

Intellectual Property Right Issue in Standardization —— View from Standardization Organization

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I. The issues (overview) Intellectual Property Right Issue in standardization

Standardization:

1. Disclosure of patent information:
when? Who?
2. Permission condition (FRAND): FRAND
aforehand V. FRAND
afterwards
3. Anti-trust immunity

Intellectual property rights:

1. Non-disclosure—the request of intellectual property right in standardization is invalid (FTC v. Dell)
2. Regulation on abuse of intellectual property rights—anti-trust: boycott—coercive permission (EFD) (2004 EC Decision on Microsoft)

Preparation of guide
documents made by the
government

I. The issues—Information Disclosure

- Non-disclosure: in 1996 Federal Trade Commission (FTC) v. Dell Inc.
- Patent application: Federal Trade Commission (FTC) v. Unocal Corporation
- Disclosure range: Rambus v. Infineon
- The owner of intellectual property rights not participating in the standard formulation: Rambus v. Infineon
- Time limit for information disclosure: ETSI's trying
- Strategic Seceding: Rambus v. Infineon

I. The issues—FRAND terms

- **Whether or not the definitions of FRAND terms are clear enough:** case of *ESS. Tech., Inc. v. PC-Tel, Inc.*,
- **Aforehand FRAND in anti-trust immunity:** points of FTC
- **Implement of fair, reasonable and non-discriminatory terms:** intellectual property price setting issues

II. Solution searching: “Open source”

- **Content:**

- What is “open source”

- **Evaluation:**

- **Coordination issues**
- **Sustainable (individual incentive V. manufacturing strategy)**
- **Watchful-waiting strategy**

II. Solution searching: solution under the government legislation and justice law

- **WTO terms: line 7, 31, and 40 on TRIP**
- **Japan: *Guidelines for Patent and Knowing-how Licensing Agreements***
- **USA: hearing, deliberation in September: suggestions on government guidelines**
- **Anti-trust law judgment: USA, Europe**
- **China:**
 - *Anti-trust law*
 - **Foreign trade laws and regulations**
 - **Revising *Patent Law*, “Technology revivification”, Coercive permission**
 - *Standardization law, Patent policy in National Standardization*

III. (Solution searching) The role standardization organization plays

Civil organization for standardization:

——contract formulation (patent policy in standardization)

- Value and objective: making standardization work more efficiently
- Searching for Anti-trust immunity: policy guidelines for Anti-trust institution
- Maneuverability: information disclosure and FRAND terms

III. (Solution searching)

The role standardization organization plays

- Standardization organization which has administrative function and civil organization for standardization influencing policy making
 - making or participating in making relative parent law
 - Standardization law
 - Intellectual property right law
 - Anti-trust law

Thank you

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