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Balance relief of interest conflict in patent technology standardization

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Abstract: *The original intention of patent technology standards is to promote economic development and improve the market competition environment, but the abuse of rights in patent technology standardization leads to the imbalance of interests of all parties. The way to realize the balance of interests is to solve the conflict of interests caused by the abuse of rights on the basis of the principle of rationality and the principle of balance of interests.*

Keywords: *Patent; Technical Standards; Interests Conflicts; Benefit Balance*

1. Introduction

Technical standards refer to rules, which have mandatory requirements or instructions with certain features, and contain detailed technical requirements or technical program aiming to make the relevant product or service reach a certain industry requirements in the market. They have significant strong social and public properties. Nevertheless, the patent is a legal monopoly of private properties. There is a conflict of interest between technical standards and patent rights. Therefore, it is necessary to study and solve the problems in the standardization process of the patent technology to pursue a balance between the patent technical standards making process and the patent license in order to reach a final win-win between public and private benefits.

2. Using the principle of rationality to solve the conflict of interest in patent technology standardization

The principle of reasonableness is the most widely used principle in the anti-monopoly law. The abuse of rights in violation of this principle will have a negative impact on others or society.

2.1 Factors considered in applying the principle of reasonableness to analyze the abuse of rights

The essence of the conflict of interest in the standardization of patented technology is the abuse of rights. When using the principle of reasonableness to analyze the abuse of rights in patent technology standardization, we need to use elements to judge whether a certain behavior causes damage and restriction to competition. Elements include market influence of patent technology standard, commodity competitiveness excluded by technical standardization, types of competitors excluded by technical standardization, the identity of the main body participating in the formulation of patent technology standards, the procedure of standard formulation, the existence of alternative standards with less restrictions on competition, and the motivation and purpose of patent technology standardization.

2.2 The way to using the principle of reasonableness to remedy the conflict of interest in patent technology standardization

Using the principle of reasonableness can solve the legal problems caused by the abuse of patent rights in patent alliance. The Patent Alliance in patent technology standardization is an independent consortium formed by the patentees participating in the formulation of standards, which gathers the necessary patents required by technical standards and implements a "package" license. Standardization organizations or countries will adopt reasonable principles to regulate patent alliances. The following factors should be considered when applying the principle of reasonableness to regulate patent alliance in patent technology standardization:(1)the nature of patent right in patent alliance includes the analysis of validity, necessity and relevance,(2)the mode of Patent Alliance mainly considers whether the

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licensing mode of patent alliance is only internal or external,(3)in terms of licensing mode, it mainly examines whether individual licensing or "package" licensing is allowed,(4)The competitive environment in the alliance, that is, whether to allow the alternative patent technology of open technology standards,(5)foreign licensing policy mainly considers whether the patent licensing conditions of patent alliance are equal and reasonable.

3. Using the principle of interest balance to solve the problem of interest conflict in patent technology standardization

The principle of interest balance is the need to realize the value of equality and justice in patent law, and the basis and guarantee to realize the public interest goal of patent law. Patent law itself has an important goal of public interest, and as a system to protect private rights, the realization of this goal must introduce the principle of interest balance.

3.1 The protection and restriction of the principle of interest balance to the patent right in the standardization of patented technology

What technical standards pursue is to establish a public order with the greatest benefit at the lowest cost, but the patent right seeks the maximum expansion of private rights, therefore, the essential difference between the two makes it inevitable that there will be conflicts of interest. The contradiction between the unity of public interest and the exclusiveness of private interest lies in the limitation and expansion of patent rights. As for the patent right included in the technical standard, its private monopoly has changed into a strong public welfare, which challenges the legitimacy of its protection in the existing legal system. The existing patent law system emphasizes the protection of the patentee's rights, at the same time, it gives reasonable and appropriate restrictions on the patent right through the time and geographical restrictions, so as to balance the interests of knowledge creators and knowledge users. The patent right in technical standards is not completely protected by the current intellectual property law system. The reason is that the combination of patented technology and standards breaks the balance of interest mechanism of patent system. According to the principle of interest balance, the protection of the patented technology included in the technical standard can balance the conflict of interest between the patented technology and the standard. Based on the principle of balance of interests, when formulating technical standards, we must fully consider the rights and interests of patentees and the public interests as beneficiaries of standards, as well as the full protection and appropriate regulation of private rights and interests.

