

# Enforcement Of Frand Commitments Under Article 102 Tfeu The Nature Of Frand Defence In Patent Litigation Munich

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Complications and Quandaries in the ICT Sector Ashish Bharadwaj 2017-10-27

This book is open access under a CC BY 4.0 license. With technology standards becoming increasingly common, particularly in the information and communications technology (ICT) sector, the complexities and contradictions at the interface of intellectual property law and competition law have emerged strongly. This book talks about how the regulatory agencies and courts in the United States, European Union and India are dealing with the rising allegations of anti-competitive behaviour by standard essential patent (SEP) holders. It also discusses the role of standards setting organizations / standards developing organizations (SSO/SDO) and the various players involved in implementing the standards that influence practices and internal dynamics in the ICT sector. This book includes discussions on fair, reasonable and non-discriminatory (FRAND) licensing terms and the complexities that arise when both licensors and licensees of SEPs differ on what they mean by "fair", "reasonable" and "non-discriminatory" terms. It also addresses topics such as the appropriate royalty base, calculation of FRAND rates and concerns related to FRAND commitments and the role of Federal Trade Commission (FTC) in collaborative standard setting process. This book provides a wide range of valuable information and is a useful tool for graduate students, academics and researchers.

China and EU Antitrust Review of Refusal to License IPR Dr. Tiancheng

Jiang 2015 Striking a proper balance between unilateral exercise of intellectual property rights on the one hand and competition rules on the other hand is not an easy exercise. The right owners' unilateral behaviour of refusal to license is one such delicate issue, particularly for China, considering that it has not been clarified within existing competition rules how to assess a right owner's specific unilateral practices. In a series of cases, the EU courts have established the exceptional circumstances in which the right owners' refusal conduct might be considered as an infringement of EU competition rules. In general, Chinese competition law has been modelled after the EU competition rules. This book firstly examines the EU approaches on dominant undertakings' refusal to license intellectual property rights and the follow-on pricing issue, and then explores to what extent the EU model could contribute to China's anti-monopoly practice.

The Intellectual Property and Antitrust Review Thomas Vinje 2019

Comparative Patent Remedies Prof. Thomas F. Cotter 2013-03-06 Nations throughout the world receive more patent applications, grant more patents, and entertain more patent infringement lawsuits than ever before. To understand the contemporary patent system, it is crucial to become familiar with how courts and other actors in different countries enable patent owners to enforce their rights. This is increasingly important, not only for firms that seek to market their products worldwide and for the lawyers who provide them with counsel, but also for scholars and policymakers working to develop better policies for promoting the innovation that drives long-term economic growth. *Comparative Patent Remedies* provides a critical and comparative analysis of patent enforcement in the United States and other major patent systems, including the European Union, Japan, Canada, Australia, China, South Korea, Taiwan, and India. Thomas Cotter shows how different countries

respond to similar issues, and suggests how economic analysis can assist in adapting current practice to the needs of the modern world. Among the topics addressed are: how courts in various nations award monetary compensation for patent infringement, including lost profits, infringer's profits, and reasonable royalties; the conditions under which patent owners may obtain preliminary and permanent injunctions, including cross-border injunctions in the European Union; the availability of various options for potential defendants to challenge patent validity; and other matters, such as the availability of criminal enforcement and border measures to exclude infringing goods.

The Interplay Between Competition Law and Intellectual Property Gabriella

Muscolo 2019-01-17 Although competition law and intellectual property are often interwoven, until this book there has been little guidance on how they work together in practice. As the intersection between the two fields continues to grow worldwide, both in case law and in regulation, the book's markets-based approach, focusing on sectors such as pharmaceuticals, IT, telecoms, energy and agriculture in eleven of the world's most active jurisdictions, provides a much-needed in-depth understanding of how this interplay reveals itself among the different legal systems. Written by a range of authors including judges, regulators, academics, economists and practitioners in both fields, the book provides an international comparative perspective as well as detailed analysis of specific cases, policies and proposals for change. Among the issues and topics covered are the following: – free movement of goods and the protection of intellectual property rights; – standard essential patents & injunction in patent cases; – intellectual property rights between technological development and consumer protection; – geo-blocking; – online platforms and antitrust; – excessive prices. In this context, special attention is paid throughout to the increasing dialogue among Competition Authorities and between Judges and Competition Authorities around the world. As matchless remedy for the lack of uniformity heretofore, the book's investigation of the nexus between competition law and intellectual property in different sectors and in various countries takes a giant step towards a more-balanced approach and more-levelled regulation and practices. It will be warmly appreciated by policy makers, decision makers, regulators, practitioners and academics in both competition law and intellectual property fields

Competition Law Richard Whish 2021-08-18 This online course will give you insights into important compliance topics.

