

PHS MoU DOCUMENT

INDUSTRIAL PROPERTY RIGHT (IPR) SERIES

IPR1.00

Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification

IPR2.00

Working Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification

PHS MoU Group
Version 2.0

(Left Open)

Title: **Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification**

Version: 02

Date: September 13, 2007

PHS MoU Classification: Unrestricted

PHS MoU Group

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Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification

The PHS MoU Specification is to be drafted in a fair and open manner, and established only when agreed upon by the general consensus of PHS MoU Group members.

Therefore, if any or all parts of the contents of the PHS MoU Specifications are included in the scope of an Essential Industrial Property Right (Industrial Property Right (hereinafter "IPR") means any patent right, utility model right and design patent right, whether allowed or pending; and "Essential IPR" means any of those which technically makes it impossible to manufacture, to sell or to use equipment, apparatus, devices, systems or software, in compliance with the PHS MoU Specification without infringing the same), the adoption of the PHS MoU Specification should be decided in a fair and open manner which clearly reflects the intention of a majority of PHS MoU Group members.

Furthermore, to promote the PHS MoU Specification for universal use, PHS MoU Group deems it desirable that the Essential IPR which relates to any or all parts of the contents of the PHS MoU Specification should be used free of charge by anyone and that it would not block the use of such Essential IPR in any other country where such an PHS MoU Specification is adopted.

Accordingly, PHS MoU Group has established the following guidelines for dealing with such Essential IPR to which the PHS MoU Specification relates.

1. Treatment

1.1 Basis for Selection

In case where any or all parts of the contents of the provisions of a particular PHS MoU Specification are included in the scope of any Essential IPR, the PHS MoU Specification shall apply only when the holder of such Essential IPR (hereinafter "the Right Holder") agrees to elect either of the following two alternative cases (1) and (2); and shall not apply when the Right Holder elects case (3).

- (1) The Right Holder agrees not to assert such Essential IPR and to grant a license unconditionally to the use of such Essential IPR to anyone who uses such a PHS MoU Specification.

However, if anyone who uses such a PHS MoU Specification owns any other Essential IPR which covers any or all parts of the contents of the provisions of such PHS MoU Specification, and lays claims thereto, such user may be excluded from the application of the aforesaid provision by the Right Holder.

- (2) The Right Holder, upon disclosing the contents and the terms and conditions of such Essential IPR, agrees to grant a non-exclusive and non-discriminatory license to the use of such Essential IPR on reasonable terms and conditions to anyone who uses such a PHS MoU Specification.

However, if anyone who uses such a PHS MoU Specification owns any other Essential IPR which covers any or all parts of the contents of the provisions of such a PHS MoU Specification, and lays claims thereto, such a user may be excluded from the application of aforesaid provision by the Right Holder.

- (3) The Right Holder does not agree to either of the aforesaid alternatives referred to in (1) or (2).

1.2 Disputes regarding IPR

PHS MoU Group is not responsible for the confirmation of whether or not any or all parts of such a PHS MoU Specification are included in a scope of any Essential IPR, nor liable for any disputes regarding IPR.

1.3 Applicable Scope and Territory

The treatment provided in Section 1.1 of these Guidelines shall be applied to equipment, apparatus, devices, systems or software used in Japan in compliance with such a PHS MoU Specification. However, in case where other countries adopt such a PHS MoU Specification, mutual consultation about the treatment of the Essential IPR can be conducted in the manners stated in the preface.

2. Procedures

Below are the procedures to be applied when any or all parts of the contents of the provisions of a particular PHS MoU Specification are included in the scope of any Essential IPR.

2.1 Submission of Confirmation Form

When drafting the provision(s) of an PHS MoU Specification, the Right Holder should submit to the chairman of PHS MoU Group one of the following confirmation forms relating to a license to the use of the Essential IPR provided in the attached forms No.1 through No.3 (IPR's other than patents shall be listed on the back page of the confirmation form in the same manner as patents.).

2.2 Submission Date for Confirmation Form

As a general rule, one of the three forms above should be submitted before or on the date to be decided by PHS MoU Group, or the date to be decided by the relevant Working Group prior to the establishment of such a draft PHS MoU Specification.

Where the Essential IPR provided in Section 2.1 has not been laid open (hereinafter "lay open" includes international publication and national (domestic) publication , and means the earliest one among them) at the time of that submission , the form shall be re-submitted after such Essential IPR is laid open again.

If the application of such Essential IPR is withdrawn or rejected or the right has expired, a notification thereof shall be submitted without delay.

2.3 Custody of Confirmation Form and Notation in the PHS MoU Specification

When the secretariat of the Standard Assembly receives a confirmation form provided in Section 2.1 form the Right Holder, the secretariat will retain the form in custody. If the secretariat receives the attached confirmation form No.1 or No.2, such an PHS MoU Specification shall include the following notation.

