

The Conflict and Reconciliation between the Global Licensing of Standard Essential Patents and the Patent Territorial Doctrine

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Abstract

Licensing disputes over standard essential patents have become the main battleground in patent litigation over the past decade. The patent holder initially held a strong position in the licensing negotiations. However, because of the “fair, reasonable and non-discriminatory” licensing terms, the licensee was able to delay the licensing negotiations. The UK Supreme Court’s decision in *Unwired Planet v Huawei* to allow global licensing mitigated some of the disadvantages for patent holders, but it also creates a lot of legal disputes and affected the balance between patent rights and the public interest. In the face of such legal disputes and imbalance of rights, this article suggests that the court should have appropriate supporting measures when approving the global licensing. If the country of manufacture and some countries of sale of the licensee's products apply the doctrine of international patent exhaustion, the global license approved by the court will be inconsistent with the principle of international exhaustion. The global patent license does not care whether the patents in suit are standard essential patents and whether the patent licensing countries apply the principle of international exhaustion. It may result in the licensee paying royalties repeatedly in several countries, which may lead to restrictive competition and illegal tie-in sales. It is therefore suggested that when a global license is granted by a national court, if the licensee's product is manufactured in a country that applies international patent exhaustion, the countries that also apply international patent

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exhaustion where the products are sold should not be included in the royalty calculation so as not to undermine the legal system of patent exhaustion and raise suspicions of tied sales. In addition, the validity and infringement of patents in other countries is not known to the court when granting worldwide licenses. This article suggests that the courts should require the plaintiffs to prove that their patents in the other countries are standard-essential patents and allow the defendants to raise a defense, in order to protect the defendant's rights of defense and due process.

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