

## 关于 AVS 专利池管理的建议性规定

### AVS Patent Pool Administration Advisory Guidelines

(2006 年 9 月 23 日发布)

(Released on Sep. 23, 2006)

#### 关于 AVS 专利池管理的建议性规定

AVS 工作组是中国数字音视频编解码技术标准工作组的简称。AVS 工作组起草制定并经标准化主管部门批准实施的系列标准简称 AVS 标准。

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 专利池管理的基本原则和组织保证做出如下建议性的规定。

本文件反映了 AVS 工作组主管机构、AVS 会员的意愿。本文件的修订由 AVS 工作组负责。

- 1) 包容原则。AVS 专利池管理的目的是按照国际惯例, 以开放与包容的态度营造一个鼓励潜在核心专利持有者将他们的专利放入 AVS 专利池的良好环境。
- 2) 诚实信用原则。AVS 工作组要求成员信守承诺, 根据知识产权政策将与其提案相关的在中国的必要专利要求放入 AVS 专利池统一管理或根据 RAND 免费实施许可。
- 3) 自愿原则。AVS 工作组鼓励但是并不强求未参加 AVS 标准化过程的专利持有人将他们的必要专利放入 AVS 专利池, 这将有助于实现 AVS 专利的一站式授权概念, 也有助于将 AVS 尽快推广成为国际化的产业标准。

#### AVS Patent Pool Administration Advisory Guidelines (for Reference)

AVS Workgroup is the abbreviation of Audio Video Coding Standard Workgroup of China. AVS standards are the standards developed by the AVS Workgroup and ratified by the national standardization administration authorities.

In order to promote the adoption of the 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 now provides the following advisory guidelines for administration of the AVS Patent Pool.

This document reflects the intention and desire of the authorities in charge of the AVS Workgroup and the AVS Members. The AVS Workgroup is responsible for amending this document.

- 1) **Inclusion** - The AVS Patent Pool is intended to be open and inclusive and to create an attractive platform under international practice for encouraging potential essential patent holders to include their patents into the patent pool
- 2) **Credit and Faith**- AVS Members should keep their licensing commitment that the essential claims of their PRC patents covered by the their contributions would be licensed through the AVS Patent Pool or licensed RAND-Royalty-Free, in accordance with the AVS IPR Policy.
- 3) **Voluntary Participation** - The AVS Workgroup encourages but does not require that essential patent holders that have not participated in the standard-setting process join in the AVS Patent Pool, with a view to accomplishing “one stop shop” licensing and expediting the process of promoting AVS as an international industry standard.

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- 4) 非排他授权原则。用户获得 AVS 的专利授权可以有至少两个渠道，可以通过 AVS 专利授权实体进行，也可以单独和所有专利持有成员直接协商获得。
- 4) **Non-exclusive**-The implementers of AVS have two options for obtaining a license .One is to receive a license from the AVS Patent Pool; the other is to negotiate directly with one or more individual patent holders.
- 5) AVS 专利池入池专利。
- 5) **AVS Pooled Patent**
- a) 进入 AVS 专利池的专利应该尽可能是独立、客观和开放的。虽然 AVS 工作组并不要求提案者对于所提出技术的独立与客观性进行检索，也不要要求提案者对于提案的技术侵权行为承担相应的法律责任，但是工作组仍然希望提案者的提案应该尽可能的清晰、独立。
- a) The patents in the AVS Patent Pool should be Necessary Claims covering the original work of the AVS contributors. The contributors are not required to research whether their contribution is covered by the patents of another entity, and the contributor will not take legal responsibility for infringing other patents with their proposed technology. Nevertheless, the AVS Workgroup hopes that contributions will be as independent and original as possible.
- b) AVS 授权管理实体将聘请独立技术专家和独立法律（专利）专家审核提交的技术专利是否为可以放入 AVS 专利池的核心专利。评估专家通过书面评估报告表述评估意见。
- b) The AVS Patent Pool Administration should appoint a qualified independent legal expert to determine the essentiality of patents submitted to the AVS Patent Pool. Evaluation results should be given in writing.
- c) 在最初创建专利池的时候，AVS 授权管理实体将邀请潜在必要专利权人至少提交一个专利进行评估。在确认潜在必要专利权人之后，AVS 授权管理实体将就具体许可条款的协商进行协调。
- c) To initially establish the pool, the AVS Patent Pool Administration should invite potential essential patent holders to submit at least one patent for evaluation. After the essential patent holders have been identified, the AVS Patent Pool Administration should facilitate the negotiation of detailed licensing terms.
- d) 每个希望入池的专利必须单独提出申请。在 AVS 专利池许可活动启动之后，评估和入池的整个过程应当在 3 个月内完成。
- d) Submission should be made for each potentially essential patent. After the AVS Patent Pool license is available, the process for evaluation and admission into the AVS Patent Pool should be completed within 3 months.
- 6) 许可的范围。AVS 专利池只负责与 AVS 标准相关的专利授权，任何 AVS 标准实现以外的专利使用由专利持有者和用户直接协商， AVS 专利池并不涉及 AVS 标准实现以外其他用途中的授权。
- 6) **Scope of License** – The AVS Patent Pool is responsible only for licensing Necessary Claims related to the AVS standards. If exploitation of a patented technology is unrelated to implementation of the AVS standards, it should be dealt with through negotiation between the patent holders and the parties using the technology. The AVS Patent Pool is not directed to licensing of patents for any use other than that of the implementation of the AVS standards.
- 7) 专利授权管理
- AVS 工作组需要选择和委托单一授权管理实体来执行 AVS 专利池的管理。
- 7) **Licensing Administration** – The AVS workgroup should select a single licensing administration entity to manage the AVS patent pool.
- a) AVS 专利池管理委员会是 AVS 专利池管理机构的决策机构，设主任一人，副主任一人。主任和副主任由全体委员会推选。委员每届任期两年，
- a) The AVS Patent Pool Executive Council should be the decision-making body of the AVS Patent Pool Administration. The AVS Patent Pool Executive Council should elect a Chairman and Vice Chairman for a