European Competition Law Annual 2007 Claus-Dieter Ehlermann 2008-11-28

This is the twelfth in a series on EU Competition Law and Policy produced by the Robert Schuman Centre of the European University Institute in Florence. The volume reproduces the written contributions and transcripts in connection with a roundtable debate which examined the EU's enforcement policy as regards the abuse of a dominant position under Article 82 EC. The workshop participants included: senior enforcement officials and policy makers from the European Commission, from the national competition authorities of certain EU Member States and from the US Department of Justice and Federal Trade Commission; and renowned international academics, legal practitioners and professional economists. In an intense,

intimate environment, this group of experts debated a number of legal and economic issues structured according to three broad lines of discussion: 1) comparisons of the concept of monopolization under Section 2 of the Sherman Act with that of abuse of dominance under Article 82 EC; 2) a reformed approach to exclusionary unilateral conduct; and 3) exploitative unilateral conduct and related remedies.

The Patent-Competition Interface in Developing Countries Thomas K. Cheng 2022-01-18 This book proposes a development stage-specific approach to the patent-competition interface for developing countries, taking into account the different ways in which competition law regulation of patent exploitation practices interacts with various means of technology transfer.

Patent Pledges Jorge L. Contreras 2017-03-31 Patent holders are increasingly making voluntary, public commitments to limit the enforcement and other exploitation of their patents. The best-known form of patent pledge is the so-called FRAND commitment, in which a patent holder commits to license patents to manufacturers of standardized products on terms that are “fair, reasonable and non-discriminatory.” Patent pledges have also been appearing in fields well beyond technical standard-setting, including open source software, green technology and the biosciences. This book explores the motivations, legal characteristics and policy goals of these increasingly popular private ordering tools.

**Licensing Standard Essential Patents** Igor Nikolic 2021-11-18 What is the licensing framework of standard essential patents (SEPs) for connectivity standards such as 5G and Wi-Fi? How will the framework change with the Internet of Things (IoT)? This book provides comprehensive answers to these questions. For over two decades, connectivity standards have been the subject of litigation and controversy around the globe. Now, with the introduction of 5G and the emergence of the world of connected objects, or the IoT, the licensing framework for SEPs is becoming even more contentious. In order to bring clarity to the debate, this book analyses and explains key components of a fair, reasonable and non-discriminatory (FRAND) licence for SEPs; clarifies the economic, policy and market background of SEP disputes; examines the interrelated application of contract, patent and competition laws; and describes the approaches by courts and regulators in the EU, US and the UK.

Importantly, the book also assesses how the experience from the smartphone and ICT industries can be applied in a new environment of the IoT, and considers what needs to be changed in the future SEP licensing landscape. The book provides a holistic coverage of SEP licensing issues in an attempt to reduce uncertainty within this highly complex and technical area, and will be useful to practitioners, policy makers, SMEs and large technology companies in the IoT, as well as academics interested in the field.

**Enforcement of FRAND Commitments under Article 102 TFEU.** Tuire Anniina Vaesaenen 2011

*Intellectual Property Rights and Competition in Standard Setting* Valerio Torti 2015-10-05 Competition and intellectual property rights (IPRs) are both necessary for a market to work efficiently and to promote consumer welfare. Properly applied, intellectual property rules define a legal framework which allows undertakings to profit from their inventions. This in turn encourages competition among firms and enhances dynamic efficiency, to the benefit of consumer welfare. Standard setting represents one of the fields where the interaction between competition law and IPRs clearly comes to light. The collaborative goal of standard setting organizations (SSOs) is to adopt and promote standards that either do not conflict with anyone’s right or, if they do, are developed under condition that patents are licensed under defined terms. This book examines the tension between IPRs and competition in the standard setting field which can arise when innovators over-exploit the rights they have been granted and hold up an entire industry. The book compares EU and U.S. jurisdictions with a particular focus on the IT and telecommunication sectors. It scrutinizes those practices which could harm standard setting and its goals, looking at misleading conducts by SSO’s members which may lead to breach the EU and U.S. antitrust provisions on abuse of market power. Recent developments in EU and U.S. standard setting are analysed highlighting the differences in enforcement approaches. The book considers how the optimal balance between IPRs and industry standards

