

The Study on Unilateral Refusals to License
— Focusing on American Antitrust Law

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Abstract

As a general matter, a monopoly firm competing in the market can freely exercise its own independent discretion as to parties with whom it will deal, and has no duty to cooperate with its rivals. Therefore, whether the refusals to deal or license with rivals are governed by antitrust law and in which circumstances the conduct will constitute monopoly violate, present a thorny problem in antitrust law. When a firm owning a patent refuses to license his patent, if the protect of patent affects the evaluation of the refusal to license in antitrust law, involving the relation and the harmonization of patent law and antitrust law.

Relating to antitrust liability of the refusals to license, should antitrust law accord special treatment to patent is the issue they frequently addressed firstly in American law. In most Courts' opinion, the exercising of patent within the scope of patent grant isn't governed by antitrust law. Because the scope of patent grant involves the conception of patent misuse in American law, and American patent law amended to identify the conduct of refusals to license that would not be treated as patent misuse, the issue that whether refusals to license are governed by antitrust law arose.

American Courts gradually determined whether a conduct constitutes patent misuse by antitrust rules as to the relation of patent misuse and antitrust. Therefore there is the same conclusion that all the conducts of exercising patent are governed by antitrust law. Besides, in the term of economic analysis, it also objects antitrust immunity for refusals to license. Consequently, this Article is concerned with the appropriate treatment of unilateral refusals to license in antitrust law, and focus on the opinion of American Courts

and theories.

Keywords: Unilateral Refusals to License; Refusals to Deal; Monopoly; Exclusionary Conduct; Profit Sacrifice; Essential Facility Doctrine; Patent Misuse; Antitrust Immunity