

1 The Exercise of Essential Patents for Standards (II) (*)

In recent years, a number of large-scale patent disputes over the exercise of rights based on standard-essential patents have been brought to courts worldwide. In Japan, a court made a noteworthy ruling that it constitutes an abuse of right for a patentee to claim damages without fulfilling the duty to negotiate in good faith despite its FRAND commitment. Also in the United States, the report released by the Federal Trade Commission (FTC, 2011) and the joint statement made by the Department of Justice and the United States Patent and Trademark Office (DOJ and USPTO, 2013) addressed issues of the exercise of rights based on standard-essential patents and (F)RAND terms for licensing such patents. Amid such trends, there is a growing necessity in Japan as well to develop debates on the exercise of rights based on patents.

In this research study, with the awareness of the situation mentioned above in mind, we surveyed domestic legal cases and foreign systems to review the recent trends in terms of the exercise of rights based on standard-essential patents. We also identified the present challenges while hearing opinions of patent professionals, and examined in which situation the exercise of rights based on standard-essential patents are found to be inappropriate, by what kind of legal basis such inappropriate exercise of rights can be restricted, and what could be the limits to such restriction under the existing law. This study report shows the outcome of the discussion on the exercise of rights based on standard-essential patents.

I Introduction

In recent years, a number of large-scale patent disputes over the exercise of rights based on standard-essential patents have been brought to courts worldwide, such as Apple v. Microsoft, Apple v. Motorola, Microsoft v. Motorola, Apple v. Samsung, and so on. Actions to seek injunctive relief based on standard-essential patents have also taken place in Japan. In February 2013, a court made a noteworthy ruling that it constitutes an abuse of right for a patentee to claim damages without fulfilling the duty to negotiate in good faith despite its FRAND commitment. Thus, there is a growing necessity to develop debates on the exercise of rights based on standard-essential patents.

The introductory chapter of this study report gives an outline of the discussion of the basic question of why restriction should be imposed on a claim for an injunction against the use of a standard technology, from an economic perspective. While a right to seek an injunction is the most fundamental right vested in a patent right, it is a principle that holders of essential patents for forum standards should make a commitment to license their patents under (fair), reasonable and non-discriminatory ((F)RAND) terms. Why is it considered reasonable to make such a commitment? The economic value of a standard is basically determined not on the basis of the value of the standard technology itself but by virtue of the value of investment made by

users for the use of the standard technology. However, after the standard has become popular, the company that owns the selected standard technology will have great market power. This is possible because a prior commitment given by the company that has developed a standard technology to waive its right to exercise monopoly afterward (which means licensing the patent for the technology under RAND terms) will promote investment by users and diffusion of the standard technology, and finally benefit the company itself.

Hence, in the case of a patent accompanied by a commitment of licensing under RAND terms, the patentee can do without a right to seek an injunction as long as licensees pay royalties as determined by their licenses. If a right to seek an injunction is exercised based on such a patent, it constitutes a unilateral breach of a prior commitment by the patentee, and when viewed from society as a whole, it would boost royalties and deteriorate market competition.

This is not to say that the exercise of rights based on standard-essential patents should be prohibited in principle. The existence of a right to seek an injunction may become an important incentive for companies using the standard technology to enter negotiation to obtain a license under RAND terms beforehand, especially in the situation where punitive damages are unavailable. If licensing negotiations are held after the diffusion of the standard, companies using the standard technology might become less profitable

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and incapable of paying royalties under RAND terms.

To avoid this, courts will have to first distinguish whether the licensing terms offered by a patentee and rejected by companies using the standard technology can be regarded as RAND terms or whether the patentee purposefully offers such licensing terms that are likely to be rejected by user companies in an attempt to obtain injunctive relief, and then determine whether or not to award injunctive relief. To help courts make determination in this way, efforts should be made to clarify RAND terms.

Another challenge at present is the great uncertainty in terms of the recognition of patents as standard-essential patents and the validity of such patents. It will also be an important task to improve the quality of patents to be granted and to be recognized as standard-essential patents.

(Sadao NAGAOKA)

II Discussion in This Research Study, and the Outcome

The role of a patent system is to contribute to the development of industry through the promotion of inventions, which is aimed at under the Patent Act. Considering that a patent right is an exclusive and monopolistic right, restricting the exercise of a right to seek an injunction, which could affect the substance of a patent right, requires a cautious stance. Nevertheless, the situation of demand for strong protection of patent rights resulting in impeding the development of industry should be avoided.