can be struck, suggesting a policy model which takes into account both innovators’ interests and SSOs’ goals.

EU Competition Law Alison Jones 2016 This comprehensive study and revision guide provides a selection of the most relevant EU legislation, extracts from the leading EU competition cases, and a selection of critical academic perspectives, setting out objectives and placing them in context.

**Bellamy & Child** David Bailey (Attorney) 2018 Now in its eighth edition, this work is the leading authority on EU competition law. It offers a clear and comprehensive exposition of law and procedure, with exhaustive citation of judicial and legislative authorities. Fully up-to-date with major developments in substantive law and case law, this is an essential purchase for EU competition law practitioners.

**Chinese Merger Control Law** Tingting Weinreich-Zhao 2014-11-19 On 1 August 2008 the Chinese Anti-Monopoly Law entered into force, introducing a comprehensive framework for competition law to the Chinese market. One set of the new rules pertains to merger control. China’s Ministry of Commerce (MOFCOM) was nominated as the authority responsible for enforcing merger control in China and has been actively doing so ever since. Recent years have established China as one of the most important merger filing jurisdictions for cross-border mergers alongside the EU and USA. This work evaluates the Chinese merger control law regime and MOFCOM’s decision-making practice after more than five years of application. In particular, it assesses which policy goals (competition policy goals or industrial policy considerations) prevail in the written law and its application and provides suggestions for a further improvement of the law – with the aim to develop a transparent merger control regime that promotes long-term economic growth in China.

Multi-dimensional Approaches Towards New Technology Ashish Bharadwaj 2018-07-23 This open access edited book captures the complexities and conflicts arising at the interface of intellectual property rights (IPR) and competition law. To do so, it discusses four specific themes: (a) policies governing functioning of standard setting organizations (SSOs), transparency and incentivising future innovation; (b) issue of royalties for standard essential patents (SEPs) and related disputes; (c) due process principles, procedural fairness and best practices in competition law; and (d) coherence of patent policies and consonance with competition law to support innovation in new technologies. Many countries have formulated policies and re-oriented their economies to foster technological innovation as it is seen as a major source of economic growth. At the same time, there have been tensions between patent laws and competition laws, despite the fact that both are intended to enhance consumer welfare. In this regard, licensing of SEPs has been debated extensively, although in most instances, innovators and implementers successfully negotiate licensing of SEPs. However, there have been instances where disagreements on royalty base and royalty rates, terms of licensing, bundling of patents in licenses, pooling of licenses have arisen, and this has resulted in a surge of litigation in various jurisdictions and also drawn the attention of competition/anti-trust regulators. Further, a lingering lack of consensus among scholars, industry experts and regulators regarding solutions and techniques that are apposite in these matters across jurisdictions has added to the confusion. This book looks at the processes adopted by the competition/anti-trust regulators to apply the principles of due process and procedural fairness in investigating abuse of dominance cases against innovators.

**An International Antitrust Primer** Mark R. Joelson 2016-04-24 Despite the continuing inter-government cooperation over the regulation of international commerce, significant cross-country differences persist in areas such as merger control, notification to authorities, and remedies deemed appropriate for antitrust enforcement. Accordingly, companies must be aware of the rules that apply in the countries in which they do business. This fourth edition of the Kintner-Joelson classic *International Antitrust Primer* provides a thorough update of the status of competition regulation in a number of key jurisdictions, including up-to-date case law involving the technology giants Google, Microsoft, Amazon, Apple, and Facebook. Coverage focuses on the European Union and the United States — which continue to be foremost in the enforcement and refinement of comprehensive competition laws — but also

