
**Analysis of and Comments on CD-R-related Cases: Focusing on Competition Law
and Patent Compulsory Licensing Issues**

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Abstract

Philips et al. jointly formulated the standards for the CD-R, pooled their respective patents and licensed them with a royalty floor of ten Japanese Yen. CD-R manufacturers in Taiwan outperformed their competitors and quickly became the No. 1 supplier worldwide. However, with the drastic increase in the number of CD-Rs being made and marketed, the price of a CD-R fell from US\$ 50-60 to US\$ 0.44 in 2000. Notwithstanding the freefall in price, Philips et al. insisted on charging ten Japanese Yen. Some Taiwanese CD-R manufacturers, when faced with the dilemma of whether to cut “a pound of flesh” to honor the contract, decided to take legal measures against Philips et al. For Taiwanese businesses, the legal battles that ensued were unprecedented in terms of scale, complexity of issues and consequences. The Taiwanese Fair Trade Act and Patent Act were resorted to in order to determine whether there had been a cartel, an abuse of monopolistic market power and whether the granting of compulsory licensing was justified. Philips filed, among other legal proceedings, complaints with the European Commission, alleging that Taiwanese authorities have violated the TRIPs Agreement and erected trade barriers against European companies. This paper will first piece up all the legal cases and summarize the main legal issues in dispute, then perform an analysis and comments on the opinions expressed by the Taiwanese Administrative Courts and the TBR Investigation Report of the EU. In addition, this paper will examine the much overlooked Optical Disk Act at this conjecture. It will concludes with lessons learned and some suggestions.

Key words: CD-R, Compulsory Patent Licensing, TRIPs Agreement, Competition Law, Relevant Market

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