

## **General information concerning Philips' optical storage licensing programs**

### **Introduction**

In response to questions raised by licensees, Philips wishes to confirm and clarify a number of its policies as part of its on-going effort to respond to the concerns and interests of its licensees.

Each year, technology-driven companies like Philips invest billions of Euros on research and development, leading to new technologies and products, in the area of optical recording as well as other technologies. In the course of the research and development work, inventions are made, and patent protection is subsequently obtained for such inventions. In part, the ability to obtain patents and license these drives further research and repays Philips for part of the enormous cost of developing new and innovative products. When patents do issue, under the laws of the country that issued the patent, the patented technologies cannot be used without Philips' consent. Nevertheless, Philips has decided to make available many of these technologies (e.g. CD Disc or DVD Disc) to those wishing to use Philips-developed technologies on non-discriminatory terms by granting licenses under its patents. Philips operates multiple open and non-discriminatory licensing programs in respect of a variety of technologies and products.

This document explains Philips' main principles in the administration of its optical licensing programs, and is for information purposes only. It is not intended to replace the contents of actual license agreements. The relevant agreements and related documents, signed by licensee and countersigned by Philips, represent the sole basis for the contractual relationship between Philips and a licensee.

### **Forms of license agreements**

Philips' licenses for the various optical storage licensing programs are made available for the manufacture of the relevant products using one or more of the licensed essential patents in the territory of manufacture and the subsequent sale of products so manufactured on a world-wide basis. For the convenience of licensees, Philips offers standard license agreements in two basic forms: one under Philips' patents only and another under the patents of Philips and other patent owners. In addition to licensing its own patents under so-called "Philips Only Patent License Agreements", Philips has been authorized by certain patent owners (e.g. Sony Corporation, Pioneer Corporation, LG Electronics, Inc.) to include their essential patents, relevant to the technology concerned, in the patent portfolio as well. Accordingly, Philips includes these other patents in so-called "Joint Patent License Agreements". These combined licenses are offered as a convenience to interested manufacturers. Accordingly, for each type of product for which it seeks a license, a manufacturer is free to enter into a standard Philips Only

Patent License Agreement, covering only Philips' patents, or a standard Joint Patent License Agreement, covering patents of Philips as well as other, specified, patent owners. The choice between a Philips Only Patent License Agreement and Joint Patent License Agreement is the sole discretion of the manufacturer concerned. Indeed, each patent owner whose patents are made available through a Joint Patent License Agreement administered by Philips also offers an individual license agreement pursuant to its own terms and conditions. Interested manufacturers thus have the freedom to choose between a standard Joint Patent License Agreement or one or more of the standard individual license agreements offered by Philips and each of the co-licensors. In addition, manufacturers may negotiate non-standard licenses with Philips.

Any manufacturer who chooses to enter into any of these license agreements should realise that the license granted does not imply any warranty in relation to Philips or third party patents, not included in the license. To be properly authorized for the use of Philips or third party patents not included in the license remains the sole responsibility of the manufacturer concerned. Generally, Philips reserves the right to assert against any licensee any and all of its patent rights not included in the license.

In addition, given the fact that the contents of Philips' standard license agreements evolve over time to, among other things, take into account concerns of licensees, every manufacturer who has concluded a license agreement with Philips (whether the Philips Only Patent License Agreement or a Joint Patent License Agreement) may, at its option, enter into the latest version of the same standard license agreement as displayed on its website [www.licensing.philips.com](http://www.licensing.philips.com) at any time. Finally, licensees who have concluded a Joint Patent License Agreement may opt to change to one or more individual license agreements offered by Philips and the respective co-licensors at any time.

### **The License Agreement**

As mentioned above, some of the technologies indispensable to manufacture optical products are covered by patents owned by Philips and other patent owners. As a general matter of patent ownership, a party wishing to use patented technology can do so only if such party is licensed to do so by the patent owner. Philips offers its licenses on non-discriminatory terms and conditions. In principle, these licenses are available to all interested manufacturers.

The Philips Only Patent License Agreement as well as the Joint Patent License Agreement aim to include patents that are necessarily infringed in the manufacture of products that comply with the Standard Specification concerned, taking into account probable developments as to technology and consumer demand. At the request of Philips, the essential nature of the licensed patents is reviewed for confirmation by independent patent experts in Europe and the United States of America. Philips goes to substantial effort and expense to determine which patents are essential to the standard product, which is the subject of the particular license agreement. Philips adopts the opinions issued by said independent experts, as well as possible divergent opinions of

said independent experts resulting from a reconsideration of such opinion at the request and the expense of third parties. If a licensed patent is thus found to be non-essential, Philips will remove the patent concerned from the Joint or Philips Only standard license agreement concerned, but will give an option to existing licensees to remain licensed under the Philips patent concerned at no additional cost.