takes into account the vast strides that are being made elsewhere, with chapters on South Korea, Japan, and India, as well as a chapter on the United Kingdom with a section on the post-Brexit implications. The book provides essential guidance on such issues of concern to business persons and their counsel as the following: • intellectual property rights; • extent and kind of criminal sanctions; • extraterritorial reach; • mergers and acquisitions; • level and type of enforcement activity; • effects of national foreign or domestic policy; • permissible cooperation among competitors; and • public procurement. Business persons, government officials, students, lawyers, and others who have been relying on this preeminent resource for years will greatly appreciate this thoroughly updated edition. There is nothing else that so lucidly and helpfully explains competition law for those who require a working knowledge of the subject to proceed confidently in their day-to-day work.

**Competition Law of the European Union** Van Bael & Bellis 2021-03-01 This new Sixth Edition of a major work by the well-known competition law team at Van Bael & Bellis in Brussels brings the book up to date to take account of the many developments in the case law and relevant legislation that have occurred since the Fifth Edition in 2010. The authors have also taken the opportunity to write a much-extended chapter on private enforcement and a dedicated section on competition law in the pharmaceutical sector. As one would expect, the new edition continues to meet the challenge for businesses and their counsel, providing a thoroughly practical guide to the application of the EU competition rules. The critical commentary cuts through the theoretical underpinnings of EU competition law to expose its actual impact on business. In this comprehensive new edition, the authors examine such notable developments as the following: important rulings concerning the concept of a restriction by object under Article 101; the extensive case law in the field of cartels, including in relation to cartel facilitation and price signalling; important Article 102 rulings concerning pricing and exclusivity, including the Post Danmark and Intel judgments, as well as standard essential patents; the current block exemption and guidelines applicable to vertical agreements, including those applicable to the motor vehicle sector; developments concerning online distribution, including the Pierre Fabre and Coty rulings; the current guidelines and block exemptions in the field of horizontal cooperation, including the treatment of information exchange; the evolution of EU merger control, including court defeats suffered by the Commission and the case law on procedural infringements; the burgeoning case law related to pharmaceuticals, including concerning reverse payment settlements; the current technology transfer guidelines and block exemption; procedural developments, including in relation to the right to privacy, access to file, parental liability, fining methodology, inability to pay and hybrid settlements; the implementation of the Damages Directive and the first interpretative rulings. As a comprehensive, up-to-date and above all practical analysis of the EU competition rules as developed by the Commission and EU Courts, this authoritative new edition of a classic work stands alone. Like its predecessors, it will be of immeasurable value to both business persons and their legal advisers.

**Promoting Competition in Innovation Through Merger Control in the ICT Sector** Kalpana Tyagi 2019-06-21 This book addresses the question of how competition authorities assess mergers in the Information Communication Technology (ICT) sector so as to promote competition in innovation. A closer look at the question reveals that it is far more complex and difficult to answer for the ICT, telecommunications and multi-sided platform (MSP) economy than for more traditional sectors of the economy. This has led many scholars to re-think and question whether the current merger control framework is suitable for the ICT sector, which is often also referred to as the new economy. The book pursues an interdisciplinary approach combining insights from law, economics and corporate strategy. Further, it has a comparative dimension, as it discusses the practices of the US, the EU and, wherever relevant, of other competition authorities from around the globe. Considering that the research was conducted in the EU, the practices of the European Commission remain a key aspect of the content. Considering its normative dimension, the book concentrates on the substantive aspects of merger control.

To facilitate a better understanding of the most important points, the book also offers a brief overview of the procedural aspects of merger control in the EU, the US and the UK, and discusses recent amendments to Austrian and German law regarding the notification threshold. Given its scope, the book offers an invaluable guide for competition law scholars, practitioners in the field, and competition authorities worldwide.

