

專利聯營在競爭法之規範— 以技術標準化專利聯營為例

研究生：黃于珊

指導教授：蔡明誠 博士

共同指導教授：劉尚志 博士

國立交通大學科技法律研究所碩士班

摘要

隨著科技的進步、網路時代的來臨，以及全球化競爭市場，我們的專利系統已在半導體、生物科技、電腦軟體及網際網路等這些重要產業上，產生一種所謂專利叢林的現象，專利叢林係指一個由層層重疊的智慧財產權所組成，密集而交錯的網路，以阻止他人進入，因此一公司若欲使其新技術商業化，必須劈砍此層層重疊的智慧財產權，以通過該叢林，所以隨著逐漸累積的創新與多樣的封鎖性專利，我們的專利制度已開始產生降低研發動機的結果。

近幾年來由於資訊技術快速發展，相關資訊產品不斷推陳出新，又因網路效應與產品相容性的考量，已經使得資訊科技產業趨向單一標準化的產品型態，標準化雖然是大勢所趨且有利多於弊的效果，但是確也使專利叢林的現象更加嚴重。因為這些技術標準往往十分複雜，包含許多不同專利權人的多個專利，故製造商製造相關商品時必須取得所有專利的授權，否則即可能面臨專利侵權的訴訟，惟要求製造商分別與各個專利權人進行授權談判，不僅非常無效率且會無端增加交易成本。

專利聯營能有效解決專利叢林現象，並有清除封鎖性專利、促進技術發展及降低交易成本等促進競爭效果，因此對於那些須取得多數

專利權人之授權，以發展或使用特定技術的製造商而言，專利聯營授權是一種非常有效率的方法，惟其仍可成為專利權人用來限制競爭、固定價格，及排除競爭者進入市場的工具，而產生競爭法上的問題，因此亦對專利聯營之授權型態特別加以規範。

由於專利聯營有時具有促進競爭效果，在新經濟時代也扮演重要的角色，美國及歐盟即明白表示其對專利聯營基本上抱持比較正面的態度。惟我國法制上就專利聯營之規定較為不足，目前公平交易委員會尚未有完整且明確的見解，因此本文希望藉由對專利聯營促進競爭效果及其可能產生競爭法問題的討論，能提供台灣一套評估專利聯營適法性的標準。經研究試提出下列標準，以利解決可能衍生的問題：

- 一. 專利聯營中僅能包含實施某技術標準之必要專利
- 二. 由獨立專家判斷聯營中專利是否為實施該技術標準的必要專利
- 三. 專利聯營需以公平、合理且無差別待遇之條件進行授權
- 四. 專利聯營應保護被授權人競爭上的機密資訊
- 五. 專利聯營不可抑制未來之創新
- 六. 專利聯營必須對於下游產品市場的競爭無不利影

Competition Law for Patent Pool— The case study of standardized patent pool

Student : Yu-Shan Huang

Advisor : Dr. Ming-Chen Tsai

Dr. Shang-Jyh Liu

Institute of Technology Law
National Chiao Tung University

ABSTRACT

With the coming of Internet age and Globalization, in several key industries, including semiconductors, biotechnology, computer software, and the Internet, our patent system is creating a patent thicket: a dense web of overlapping intellectual property rights that a company must hack its way through in order to actually commercialize new technology. With cumulative innovation and multiple blocking patents, stronger patent rights can have the perverse effect of stifling, not encouraging, innovation.

Information technology has sparked the development of many new products. Most of such products have trended toward to standardization, since the effect upon “Network Effect” and the interoperability in recently years. Standardization provides many advantages and convenience to most vendors and users, but also makes the patent thicket especially thorny. The standard usually includes many patents that are owned by many patentees and the manufacturers have to pay the royalty to the all patentees or they will be sued for patent infringement. To negotiate with

all patentees is inefficient and increasing the transaction cost.

Patent pools are the natural and effective method used by market participants to cut through the patent thicket. They can clear blocking patents, facilitate the rapid development of technology as well as reduce transaction cost, so they are very efficient where multiple intellectual property licensees are necessary to develop or use a particular technology. Nevertheless, patent pools can also have negative effects and violate the antitrust law due to the fact that they tend to reduce or eliminate innovation, fix the price and exclude the competition into the market. .

Patent pools is getting more and more important in the new economic age cut through the patent thicket, and the U.S. authorities and the European Union have clearly taken a more positive attitude towards patent pooling. Taiwan has not had a clearly attitude towards patent pools and the rules of them are unclear, so this thesis discusses the procompetition effects of patent pools and the antitrust concerns related to them and provide some standards to evaluate patent pools in Taiwan. These standards can be illustrated as follow:

- (1) A patent pool should include essential patents only.
- (2) A patent pool should employ an independent expert to review all patents that are in the patent pool.
- (3) The patent pool should be licensed under non-discriminatory terms.
- (4) There should be safeguards that commercially sensitive information will not be exchanged.
- (5) The patent pool should not discourage the innovation.
- (6) The members of patent pool could not use the Portfolio license as a vehicle to disadvantage competitors in downstream product markets.