"Note: Although this PHS MoU Specification contains no specific reference to any Essential Industrial Property Right relating thereto, the holder of such Essential Industrial Property Right states that "YYY" is the holder of the Industrial Property Right "XXX" covering this ARIB Standard and agrees [(in case of the attached form No.1) not to assert such right "XXX" and to grant a license unconditionally to the use of such right "XXX" to anyone using this PHS MoU Specification] [(in case of the attached form No.2) to grant a non-exclusive and non-discriminatory license to the use of such right "XXX" on reasonable terms and conditions to anyone using this PHS MoU Specification]. However this does not apply to anyone who uses this PHS MoU Specification and also owns and lays claim to any other Essential Industrial Property Right whose scope is included in any or all parts of the contents of the provisions of this PHS MoU Specification."

2.4 Liability for not receiving Confirmation Form

PHS MoU Group shall not be responsible to anyone for any and all consequences that may arise from not submitting any of the confirmation forms provided in section 2.1 by the Right Holder.

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Confirmation form relating to a license to the use of the Essential IPR

To the Chairman of PHS MoU Group

Date of submission :

Submitter

Name of company :

Name of representative : (seal or signature)

Address of company :

In terms of the Essential IPR stated below in connection with the PHS MoU Specification, we confirm that the company elects case (1) in Section 1.1 provided in "Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification.

If any amendment of the contents of our statement arises, we shall submit a confirmation form again without delay.

1. Title of PHS MoU Specification

2. IPR of Interest
As per the table of relevant IPR stated on the back page

(NOTE): The definition of the Essential IPR stated in this confirmation form is in accordance with the definition provided in "Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification.

(Back page)

Table of relevant IPR

Applied country	Application Number	Name of invention	Content in detail
			as per attached sheet -
			as per attached sheet -
			as per attached sheet -
			as per attached sheet -
			as per attached sheet -
			as per attached sheet -
			as per attached sheet -
			as per attached sheet -

Attached sheet –

Title of invention	
Date of application	
Patent registration number (note #1)	
Name or title of the patent applicant (Note #2)	
Name and address (or domicile) of inventor (Note #3)	
Reference material(s) (Note #3,4) (1) Specification (2) Drawings necessary	as per attached Specification (brief explanations of drawings, detailed explanations of invention and scope of claims are to be stated) (table of attached drawings is to be stated)
Description of the provisions of the RCR Standard subject to the right applied (Note #5)	
Remarks	(name of foreign countries where in case of applied is to be stated)

Note #1: Patent publication number, laying-open number or application number is to be stated in case of not registered.

Note #2: Company name and representative name are to be stated in case of juridical person.

Note #3: Not necessary to fill in the blank in case of not laid-open.

Note #4: Patent official report which reflects the latest specification may be attached.

Note #5: Not necessary to fill in the blank in case of registered.

Confirmation form relating to a license to the use of the Essential IPR

To the Chairman of PHS MoU Group

Date of submission :

Submitter

Name of company :

Name of representative : (seal or signature)

Address of company :

In terms of the Essential IPR stated below in connection with the PHS MoU Specification, we confirm that the company elects case (2) in Section 1.1 Provided in "Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification.

The terms and conditions to use the Essential IPR of interest are stated below.

If any amendment of the contents of our statement arises, we shall submit a confirmation form again without delay.

1. Title of PHS MoU Specification

2. IPR of Interest
As per table of relevant IPR stated on the back page

3. Terms and Conditions to use the Essential IPR

(NOTE): The definition of the Essential IPR stated in this confirmation form is in accordance with the definition provided in "Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification.

Confirmation form relating to a license to the use of the Essential IPR

To the Chairman of PHS MoU Group

Date of submission :

Submitter

Name of company :

Name of representative : (seal or signature)

Address of company :

In terms of the Essential IPR stated below in connection with the PHS MoU Specification, we confirm that the company elects case (3) in Section 1.1 provided in "Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification".

If any amendment of the contents of our statement arises, we shall submit a confirmation form again without delay.

1. Title of PHS MoU Specification

2. IPR of Interest

As per table of relevant IPR stated on the back page

(NOTE): The definition of the Essential IPR stated in this confirmation form is in accordance with the definition provided in "Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification.

PHS MoU Document

IPR2.00

Title: **Working Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification**

Version: 02

Date: September 13, 2007

PHS MoU Classification: Unrestricted

PHS MoU Group

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History of Revised Versions

Version	Date	Outline
01	July 3, 1996	Established
02	Sep.13, 2007	Revised

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Working Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification

PHS MoU Group decided as follows in connection with the practical use of “Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification (decided as of September 3, 1996)” (hereinafter “Guidelines”).