**Intellectual Property Rights and Competition in Standard Setting** Valerio Torti 2015-10-05 Competition and intellectual property rights (IPRs) are both necessary for a market to work efficiently and to promote consumer welfare. Properly applied, intellectual property rules define a legal framework which allows undertakings to profit from their inventions. This in turn encourages competition among firms and enhances dynamic efficiency, to the benefit of consumer welfare. Standard setting represents one of the fields where the interaction between competition law and IPRs clearly comes to light. The collaborative goal of standard setting organizations (SSOs) is to adopt and promote standards that either do not conflict with anyone's right or, if they do, are developed under condition that patents are licensed under defined terms. This book examines the tension between IPRs and competition in the standard setting field which can arise when innovators over-exploit the rights they have been granted and hold up an entire industry. The book compares EU and U.S. jurisdictions with a particular focus on the IT and telecommunication sectors. It scrutinizes those practices which could harm standard setting and its goals, looking at misleading conducts by SSOs' members which may lead to breach the EU and U.S. antitrust provisions on abuse of market power. Recent developments in EU and U.S. standard setting are analysed highlighting the differences in enforcement approaches. The book considers how the optimal balance between IPRs and industry standards can be struck, suggesting a policy model which takes into account both innovators' interests and SSOs' goals.

**Abuse of Dominance in EU Competition Law** Pier Luigi Parcu 2017-02-24 Granting rebates to a customer or refusing to supply a competitor are examples of ordinary commercial practices, which become 'abusive' under Article 102 of the Treaty on the Functioning of the EU (TFEU) when carried out by 'dominant' firms. This topical book provides an up-to-date account of the emerging trends in the enforcement and interpretation of this provision at both the EU and national level.

**Competition Law's Innovation Factor** Viktoria H S E Robertson 2020-02-06 In recent years, market definition has come under attack as an analytical tool of competition law. Scholars have increasingly questioned its usefulness and feasibility. That criticism comes into sharper relief in dynamic, innovation-driven markets, which do not correspond to the static markets on which the concept of the relevant market was modelled. This book explores that controversy from a comparative legal perspective, taking into account both EU competition and US antitrust law. It examines the manifold ways in which courts and competition authorities in the EU and US have factored innovation-related considerations into market delineation, covering: innovative product markets, product differentiation, future markets, issues going beyond market definition proper – such as innovation competition, innovation markets and potential competition –, intellectual property rights, innovative aftermarkets and multi-sided platforms. This book finds that going forward, the role of market definition in dynamic contexts needs to focus on its function of market characterisation rather than on the assessment of market power.

**Antitrust Enforcement & Intellectual Property Rights: Promoting Innovation & Competition** United States. Department of Justice 2007

**Competition Law and Big Data** Beata Mäihäniemi 2020-02-28 In this timely book, Beata Mäihäniemi analyses and evaluates how the characteristics of information as a good, as well as the characteristics of digital platforms, affect the application of competition law in both theory and practice.

**Patent Challenges for Standard-Setting in the Global Economy** National Research Council 2013-10-07 Patent Challenges for Standard-Setting in the Global Economy: Lessons from Information and Communication Technology examines how leading national and multinational standard-setting organizations (SSOs) address patent disclosures, licensing terms, transfers of

patent ownership, and other issues that arise in connection with developing technical standards for consumer and other microelectronic products, associated software and components, and communications networks including the Internet. Attempting to balance the interests of patent holders, other participants in standard-setting, standards implementers, and consumers, the report calls on SSOs to develop more explicit policies to avoid patent holdup and royalty-stacking, ensure that licensing commitments carry over to new owners of the patents incorporated in standards, and limit injunctions for infringement of patents with those licensing commitments. The report recommends government measures to increase the transparency of patent ownership and use of standards information to improve patent quality and to reduce conflicts of laws across countries.

**Intellectual Property Enforcement (2010)** Victoria A. Espinel (au) 2011-06-01

In 2010 the inaugural U.S. Joint Strategic Plan on Intellectual Property Enforcement (Strategy) was issued. It was developed as a result of public input and the efforts of Fed. agencies. The Strategy included 33 action items to improve intellectual property enforcement, falling into six categories. This report shows how the U.S. Gov't. has implemented the action items and taken steps to improve enforcement, in order to grow the U.S. economy; create jobs and support U.S. exports; promote innovation and the security of America's comparative advantage in the global economy; protect consumer trust and safety; protect national and economic security; and validate rights protected under our Constitution. Illus. This is a print on demand report.

**Competition Law** Richard Whish 2012-01-12 The authors describes the potential scope and application of the various legal provisions which regulate competition in the UK. This book also examines the results of the convergence of UK and EC law with regard to competition in business.