Standard-essential patents are indispensable for various commercial reasons, such as enabling connection between devices, reducing research and development costs, and diffusing products overseas. However, it is often the case that as many as several hundred to several thousand essential patents are incorporated in one standard, and it is difficult to search and identify all such patents. At the same time, the unavailability of only one patent from among those several hundred to several thousand essential patents involved in a standard technology could hinder the use of the technology as a whole. Therefore, the exercise of a right to seek an injunction on account of the infringement of a standard-essential patent could adversely affect not only the management of the company alleged as infringing the patent but also the diffusion of the standard, and ultimately the interest of

consumers.

For this reason, there may be circumstances where imposing restriction on the exercise of a right to seek an injunction based on a standard-essential patent would rather be conducive to the development of industry, and such restriction should not be precluded only by reason of the nature of a patent, such as that a patent right is a quasi-real right or a patent is granted as a result of examination by the patent office. The research committee discussed this issue while looking back at the primary purpose of the patent system, i.e. contributing to the development of industry, and reached a consensus that it is reasonable to restrict the exercise of a right to seek an injunction based on a standard-essential patent if it goes against said purpose of the patent system.

However, diverse opinions were stated by committee members as to what policy measures should be taken to this end, and opinions were also divided as to whether or not it is necessary to make a new law, and if it is necessary, what kind of law should be made. It may be possible to impose restriction on the exercise of a right to seek an injunction to the extent not detrimental to the development of industry, by way of such means that are available under the existing law, namely, the fulfillment of a patent declaration including succession to a FRAND commitment, restriction on injunctive relief through the interpretation of Article 100 of the Patent Act or the application of the abuse-of-right doctrine, restriction on injunctive relief through the enforcement of the Antimonopoly Act, and granting of a compulsory license. However, judicial precedents are not yet adequate and the rule-making process for essential patents is still ongoing at standard-setting organizations. At present, the scope and limits of these means is not clear enough.

In view of these circumstances, the research committee discussed possible policy options, including legislative measures in relation to the exercise of rights based on standard-essential patents. Opinions of committee members can be basically organized into several proposals, although the details varied.

Some members proposed to make a law to preclude, to the extent necessary, the exercise of a right to seek an injunction in a situation where such exercise does not contribute to the development of industry. Others went in a direction away from imposing restriction and expressed an idea of coping with the exercise of

rights based on standard-essential patents by granting a compulsory, non-exclusive license based on a FRAND commitment. The interpretation of Article 100 of the Patent Act was also mentioned as a means to avoid the difficulty in legislation. These opinions take the same line in that they all intended to restrict the exercise of a right to seek an injunction based on standard-essential patents with the aim of achieving the purpose of the Patent Act, i.e. development of industry, and they basically do not conflict with one another.

The committee also reached a consensus that a right to seek an injunction vested in a patent right is not of absolute nature but it should inevitably be restricted if the exercise thereof goes against the purpose of the patent system, which is to contribute to the development of industry. We recommend that the issues arising in relation to the exercise of a right to seek an injunction, including the exercise of rights based on standard-essential patents, should be further discussed broadly in industrial, academic and governmental sectors based on the findings given by this report, and such discussions should be reflected in formulating effective policy, including exploring the possibility of legislation.

(Secretariat)

III Domestic Survey

As the basis for an analysis of the influence of the exercise of rights based on standard-essential patents on the development of industry, we reviewed domestic legal cases disputing the exercise of rights based on standard-essential patents in the information and telecommunications industry. These cases show some aspects of the existing problems with the exercise of rights based on standard-essential patents, including: the exercise of rights based on patents by transferees against highly public, and capital-intensive communication infrastructure development projects; submission of relatively high damage claims; exercise of rights based on patents by parties who do not use the patented technology or who have shut down the business that used the patented technology; FRAND commitment; and failure of timely disclosure of patents in the standardization process (concealment of patents).

We arranged interviews targeting some industries, namely, electronics/information and telecommunications, pharmaceuticals, and automobiles, to ask about what would happen if

restriction was allowed to be imposed on the exercise of a right to seek an injunction based on a patent by reason that the patent is a standard-essential patent. The interview results are summarized in the main body of the report. Although these interviews were conducted with some member companies of the trade associations of the respective industries, the summary of the interview results does not necessarily represent the opinions of the associations, but contains opinions of the individual respondent companies.