In some of Philips' licensing programs, the license agreement provides for options between different product versions. For those situations, the license agreement expressly states that licensee can select, solely at its option, what product(s) covered by the agreement it chooses to manufacture. By this selection, licensee exercises its option to decide what products it wishes and does not wish to make, and the license agreement also clearly and transparently presents to licensee what essential patent(s), listed on the attached patent list, it will use to manufacture the product(s) concerned.

As already mentioned, the patents covered by each license agreement are listed on the patent lists attached to the license agreement. Such lists can also be found on Philips' website [www.licensing.philips.com](http://www.licensing.philips.com). Please note that the patent lists posted on this website are updated on a regular basis. The website lists prevail over the patent lists attached to the license agreement in the event of any differences. (In exceptional cases where a manufacturer has entered into a license agreement after the production of the relevant product has started, essential patents that were used in the manufacture of the product concerned may actually have expired before the effective date of the agreement. In such event, although the expired patent will not appear on the lists of patents as published on the website, it will be deemed included in the license agreement in as far as it has been used in the past production.)

### **Compliance with the Standard Specifications**

One of the advantages of standard licensing programs is that adherence to standard product specifications allows numerous companies to compete for each sale, benefiting both consumers and manufacturers. As an example, compliance with the standard specifications in the field of use in the standard CD license agreements help ensure that all CDs will play on all CD players and that all players can play all discs. Thus, for compatibility reasons and in order to protect interoperability furthered by the standard (which is in the interest of consumers and manufacturers alike), the products manufactured by licensees under standard licenses must comply with standard specifications in respect of the format concerned. These standards are laid down in the so-called Standard Specifications. Periodically, Philips has updated or changed the Standard Specifications for a format issued by Philips, to take into account technological developments, but there is no obligation for existing licensees to follow this new standard or to enter into a new license agreement, and licensees may continue manufacturing according to the standards as provided when entering into their license agreement. Philips, of course, continues to be willing to enter into non-standard license agreements for the use of its patents for non-standard products.

### **The royalty rate**

The royalty rate, as specified in the standard license agreement generally is a per-unit amount and not a percentage of the net selling price of the product it refers to. The royalty rate in standard licenses is not related to fluctuations in the market price of a licensed product. Further, the royalty rate is not computed on a per-patent basis and does not fluctuate as patents are added or removed from the standard license for the format concerned. Therefore, the same royalty rate is payable when using one essential patent as when using several essential patents.

The standard license agreements are based on the premise that, in consideration for using one or more of the essential patents, licensee shall pay Philips a royalty for each product that is manufactured or sold or otherwise disposed of in a country where at least one of the licensed patents used exists. As stated, the royalty rate does not vary as a function of the precise number of patents actually used in the numerous countries in which licensees may sell or manufacture. It is Philips' philosophy that the value of a standard license is to allow a licensee to lawfully make and sell a licensed product, and the value of that license does not fluctuate merely because the number of patents in a certain country is different from the number of patents in another country. However, the agreements explicitly state that, in the event that the manufacture by licensee of the products within the territory concerned (as per the license agreement) does not infringe any of the licensed patents, licensee shall have no obligation to pay royalties in respect of products manufactured within licensee's territory and which are sold for final use within the same territory or imported (either by licensee or by a third party) into a country where none of the licensed patents subsist. In other words, no royalties are payable when no patents are infringed.

### **The grant-back provisions**

The standard license agreements provide for clauses whereby licensee undertakes to license any essential patents owned by it, which are essential in respect of the format or product concerned, to Philips and other licensees that have entered into the same license agreement on reasonable and non-discriminatory conditions. The purpose of the grant-back provision is to prevent licensees from excluding any party from the industry that licensors and other licensees have developed and in which they have invested and from depriving consumers of licensed products of multiple manufacturers. Other than requiring that the grant-back be on reasonable and non-discriminatory terms and conditions to protect manufacturers and consumers, Philips has no interest in the terms of negotiations for patent licenses to be offered by licensee under its essential patents, as this is a matter for the discretion of each licensee concerned. It should be noted that, for those license agreements that provide for product options to be selected by the licensee, the grant-back undertaking only applies in respect of the option(s) selected by licensee. In other words, the scope of the grant-back undertaking is identical to the license granted to licensee. In addition, and with the aim to preserve general interoperability (notably

between optical discs on the one hand and playback and recording devices on the other hand), the grant-back undertaking extends to those products within the system with which the licensed products have to interact. Finally, the grant-back obligation is limited to the standard specifications to which the license agreement applies, as concluded by licensee. There is no grant-back obligation in respect of future upgrades or additions to the standard that are not covered by the version of the license agreement as concluded by the licensee.