The Oxford Handbook of Intellectual Property Law Rochelle Cooper Dreyfuss 2018 A comprehensive overview of intellectual property law, this handbook will be a vital read for all invested in the field of IP law. Topics include the foundations of IP law; its emergence and development in various jurisdictions; its rules and principles; and current issues arising from the existence and operation of IP law in a political economy.

**Competition Policy and Intellectual Property in Today's Global Economy**

Robert D. Anderson 2021-07-31 The fast-evolving relationship between the promotion of welfare-enhancing competition and the balanced protection of intellectual property (IP) rights has attracted the attention of policymakers, analysts and scholars. This interest is inevitable in an environment that lays ever greater emphasis on the management of knowledge and innovation and on mechanisms to ensure that the public derives the expected social and economic benefits from this innovation and the spread of knowledge. This book looks at the positive linkage between IP and competition in jurisdictions around the world, surveying developments and policy issues from an international and comparative perspective. It includes analysis of key doctrinal and policy issues by leading academics and practitioners from around the globe and a cutting-edge survey of related developments across both developed and developing economies. It also situates current policy developments at the national level in the context of multilateral developments, at WIPO, WTO and elsewhere.

**SEPs, SSOs and FRAND** Kung-Chung Liu 2019-12-05 This book is a very useful reference guide on how de jure and de facto standards are being developed and how these standards compete against each other. The book also looks at how FRAND commitments are being determined across countries, how these disputes have played out, especially in Asia, and how they can be better dealt with in future globally. The book gives a broad overview of the business model of dominant SEP patentees and analyzes some standards for FRAND licensing of SEPs which are converging in major Asian jurisdictions. It highlights the need for ex ante regulation in the FRAND licensing of SEPs and suggests how we can reconcile conflicts which may arise from different legal standards. This book provides detailed and comprehensive analysis of recent SEP cases with an emphasis on Asia and will interest anyone who wishes to have more insight into the legal, policy, industrial and economic implications of such issues.

**EC Competition Law** Alison Jones 2008 Ideal for students taking a course on

competition law in its European context, this book guides students through a wide range of carefully selected cases and materials with exceptional analysis and comment. The selection of writings has been chosen to present the most important perspectives on the subject as well as the broader socio-economic context of EC competition law. This third edition has been fully updated with all the recent developments within EC Competition Law since 2004, including coverage of the review of Article 82 and the green paper on damages, as well as further information on US anti-trust law. Each chapter now begins with a 'central issues' section which helps students to focus and direct their learning. Editions are kept up-to-date via an accompanying Online Resource Centre which also contains relevant weblinks and material including an additional chapter on State Aids. Combining the strengths of a modern textbook and traditional materials book, *Cases and Materials on EC Competition Law* provides a wide-ranging and thorough guide to the study of Competition Law, enabling students to engage with both legal and economic aspects and making it ideal for both under and postgraduate courses on EC Competition Law.

*Technology Transfer and the New EU Competition Rules* Steven D.

Anderman 2006 The new Technology Transfer Block Exemption Regulation signals a profound change in the nature of the regulatory framework for technology licensing under EU competition law. This book examines the new Regulation, placing it in the context of: the modernisation reforms of EC competition law; and the treatment of IP rights over technology. The new Technology Transfer Block Exemption Regulation (in force from May 1, 2004) signals a profound change in the nature of the regulatory framework for technology licensing under EU competition law. This book examines the new Regulation in detail, placing it in the wider context of: the context of the modernisation reforms of EC competition law generally; and the changes in treatment of "technology transfer" within the broader context of changes in treatment of IP rights over technology more generally. The book also considers the approach to assessment of IP issues set out in the Guidelines that accompany the Regulation. The central feature of the Commission's new approach is that firms and practitioners must engage in self-assessment to determine whether their agreements comply with Community competition law. Paradoxically, this makes it more important that practitioners understand the significance of the old case law: the book considers to what extent these cases remain valid today. It also goes beyond paraphrasing the Commission's Guidelines, discussing their legal basis and, where appropriate, criticising the approach taken by the Guidelines where the legal basis is unsure.

