

The Regulation of Patent Pools under the Competition Law
— **with Particular Reference to Technology Licensing Guidelines of EC,**
US, Japan and Taiwan

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Abstract

Patent pools may produce pro-competitive or anti-competitive effects. Moreover, in addition to reducing competition between the parties, patent pool may also, in particular when they support an industry standard or establish a de facto industry standard, result in a reduction of innovation by foreclosing alternative (competing) technologies. The existence of the standards and the related patent pools may make it more difficult for new and improved technologies to enter the market.

In the real world, innovation is an on-going process, with one innovation frequently providing a building block for the next. The ongoing nature of innovation poses difficult questions about how best to preserve adequate incentives for an initial innovator and maintain adequate incentives for competition become the next innovator. However, patents and competition have adverse effects on the incentive to innovation, and it is unlikely foreseeable that the various licensing conducts of the patent pools and their anticompetitive effects at the time of determination of principles. Questionable patents are a significant competitive concern and can harm innovation, especially in four major industries including pharmaceutical industry, biotechnology industry, computer hardware and semiconductor industries, software and internet industries. Accordingly, Agencies of European Union (EU), United States (US) and Japan continually amend general principles to predict and analyze whether the licensing conducts involving the patent pools are anti-competitive or not.

In comparison with EU, US and Japan, Guidelines on Technology Licensing

Arrangements provided by Taiwan Fair Trade Commission (FTC) seem to be insufficient to properly evaluate the aforementioned disputes about patent pool licensing. As aforementioned, in light of the currently amended guidelines of EU, US and Japan, this essay attempts to address suggestion for further amendments on the current guidelines according to two stages of patent pool formation and licensing.

Keywords: Intellectual Property, Intellectual Property Right, Patent Pool, Patent Licensing, Technology Transfer, Concerted Action, Patent Law, Fair Trade Act, Competition Law, Antitrust Law, Anti-monopoly Act.