On the Abuse of Standard Essential Patents and Restraints on Competition

Yang, Hung-Hui*

Abstract

Technology advancement contributes to the variety and complication of products. In order to ensure the quality and interflow of products, a Standards Setting Organization is necessary to avoid overlaps in techniques and costs, and to ensure the efficiency of products. According to the rule of reason, setting standards in concert is not conspiracy. When a standard contributes to a de facto standard within an industry, a problem of monopoly abuse may arise, such as the refusal to license, discrimination, or the overcharging of a royalty. These concerns could be resolved by the proper use of a competition law. However, ambushing patents is a problem in competition law. The patent holder manipulates the standard by jointing the organization and concealing the patent, and overcharges until the standard is set. Whether or not this practice constitutes the abuse of domination is developed in competition law. The patent policy of many Standards Setting Organizations involves requesting that members disclose their patents and license on FRAND. Practices, such as concealing patents, delay of publication in order to acquire a monopoly or violating FRAND commitments, could go against the competition law. In order to manifest the patent abuse in the course of setting standards, the Rambus case, Motorola case and Samsung case in the USA and EU, as well as the preliminary ruling of the Huawei case in the European Court, will be discussed in this article.

Keywords: Standard Setting, FRAND, Standard Essential Patent, Patent Abuse, Monopoly, Competition.

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* Associate Professor, Department of Law, National Chung Cheng University; Ph. D., College of Law, National Chengchi University.