Antitrust Enforcement and Standard Essential Patents Haris Tsilikas

2017-07-14 Die Arbeit diskutiert die Auswirkungen der Durchsetzung von Standard-Patenten für das Wettbewerbsrecht. Die formale Standardeinstellung hat das Potenzial, zu nahezu optimalen Investitionen in Forschung und Entwicklung und gleichzeitig zur schnellen Umsetzung innovativer Standards zu führen.

*Intellectual Property, Antitrust and Cumulative Innovation in the EU and the US* Thorsten Käseberg 2012-06-08

For decades, the debate about the tension between IP and antitrust law has revolved around the question to what extent antitrust should accept that IP laws may bar competition in order to stimulate innovation. The rise of IP rights in recent years has highlighted the problem that IP may also impede innovation, if research for new technologies or the marketing of new products requires access to protected prior innovation. How this 'cumulative innovation' is actually accounted for under IP and antitrust laws in the EU and the US, and how it could alternatively be dealt with, are the central questions addressed in this unique study by lawyer and economist Thorsten Käseberg. Taking an integrated view of both IP and antitrust rules – in particular on refusals to deal based on IP – the book assesses policy levers under European and US patent, copyright and trade secrecy laws, such as the bar for and scope of protection as well as research exemptions, compulsory licensing regimes and misuse doctrines. It analyses what the allocation of tasks is and should be between these IP levers and antitrust rules, in particular the law on abuse of dominance (Article 102 TFEU) and monopolisation (Section 2 Sherman Act), while particular attention is paid to the essential facilities doctrine, including pricing

methodologies for access to IP. Many recent decisions and judgments are put into a coherent analytical framework, such as IMS Health, AstraZeneca, GlaxoSmithKline (in the EU), Apple (France), Orange Book Standard (Germany), Trinko, Rambus, NYMEX, eBay (US), Microsoft and IBM/T3 (both EU and US). Further topics covered include: IP protection for software, interoperability information and databases; industry-specific tailoring of IP; antitrust innovation market analysis; and the WTO law on the IP/antitrust interface.

**The Cambridge Handbook of Technical Standardization Law** Jorge L. Contreras 2017-12-14 Technical standards are ubiquitous in the modern networked economy. They allow products made and sold by different vendors to interoperate with little to no consumer effort and enable new market entrants to innovate on top of established technology platforms. This groundbreaking volume, edited by Jorge L. Contreras, assesses and analyzes the legal aspects of technical standards and standardization. Bringing together more than thirty leading international scholars, advocates, and policymakers, it focuses on two of the most contentious and critical areas pertaining to standards today in key jurisdictions around the world: antitrust/competition law and patent law. (A subsequent volume will focus on international trade, copyright, and administrative law.) This comprehensive, detailed examination sheds new light on the standards that shape the global technology marketplace and will serve as an indispensable tool for scholars, practitioners, judges, and policymakers everywhere.

**Enforcement of FRAND Commitments Under Article 102 TFEU** Tuire Anniina Väisänen 2011 In attempting to define the true meaning of "fair, reasonable and non-discriminatory terms" - also known as FRAND - one is reminded of the parable of two political parties arguing before the elections about who is right and who is wrong, although they both know that there is no such thing as one truth and that it utterly depends on the individual perspective. Given the very substantial legal and business concerns involved within the telecommunication standardization environment, the conflicting interpretations of FRAND terms and conditions seem to be unavoidable. This paper is based on the author's master thesis as part of the LL.M. in Intellectual Property and Competition Law. The analysis presented shows that the FRAND debate is very controversial and that many questions related to the enforcement of FRAND commitments under EC competition law remain unsolved. In essence, this paper demonstrates that FRAND commitments can be used as a powerful defense in order to prevent dominant patent holders from abusively exploiting their standard-essential patents. However, when determining the impact of FRAND commitments under Article 102 TFEU (Treaty on the Functioning of the European Union), it should be kept in mind that the test that complainants need to meet is not merely a test based on the rationale of FRAND commitments under the relevant standards-setting organization rules. In other words, in the absence of dominance, even if a patentee in fact does not fulfill his FRAND commitments and asks for exorbitant royalty rates, this does not automatically provide complainants with an antitrust remedy under the EC competition law. Master Thesis.

