

**The Rules of Technology Licensing Arrangements under
Japanese Antimonopoly Law – Reflections on Taiwan’s Fair Trade Act**

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Abstract

Focusing on intellectual property rights protection and ensuring fair competition are the two most important goals on which the Taiwanese and Japanese governments are currently channeling their efforts. The purpose of this article is to discuss the rules of technology licensing arrangements under Japanese Antimonopoly Law, and to provide suggestions from the viewpoint of harmonization between competition policies and intellectual property systems in order to help review the related Taiwan Fair Trade Act (TFTA) regulations. Based on the conclusions of the research conducted in this article, we suggest that: (1) In reviewing technology licensing arrangement cases, the Taiwan Fair Trade Commission (TFTC) should follow the two-step review procedure strictly in accordance with Article 45 of the TFTA. This means that the TFTA is applicable only when a technology licensing arrangement cannot be substantively recognized as an exercise of a right; (2) It is necessary for the TFTC to expand the scope of the TFTA’s application, to renew the considered factors, to evaluate the methods used to examine the exercise of rights under the intellectual property law, as well as the punishments of violations of the TFTA as listed in the Guidelines, in order to make the rules contained within the TFTC Guidelines on Technology Licensing Arrangements clearer and more complete; (3) In a dispute where the royalty is overcharged, the licensor’s conduct is in effect equivalent to a refusal to license, and from the viewpoint of ensuring fair competition, it ought to be reviewed under Article 10(1)(i) (exclusive abuse) of the TFTA.

Keywords: Technology Licensing Arrangement, Refusal to License, High-Priced Royalty, Patent Pool, Intellectual Property Right.