(Secretariat)

IV Overseas Survey

1 Analysis of the Current Situation in the United States

The Supreme Court judgment on eBay in 2009 reconfirmed the rule that whether to award injunctive relief for patent infringement should be determined by what is generally called the “four-factor test” ((1) an irreparable injury, (2) inadequacy of monetary remedies, (3) balance of hardships between the parties, and (4) public interest). After this judgment, about one-fourth of district court decisions rejected a claim for injunctive relief, and in particular, injunctive relief is rarely awarded when the patentee is a patent assertion entity (PAE). On the other hand, it is said to be generally easier for injunctive relief to be awarded if the patentee and the infringer are in a competitive relationship. However, even in such situation, strict proof of causation between the infringement and the injury may be required in the course of proof of an irreparable injury, and in actual cases, some court decisions rejected a claim for injunctive relief on the grounds that the patentee fails to give specific proof that a particular function achieved by the patented technology would induce demand. Meanwhile, the International Trade Commission (ITC) does not apply the four-factor test and it basically issues an exclusive order when it finds patent infringement.

In cases where whether to award injunctive relief based on a standard-essential patent is disputed, some recent court decisions have rejected this claim, especially when the patentee has given a FRAND commitment for the patent beforehand, by applying different approaches. One approach is to consider that by virtue of the FRAND commitment, an agreement has been formed between the patentee and the standard-setting organization for the benefit of a

third party, and the infringer is entitled to a license under FRAND terms as a third-party beneficiary. The other approach is to consider that just by giving the FRAND commitment, the patentee is deemed to have implicitly admitted that royalties would be adequate compensation. Based on either approach, the patentee would sustain no irreparable injury and receive adequate remedies from monetary compensation. It is also expected that courts will make determination on details of royalties that meet FRAND terms. However, the situation is still fluid because the court decisions currently available are mainly those issued by district courts.

(Ichiro NAKAYAMA)

2 Patent System Reform Suggested in the 2011 FTC Report: Patent Remedies

The report released by the Federal Trade Commission titled “The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition” (hereinafter referred to as the “FTC Report”) is worthy of note as it points out problems that have occurred in some industries due to the US patent system and recommends system improvements. In the FTC Report, transactions “which occur after the user of the technology has invested in its independent invention and development, without input from the patentee” are referred to as “ex post patent transactions” and distinguished from ex ante patent transactions. The report considers that ex ante patent transactions encourage innovation and competition, whereas ex post patent transactions inhibit the same. However, according to its analysis, in some fields, such as IT, the decline in the patent system’s “notice function”—making public what is covered by a patent and what is still in the public domain—results in unduly encouraging ex post patent transactions. From this standpoint, the report recommends direct improvements to the patent notice and alignment of patent remedies such as injunctions and damages that are to be granted to prevent the situation from worsening when the patent notice does not function well.

Specifically, the FTC Report states that for proper balance between the patent system and competition policy, damages should align with the economic value of the patented invention, and to achieve this, damages should be designed to replicate the market reward that the patent holder would have earned absent infringement. As for an injunction, it provides recommendations in

relation to the four-factor test suggested by the Supreme Court in the eBay Case. Concerning (1) irreparable harm and (2) inadequacy of money damages, courts should not presume irreparable harm based on the patentee’s use of the patent, but should take into account whether the patentee primarily engages in technology transfer through licensing in a competing technology market. Concerning (3) balance of hardships between the parties, courts should consider, as the patentee’s hardship, whether the invention is a minor component for which acceptable alternatives are available, and should also consider, as the infringer’s hardship to be balanced against the former, whether the infringer is facing hold-up. However, courts should reject the infringer’s defense if it “elects” to infringe by copying a patented invention with knowledge of the patent. Concerning (4) public interest, courts should take into consideration that in circumstances involving hold-up based on a patent for a minor component, an injunction could unduly raise product prices for consumers and deter innovation.

While the theoretical analysis shown by the FTC Report is full of implications, we should take notice of the fact that its recommendations regarding the calculation of lost profits and limitation of a reasonable royalty to a compensatory amount are premised on the US patent system, which allows an award of treble damages as a means to prevent willful infringement.

