th, and 47th Civil Divisions)

The 29th, 40th, 46th, and 47th Civil Divisions of the Tokyo District Court have decided to implement judicial mediation for cases involving standard essential patents (hereinafter “SEPs”), namely SEP Judicial Mediation (SEPJM), as a special procedure under the intellectual property judicial mediation procedure. The purpose, features, procedure, etc. of SEP Judicial Mediation are set out below. For all other matters, the Operation of the Intellectual Property Mediation Procedure shall apply *mutatis mutandis*. Please refer to the “Operation of the Intellectual Property Mediation Procedure” published on the homepage of the Intellectual Property Divisions of the Tokyo District Court [on the website of the Courts in Japan].

#### 1. Purpose of SEP Judicial Mediation

Given that implementation of SEPs inevitably extends beyond borders as a result of the international proliferation of standards, the purpose of SEP Judicial Mediation is to facilitate the formation of an agreement on the licensing royalty under FRAND terms for the SEP holder’s entire global SEP portfolio including the SEPs at issue (such royalty hereinafter referred to as the “Global FRAND Royalty”).

In order to achieve this purpose, the mediation panel [for SEP Judicial Mediation], while referring to global standards, will endeavor to facilitate the formation of an agreement on the Global FRAND Royalty in a smooth and flexible manner and aim to reach a settlement through mediation, in principle, by the third mediation session.

#### 2. Features of SEP Judicial Mediation

The features of SEP Judicial Mediation are as follows.

##### (1) Internationality

SEP Judicial Mediation aims to facilitate the formation of an agreement on the Global FRAND Royalty. In this context, regarding the calculation method for the Global FRAND Royalty, global standards are referred to in light of the global nature of SEPs. For example, as long as the basis for the calculation [of the Global FRAND Royalty] is provided, [the petitioner] may use either the top-down approach, the comparable approach, or a combination of the two [as the calculation method].

##### (2) Expeditiousness

In cases involving SEPs, it is generally understood that, before the filing of a petition for mediation, the relevant parties will have engaged in negotiations, the disputed issues regarding the basis for calculation of the Global FRAND Royalties are identified, and each party possesses relevant documentation and other materials. Given this, in SEP Judicial Mediation, both parties are to submit their arguments [in writing] and evidence by the first mediation session, and, in principle, the dispute is to be resolved expeditiously within three mediation sessions.

##### (3) Expertise

The mediation panel for SEP Judicial Mediation consists of three members: one judge from [one of] the

Intellectual Property Divisions [of the Tokyo District Court] and two experts such as attorneys or patent agents with extensive experience working on intellectual property cases. Accordingly, the level of expertise [of the mediation panel members] is comparable to that of [judges in] litigation and related proceedings. In addition, it is possible to involve a technical assistant with expertise in SEPs in the mediation [to assist the judges in understanding technical matters].

### **3. Procedure of SEP Judicial Mediation**

#### **(1) First Mediation Session**

In the petition [for SEP Judicial mediation], the petitioner will specify, in detail, the basis for its calculation of the Global FRAND Royalty and make its proposal for the Global FRAND Royalty. In response, in its answer, the respondent will indicate its specific admission or denial and set out its rebuttals to the petitioner's calculation basis, and make its counterproposal for the Global FRAND Royalty, specifying the respondent's basis for calculation. In doing so, the respondent also will need to submit evidence regarding sales volumes, sales amounts, etc., in relation to the respondent's [relevant] products.

At the first mediation session, the mediation panel will hear separately from each party regarding the substance of its respective proposal and will instruct them to submit further counterproposals by the second mediation session. Furthermore, promptly after the first mediation session, the parties are to discuss settlement terms other than those regarding the Global FRAND Royalty, with each other and prepare a written agreement from the perspective of facilitating the formation of an agreement. If a settlement is reached through mediation, the written agreement, with the Global FRAND Royalty terms added, is attached as an annex to the court's mediation record.

If there are disputed issues concerning patent infringement or validity, from the perspective of achieving a simple and expeditious resolution, [the mediation panel] may, depending on the circumstances of the particular case, request one round of exchanges of briefs [and evidence] (i.e., (i) respondent's [brief setting out its] arguments and respondent's evidence concerning non-infringement and invalidity in response to the petition, and (ii) petitioner's [brief setting out its] counterarguments and petitioner's evidence in response thereto). If necessary, [the mediation panel] may set a date for a brief technical explanatory session at the second mediation session. In such cases, from the perspective of ensuring smooth coordination between the mediation and subsequent lawsuit, both parties will promptly file the above-mentioned written briefs in a lawsuit initiated after it is determined that a settlement cannot be reached through mediation or [the petition for] the mediation has been withdrawn.

#### **(2) Second Mediation Session (or the third mediation session if a brief technical explanatory session is held at the second mediation session)**

Based on the calculation bases for the Global FRAND Royalty submitted by both parties, the mediation panel will either present its settlement proposal or instruct both parties to submit their final proposals. If the parties are instructed to submit final proposals, they will do so by the third mediation session (or the fourth mediation session if a brief technical explanatory session is held at the second mediation session).

Where a brief technical explanatory session is held at the second mediation session, the mediation panel may also instruct the parties, as in the first mediation session, to submit further counterproposals by the third mediation session.

#### **(3) Third Mediation Session**

If the mediation panel has presented its settlement proposal, it will ask both parties if they accept the proposal, thereby determining whether a settlement is reached through mediation or not.

If the mediation panel has instructed both parties to submit final proposals, the mediation panel will present

its settlement proposal based on those final proposals, and ask both parties if they accept the mediation panel's proposal, thereby determining whether a settlement is reached through mediation or not.

**(4) Case where Settlement Is Not Reached through Mediation**

In the case where a settlement is not reached through mediation, if a settlement is not reached through mediation because either the petitioner or the respondent is unwilling to agree, this will be recorded in the mediation record. And if a mediation settlement proposal is presented, the proposal and the mediation panel's opinion will be attached to the mediation record. Both parties may submit the mediation record in a subsequent lawsuit or preliminary injunction proceeding with respect to a disputed issue of an abuse of rights defense.

End

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