**Intellectual Property as a Complex Adaptive System** Kamperman Sanders, Anselm 2021-12-07 This incisive book examines the role of Intellectual Property (IP) as a complex adaptive system in innovation and the lifecycle of IP intensive assets. Discussing recent innovation trends, it places emphasis on how different forms of intellectual property law can facilitate these trends. Inventors and entrepreneurs are guided through the lifecycle of IP intensive assets that commercialise human creativity. Utilising a range of sector specific, interdisciplinary and actor-focused approaches, each contribution offers suggestions on how Europe's capacity to foster innovation-based sustainable economic growth can be enhanced on a global scale.

**Innovation Markets and Competition Analysis** Marcus Glader 2006-01-01 The book is warmly recommended to practitioners and academics from both the legal and the economic field. Guido Westkamp, Journal of Intellectual Property Law and Practice . . . Glader offers strong commentary and case

explanation, coupled with insightful analysis, in this complex area. . . This book is strong on both the relevant law, and the economics arena in which the law must be applied, and deals equally well with the US and EC principles and practice. Mark Furse, European Competition Law Review The pace and scope of technological change is increasing, but some innovative technologies take years before they give rise to saleable products. Before they do, there is competition in ideas and research, but the ideas cannot be market tested, because there are no products or services to offer to consumers. Competition law, in Europe and the USA, cannot be applied to competition in research for innovation as if it was competition between products. Completely different problems arise and a completely different approach is needed. This book, the first on innovation markets, shows how this new approach has been used by competition authorities on both sides of the Atlantic in a wide variety of cases. It analyses in depth and detail the comparative law and economics of the problems arising from the different stages of these markets . It considers how far conclusions can be drawn about the future and comes to interesting, practical and sensible conclusions. And it avoids both unjustified scepticism and exaggerated enthusiasm about the theories of innovation markets. John Temple Lang, Cleary Gottlieb Steen & Hamilton LLP, Brussels and London; Trinity College Dublin, Ireland and Oxford University, UK This book examines the legal standards and their underlying economic rationale for the protection of competition in the innovation process, in both European competition law and American antitrust law. Apart from relevant regulatory frameworks, the author also reviews a range of case laws, which assess whether a transaction or unilateral conduct would limit market participants incentives and abilities for continued innovation and future competition. At the centre of this study is the innovation market concept. This concept entails the delineation, for purposes of antitrust analysis, of an upstream market for competing R&D. Questions of market definition, the assessment of innovation competition in defined markets, the role of efficiencies in the appraisal of transactions and possible remedies to alleviate anti-competitive effects are also explored. Updating the field of research in light of new developments and ~~Meaning and Impact of the Organization~~ and analysis of the innovation market area, this book will be of great interest to academics, practitioners and consultants, and also public policymakers.

Alina Wernick 2021-05-13 The patent system is based on "one-patent-per-product" presumption and therefore fails to sustain complex follow-on innovations that contain a number of patents. The book explains that follow-on innovations may be subject to market failures such as hold-ups and excessive royalties. For decades, scholars have debated whether the market problems can be solved with voluntary licensing i.e., open innovation, or with compulsory liability rules. The book concludes that neither approach is sufficient. On the one hand, incentives to engage in open innovation practices involving patents are insufficient. On the other hand, the existing compulsory liability rules in patent and competition law are not tailored to address follow-on innovator's interests. To transcend this problem, the author proposes a compulsory liability rule against the suppression of follow-on innovation, that paradoxically, fosters early-on voluntary licensing between patent holders and follow-on innovators. The book is aimed at patent and competition law scholars and practitioners, patent attorneys, managers, engineers and economists who either engage in open innovation involving patents or conduct research on the topic. It also offers insights to policy and law-makers reviewing the possibilities to foster open innovation initiatives or adapt the scope of patent remedies or employ compulsory licenses for patents.

**Patent Remedies and Complex Products** C. Bradford Biddle 2019-06-27 Through a collaboration among twenty legal scholars from North America, Europe and Asia, this book presents an international consensus on the use of patent remedies for complex products such as smartphones, computer networks, and the Internet of Things. This title is also available as Open Access on Cambridge Core.