(Yoshiyuki TAMURA)

3 Outlines of Foreign Systems

We reviewed patent remedies available in foreign countries, namely, South Korea, China, the Netherlands, and Germany, focusing on the principle for the exercise of a right to seek an injunction, the possibility (requirements) for restricting injunctive relief, monetary damages to be awarded when a claim for injunctive relief is rejected, and special rules for the exercise of rights based on standard-essential patents.

In South Korea, injunctive relief is awarded based on a finding of patent infringement, as in Japan. However, recent court decisions recognize the necessity to impose restriction on the patentee’s rights based on a standard-essential patent if the patentee has given a FRAND commitment for the patent, in light of the purpose and principle of the patent law.

In China, based on the Supreme Court’s

guiding opinions, there may be cases where injunctive relief against infringement may not be awarded or a royalty payment order may be issued instead of injunctive relief by reason of public interest or impossibility to stop infringement. According to the Supreme Court's judicial interpretation (2008, Min San Ta Zi No. 4), the patentee who has participated in the drafting of a standard shall be deemed to have granted a license to a party who uses the standard technology, and as a result, such use of the technology does not constitute infringement, while the patentee is entitled to claim a royalty from the user at a rate that is lower than the ordinary royalty rate.

In the Netherlands, injunctive relief is awarded based on a finding of patent infringement. However, if the patentee has given a FRAND commitment but shows an unreasonably passive attitude in bona fide negotiations to decide FRAND terms, exercises the patent right during the licensing negotiations, or threatens to take legal action against the other party in an attempt to gain an advantage during the licensing negotiations, such behavior of the patentee can be considered to be an abuse of right.

In Germany, injunctive relief is awarded based on a finding of patent infringement, as in Japan. With regard to standard-essential patents, the German system has a unique feature in that the user of the patented technology may claim a license to be awarded under the German Act Against Unfair Competition as defense against the patentee's claim for injunctive relief. However, in order to claim such a license, the user of the technology is required to apply for a licensing agreement unconditionally and to fulfill its obligation under the licensing agreement before the agreement is concluded.

(Secretariat)

V Practices at Home and Abroad—Opinions from Patent Professionals

As Japanese companies carry out business activities on a global and borderless scale, they will change their vertically-integrated business structure to a horizontal division of labor, and accordingly, chained business models will be promoted and the standardization of interfaces will be facilitated. In data transmission and communications industries in particular, standardization will continue to make progress along with the development of new technologies.

In this respect, challenges arising from standard technologies in such progress and from standard-essential patents will have a great impact on industrial sectors.

Standard-essential patents are peculiar in the following five aspects.

- (i) Number of rights: Depending on the technical theme, a standard technology could involve one thousand or more patents. Dealing with such a large number patents is beyond the extent originally expected for the patent system.
- (ii) Value of rights: There is concern that individual patents involved in a standard technology might be regarded as having an equal economic value because they are all essential to the standard. This could cause a gap between the presumed value and the true value of the technology or patent.
- (iii) Meaning of being "essential": Some patents are technically avoidable but commercially unavoidable. When a patented technology is avoided, compatibility cannot be assured and the commercial value would be lost.
- (iv) FRAND commitment: By making it an obligation for a patentee to give this commitment, companies using the patented technology can be relieved of anxiety when the technology is adopted as a standard. In this respect, the use of a FRAND commitment promotes and accelerates standardization activities. The important point is that the patentee should grant a license under fair, reasonable and non-discriminatory terms and waive its monopoly and the right to seek an injunction based on the patent.
- (v) Existence of outsiders: Some patents that are essential to a standard may be owned by outsiders, who do not use the patents on business terms and therefore do not join the standardization process.

In the United States, the same problems and opinions as those existing in Japan came to surface, and the judiciary committees of the upper and lower houses held public hearings for discussion. Also, the International Telecommunication Union (ITU) has shifted its stance from regarding the issue of FRAND terms as a potential problem to regarding it as a surfacing problem and held discussion repeatedly.

Restriction on a right to seek an injunction and reasonable royalty in relation to standard-essential patents represent big problems for industrial sectors. In view of the peculiarities

of standard-essential patents explained above, if too much emphasis is placed on protection of patent rights and the development of a desirable industrial society is obstructed as a result, this is not what is originally intended by the patent system. As problems actually exist in the patent system, it is now necessary to take some measures for system improvement, including legal reform. Although this may be a tough challenge, we would expect a forward-looking response to be taken.