Essential Industrial Property Right (hereinafter “Essential IPR”) relating to any or all parts of the contents of such an PHS MoU Specification shall be treated only as provided in the Guidelines without any other terms and conditions.

The Guidelines do not address any treatment of Non-Essential IPR (hereinafter “Non-Essential IPR” means Industrial Property Right relating to any or all parts of the contents of such an PHS MoU Specification other than Essential IPR) in connection with systems in compliance with such an PHS MoU Specification. However, if the holder of Essential IPR (this relates only to those holders of Essential IPR who selected Section 1.1(1) of the Guidelines) requests a license from the holder of Non-Essential IPR to use such Non-Essential IPR in the system in compliance with such an PHS MoU Specification, such a holder of the Non-Essential IPR shall pay due consideration to the fact that such a holder of Non-Essential IPR received a royalty-free license under the Essential IPR from such a holder of Essential IPR. Such a holder of Non-Essential IPR shall therefore negotiate in good faith with such a holder of Essential IPR for such licenses on reasonable terms and conditions (including royalty-free) so that a mutually acceptable agreement can be reached.

In the case that a potential holder of Essential IPR is not able to submit a confirmation form per Section 2.1 of the Guidelines by the submission date specified in Section 2.2 of the Guidelines (hereinafter “the submission date”), the potential holder can submit either of the attached comprehensive confirmation forms, No.1 or No.2, that does not specify Industrial Property Right (hereinafter “comprehensive confirmation forms”) by the submission date. The submitter of one of these comprehensive confirmation forms may postpone the submission of the confirmation form provided in the Guidelines until the date up to six months from the date of the establishment or revision of the relevant PHS MoU Specification. Any entity who has participated into making this PHS MoU Specification and possibly be as a potential IPR holder is entitled to submit the attached comprehensive confirmation lists, No.3 or No.4 instead of submitting “comprehensive confirmation forms” under the prior consent of relevant Working Group. In case that the comprehensive confirmation form No.1 is submitted and if the submitter is later ascertaining to be an Essential IPR holder, it should submit the confirmation form No.1 provided in the Guidelines. In case that the comprehensive confirmation form No.2 is submitted and if the submitter is later ascertain to be an Essential IPR holder, it should submit either one of the confirmation forms No.1 and No.2 provided in the Guidelines.

If the submitter learns of the existence of its Essential IPR after the submission date (six months from the date of the establishment or revision of the relevant PHS MoU Specification in the case that a comprehensive confirmation form described in Paragraph 3 is submitted), the holder of such Essential IPR should submit the confirmation form No.1

or No.2 provided in the Guidelines without delay. In the case that the holder of such Essential IPR submitted the comprehensive confirmation form described in Paragraph 3, the contents mentioned in the comprehensive confirmation form are also valid for the Essential IPR that is not specified in the confirmation form No. 1 or No. 2 provided in the Guidelines.

Comprehensive confirmation form relating to a license to the use of the Essential IPR

To the Chairman of PHS MoU Group

Date of submission:

Submitter

Name of company:

Name of representative:

(seal or signature)

Address of company:

In accordance with Paragraph 3 of the “Working Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification”, in the case that we have any Essential IPR relevant to the PHS MoU Specification stated below, we hereby comprehensively confirm that the company elects case (1) in Section 1.1 provided in “Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification.”

1. Title of PHS MoU Specification:

Comprehensive confirmation form relating to a license to the use of the Essential IPR

To the Chairman of PHS MoU Group

Date of submission:

Submitter

Name of company:

Name of representative:

(seal or signature)

Address of company:

In accordance with Paragraph 3 of the “Working Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification”, in the case that we have any Essential IPR relevant to the PHS MoU Specification stated below, we hereby comprehensively confirm that the company elects case (2) in Section 1.1 provided in “Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification.”

1. Title of PHS MoU Specification:

Comprehensive confirmation list relating to a license to the use of the Essential IPR

To the Chairman of PHS MoU Group

In accordance with Paragraph 3 of the “Working Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification”, in the case that we have any Essential IPR relevant to the PHS MoU Specification stated below, we hereby comprehensively confirm that the company elects case (1) in Section 1.1 provided in “Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification.”

1. Title of PHS MoU Specification:

2. Date of confirmation

3. Relevant working group

4. Submitters (Name and Address of company)

Comprehensive confirmation list relating to a license to the use of the Essential IPR

To the Chairman of PHS MoU Group

In accordance with Paragraph 3 of the “Working Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification”, in the case that we have any Essential IPR relevant to the PHS MoU Specification stated below, we hereby comprehensively confirm that the company elects case (2) in Section 1.1 provided in “Guidelines for Treatment of Industrial Property Rights in connection with the PHS MoU Specification.”

1. Title of PHS MoU Specification:

2. Date of confirmation

3. Relevant working group

4. Submitters (Name and Address of company)

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