

A Study on the Regulation of Predatory IP Litigation under Competition Law

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Abstract

There has recently been a succession of patent lawsuits in the technology industry, where patent rights have in many cases been used as a strategic weapon. For some corporations, especially those in the major patent-exporting countries such as the United States and certain European nations, it is even common practice to press charges of patent infringement against competitors. As attorney fees in a patent infringement suit filed in the United States constitute a considerable expense to each party involved, some large US corporations tend to sue competitors for infringement as a way of increasing the latter's costs, thereby either deterring potential competitors or forcing existing ones to withdraw from the market if a settlement involving a payment cannot be reached. Some companies compile huge legal expense budgets only to drive opponents out of the market through litigation. While a patentee is entitled by the patent law to sue an infringing party, some companies do not do so to protect themselves or as a legitimate exercise of their legal power, but rather to weaken or hinder their competitors. Even worse, some "wage war to compel settlement".

In Taiwan, discussions on patent litigation are mostly centered on the purpose of the legislation embodied in the patent law, and this view is shared by legal practitioners and scholars alike. A typical conclusion is that the patent law, which is intended to encourage innovation, shall have supremacy in lawsuits involving patent infringement, and that a patentee's filing an infringement suit is a legitimate exercise of power based on the patent law. However, the patent right does not empower its holder to use the right arbitrarily without limitation by law. If a patentee filing a patent suit has monopoly power and if the

Date submitted: November 15, 2013

Date accepted: March 28, 2014

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suit filed is a predatory one for anti-competitive purposes and for causing damage to a competitor, there should be room for the competition law to intervene.

The objective of this study, therefore, is to view patent infringement litigation from the perspective of the competition law and to explore, from the same perspective, the potential anti-competitiveness of infringement lawsuits filed by patentees who have market power and whose only purpose is to cause damage to their competitors.

Keywords: Predatory Litigation, Sham Litigation, Noerr-Pennington Doctrine, Preliminary Injunction, Error Cost