A possible solution may be thorough enforcement of the obligation to give a FRAND commitment or licensing through a patent pool, but in reality, there are many challenges to overcome. We would expect courts to fully understand the peculiarities of patents that are essential to standard technologies and make appropriate decisions in infringement cases. At the same time, there is a call from industrial sectors for a bold legislative step to deal with a swelling number of standard-essential patents, such as providing under the Antimonopoly Act that a standardization entity may determine licensing terms in advance through a patent pool.

We hope that many people in Japan will recognize the problems and challenges in relation to standard-essential patents while taking into account the original purpose of patents and hearing opinions from legal professionals, so that Japan will lead other countries in taking legislative measures including legal reform, such as promoting the use of the compulsory license system.

(Hiroshi MIYAUCHI)

VI Restriction on the Exercise of a Right to Seek an Injunction Based on a Patent, and Legislative Measures

A patent right is a monopolistic and exclusive right, and a patentee may claim damages against a third party who uses the patented invention without authorization, and may also seek an injunction to stop such use by the third party pursuant to Article 100 of the Patent Act.

However, it has been raised as an issue whether it is always permissible for the patentee to exercise a right to seek an injunction and thereby make it impossible for any third party to use the patented invention.

A typical example of this issue is the exercise of rights based on patents that are not in

use, which is generally referred to as “patent trolling.” After a technology is set as a standard, the party who holds a patent that is essential to the standard files an action to seek an injunction against others who produce and sell products using the standard, while refusing to grant a license or claiming a large amount of royalties.

With regard to the patentee’s refusal of licensing, while the four-factor test indicated by the Supreme Court in the eBay case functions as a test for determining whether to award injunctive relief in the United States, there is no such judicial precedent in Japan that shows a clear test. As for the patentee’s claim for heavy royalties, a RAND commitment required by the standard-setting organization has not yet been fully recognized as legally binding, and what is more, it cannot be an effective defense against holders of standard-essential patents who do not join the standardization process.

In the existing Civil Code, it is provided that “No abuse of rights is permitted” (Article 1, paragraph (3)). In order to apply this provision to the exercise of a right to seek an injunction based on a patent right, it is required for such exercise of the right to be contrary to the purpose of the Patent Act, which is to contribute to the development of industrial society, and to be unacceptable in society in light of the circumstances of the case. In past cases, courts rarely restricted the patentee from exercising a right to seek an injunction by applying this provision on an abuse of rights. Hence, this provision is not enough to solve the problem. Then, how about a cease and desist order issued by the Fair Trade Commission under the Antimonopoly Act? In order to issue this order against the exercise of a right to seek an injunction based on a patent right, there is still a high hurdle to overcome after meeting the conditions of unfair trade practices, such as trading on restrictive terms and abuse of one’s dominant bargaining position, which is partly because Article 21 of said Act provides that the provisions of this Act shall not apply to “such acts recognizable as the exercise of rights” under the Patent Act and other intellectual property laws.

With regard to the system of granting a compulsory non-exclusive license for public interest (Article 93 of the Patent Act), it is pointed out that even when a standard involving a patented invention is found to be necessary for the public interest, the product in dispute using the patented invention is not always found to be necessary for the public interest. Because of this,

and in combination with the influence of the Japan-US Agreement (by means of the letter dated August 16, 1994), there has not yet been any case in which a court has granted a compulsory license.

Under such circumstances, revising Article 100, paragraph (1) of the Patent Act may be the only effective legal measure to be taken to solve the problem.

A patent right is a private-law right granted under the Patent Act. Nevertheless, the Patent Act grants a monopolistic and exclusive right to a patent applicant in order to protect such right and thereby achieve the primary purpose of the Act, which is to contribute to the development of industry (Article 1). Therefore, although a patent right is a private right, it is poorly justified to allow the patentee to exercise a right to seek an injunction in the pursuit of its own economic profit even in the situation where such exercise of the right would have a significant impact on people's lives and impede the development of industrial society.

As a solution to this problem, we would propose that a provision on the restriction on the exercise of a right to seek an injunction should be inserted in the Patent Act, following the existing provisions of Article 100, paragraph (1). This provision on restriction should be drafted from the perspective of indicating a simple and clear criterion that allows flexible interpretation to some degree, while making reference to the eBay decision under the US law.