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- 可以连任。
- b) AVS 专利池管理委员会由十九位委员组成，其中五位委员是从国家相关部委邀请技术和管理专家（相关部委包括：国家信息产业部、国家科技部、国家广电总局、国家发展与改革委员会、国家标准化委员会、国家知识产权局、国家商务部等），六位 AVS 用户委员来自采用 AVS 标准的企业，六位专利许可人委员来自 AVS 专利池许可人。另外两位委员是 AVS 工作组的组长和 AVS 专利池管理执行机构的主任。
- c) AVS 授权管理实体是 AVS 专利池管理的执行机构，接受 AVS 专利池管理委员会的领导。AVS 授权管理实体应该是在中国本土注册的和信誉可靠的非营利法人实体。
- d) 授权管理实体可以获得的管理费用包括不高于 10% 的专利授权费；
- e) 授权管理实体的责任
- i. 发现和寻求可能的被授权者和专利池成员
  - ii. 管理专利池成员的资格，包括选择一位专利池独立评估专家，做好专利池独立评估专家和专利池成员及潜在专利池成员的沟通协调工作等
  - iii. 为准备和修改专利池许可文件提供帮助
  - iv. 在专利池许可谈判、许可执行和许可管理方面为潜在专利池用户提供协助
  - v. 按照专利池成员同意的协议，收取、汇报和分发专利费
  - vi. 对专利池成员提供市场对专利授权项目运行情况的反馈
  - vii. 对专利池成员的专利实施和保护提供可能的帮助
- term of two years. The committee members should be eligible for being reelected for new terms.
- b) The AVS Patent Pool Executive Council should consist of nineteen committee members. Five committee members should be invited as technology and management experts from relevant government agencies (including the Ministry of Information Industry, the Ministry of Science and Technology, the State Administration of Radio, Film and TV, the State Commission of Development and Reform, the Standardization Administration of China, the State Intellectual Property Office and the Ministry of Commerce). Six committee members should be AVS Workgroup members who represent users of the AVS Standards, six committee members should represent AVS Licensors, and the remaining two committee members should be the President of the AVS Workgroup and the Director of the AVS Patent Pool Administration.
- c) The AVS Patent Pool Administrator should be the execution body under the leadership of the AVS Patent Pool Executive Council. It should be an entity which is non-profit, credible and registered in the mainland.
- d) Licensing Administrator Fees should include no more than 10% of received royalties.
- e) The AVS Patent Pool Administrator should be responsible for:
- i. Identifying and soliciting prospective licensees and pool members.
  - ii. Administering pool membership rules, including selecting an independent evaluator for the patent pool and interfacing between pool members, prospective members and the evaluator.
  - iii. Facilitating pool members in the creation and amendment, as appropriate, of pool licenses.
  - iv. Facilitating prospective licensees in the negotiation, execution and administration of pool licenses.
  - v. Collecting, reporting and distributing royalties in accordance with agreement with pool members.
  - vi. Providing ongoing feedback to pool members regarding market acceptance of pool licensing program.
  - vii. Assisting pool members in patent enforcement activities and proceedings.

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- f) 授权管理实体的能力要求
  - i. 对 AVS 的市场有彻底的了解, 包括家电、计算机、广播、物理媒体 (光盘等)、内容提供商等
  - ii. 在标准有关的专利许可方面有成功的市场推广能力
  - iii. 建立专利授权费的收取和发放运作
  - iv. 能够通过利用内部或外部的法律专家解决专利池运作和许可过程中出现的问题
- f) The AVS Patent Pool Administrator should demonstrate the following:
  - i. Detailed understanding of key markets for AVS technologies – consumer electronics, PC, broadcast, physical medium, content providers, etc.
  - ii. Proven success in marketing patent licenses for standardized technology.
  - iii. Established royalty collection and disbursement operations.
  - iv. Access to in-house or external legal expertise for handling patent pooling issues and transactions.