(Minoru TAKEDA)

VII Recommendations on Imposing Restriction on Injunctions against Patent Infringement, through Legal Interpretation or Legislative Reform

When trying to impose restriction on the exercise of a right to seek injunction against patent infringement through legal interpretation or legislative reform, it is necessary to discuss this issue by dividing it into two phases: the first is considering in what cases the exercise of a right to seek an injunction should be restricted, and the second is considering how such restriction should be written in law.

In Phase 1, at least four different types of reasons can be thought of for restricting the exercise of a right to seek an injunction: (i) public interest; (ii) breach of the principle of good faith or doctrine of estoppel; (iii) an injunction could

amount to a considerable imbalance in interest between the parties; (iv) other reasons for which an injunction should be restricted. Among these, type (iv) raises a problem in particular. On this point, helpful reference can be obtained from the 2011 FTC Report, which recommended imposing restriction on the exercise of a right to seek an injunction in some cases from the perspective of promoting "ex ante patent transactions" and deterring "ex post patent transactions." Specifically, an injunction may be restricted exceptionally in cases where the patented invention is used only for a small portion of the accused product and it is inseparable from said product, and therefore an injunction is excessive in scale in comparison with the degree of contribution of the patented invention to the accused product, while at the same time the patentee can be sufficiently compensated for infringement by monetary damages, provided that the infringer has infringed the patent due to a cause not attributable thereto.

In Phase 2, if restriction on an injunction is sought (i) for the public interest, (ii) on account of a breach of the principle of good faith or doctrine of estoppel, or (iii) because an injunction could amount to a considerable imbalance in interest between the parties, it may be possible to impose restriction in accordance with the principle of abuse of rights under the Civil Code, without making any revision to the existing Patent Act. If so, in the context of legislative reform, we should discuss whether or not it is necessary to revise the existing Patent Act in order to restrict a right to seek an injunction for the fourth reason, that is, from the perspective of deterring ex post patent transactions, and if it is necessary to do so, we should further discuss to what extent such restriction should be written in detail in law. In this process, we should also take into consideration enforcement costs and political costs for codifying the restriction.

(Yoshiyuki TAMURA)

VIII Research and Development Agreements and Standardization Agreements under the "Guidelines on the Applicability of Article 101 of the Treaty on the Functioning of the European Union to Horizontal Co-operation Agreements"

The European Commission adopted a revised version of the Guidelines on the Applicability of

Article 101 of the Treaty on the Functioning of the European Union to Horizontal Co-operation Agreements as of December 14, 2010. The major revisions to the guidelines included the creation of a new chapter on information exchange and significant changes to the chapter on standardization agreements. In particular, the chapter on standardization agreements introduces the “safe harbor” thresholds within which the European Commission will not find problems with standardization agreements, and provides an additional detailed explanation regarding standardization agreements that fail to meet the thresholds, so that business entities can assess whether their agreement meets the thresholds. A patent for a technology adopted as a standard, or in other words, a patent that is indispensable for using the standard is referred to as a (standard-) essential patent. Along with the accumulation of technological developments and expansion of networks, in some cases, several hundred to several thousand essential patents are involved in one standard. In such case, it often happens that a patent holder who has initially engaged in the drafting of a standard while concealing its ownership of the patent later exercises the patent right after the standard is set. This practice, which is called “patent hold-up,” has been recently recognized as a problem. After a standard is set, it is difficult for many companies that have been working toward making products with the use of the standard technology to adopt a technology other than the standard technology in light of the special investment that they have already made. In such situation, the patentee might claim a large amount of royalties against these companies by leveraging a right to seek an injunction based on its essential patent, placing those companies in a competitive disadvantage. To avoid this, the revised Guidelines provide that before setting a standard, a standard-setting organization may require its member companies to disclose the maximum royalty rate that they would charge for their intellectual property rights if these rights are incorporated in a standard. This framework will enable standard-setting organizations and industrial sectors to select technologies that they will set as standards, based on the information disclosed in advance regarding the quality and price of the technologies, and help to reduce the number of patent hold-up incidents. The recent revision to the Guidelines clarifies that such a framework basically does not conflict with EU competition law. In this study report, we examined the provisions of the Guidelines

focusing on research and development agreements and standardization agreements, with a view to consider the relationship between the antimonopoly law and intellectual property rights.

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