Patent law has benefit value orientation, and the principle of interest balance ensures the realization of benefit value of patent right. The key lies in the construction of interest balance mechanism and its operation in the intellectual property system. Monopoly may cause the waste of social resources on the level of restricting competition and controlling prices, but the monopoly of patent right produces both monopoly benefits of patentees and social benefits. As far as the monopoly benefits of patentees are concerned, patent law guarantees that patentees can not only recover the cost of knowledge creation, but also obtain the necessary benefits by giving them exclusive rights to patented technology. The incentive mechanism of patent system improves the enthusiasm of knowledge creators to engage in knowledge creation, so as to produce more useful intellectual products for the society, and make the limited monopoly produce social benefits. Under the guidance of the principle of balance of interests, taking equity as a way of distribution can make the rights and obligations of the interest subjects of patent rights be evenly distributed. Besides meeting the monopoly interests of the patentee, it also takes into account the social public interests, so as to realize the social benefits of knowledge products. This kind of coordination and compromise between monopoly benefit and social benefit is closely related to the full consideration of fairness in the interest balance mechanism.

3.2 The specific ways of using the principle of balance of interests to remedy the conflict of interests in patent technology standardization

From the perspective of current standardization organizations, the application of the principle of interest balance in patent technology standardization is mainly reflected in information disclosure and patent licensing. Information disclosure requires that the patentee should not conceal the necessary patent information in the process of patent technology standardization, so as to prevent the possibility of technical standards being hijacked by the patentee. Patent licensing requires that once the patent right is incorporated into the technical standard system, the patentee has the obligation to license.

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3.2.1 Information disclosure

Using the principle of interest balance to balance the interests of relevant subjects in patent technology standardization, we should make both sides stand in an equal market position. In technical standards, the exclusive right is still a private right, and the subjects of interests of both parties involved are still equal subjects regulated by civil legal relations. But equality in law does not mean equality in the market. When standard users use technical standards that should not involve patent rights, they passively accept sudden patent rights. Because they have not obtained patent rights through equal negotiation, standard users are likely to suffer from sudden changes in their status. This kind of damage is caused by information asymmetry caused by patentee deliberately concealing patent information in patent technology standardization. Therefore, according to the principle of balance of interests, the disclosure mechanism must be introduced to make the patent information related to technical standards be clearly determined as far as possible. This is not only the premise to solve the contradiction between technical standards and patent rights, but also the root to solve the conflict of interests between patentees and standard users. The so-called patent information disclosure mechanism refers to the system in which the members of the standardization organization disclose the necessary patents of the standard to the standardization organization or the public.

The main points of patent information disclosure include: disclosure subject, disclosure object, disclosure object, disclosure time and the consequences of violation of disclosure obligation. Among them, the most important elements should be the object of disclosure and liability for breach of contract. Firstly, the object of disclosure should be standard essential patent. Secondly, when the disclosure subject fails to disclose the relevant patent information to the disclosure object according to the agreement of the standardization organization, it should bear the responsibility. There are three forms of liability: compulsory Rand license, reduced license fee or compulsory free license. Although most of the standardization organizations that have formulated patent policies at present have explicit or implied provisions on the obligation of patent information disclosure, they lack provisions on the corresponding patent retrieval obligation and liability for violation of the disclosure policy, which affects the binding force of the patent information disclosure system on members. Non mandatory patent disclosure policy can not solve the problem of "patent ambush". Therefore, some standardization organizations have made bold attempts to strengthen the implementation of patent information disclosure policy.

3.2.2 Patent license

Patentees try to combine their patents with technical standards in order to control technical standards through patents, so as to gain greater control over the market, greater monopoly interests, and give full play to the advantages of patents. If he has enough patents to control most of the core technologies in the technology market, he can adopt the form of "de facto standard". But in practice, most companies have to cooperate with many enterprises to control the core technology, or cooperate with many companies to ensure that their patented technology can be adopted as the technical standard. As a price, patentees will have to accept the patent policy of standardization organization. Standardization organization patent license agreements are generally divided into Rand license and RF license. Patent licensing policies to regulate the abuse of rights in patent technology standardization mainly include reasonable, non discriminatory and free. "Reasonable" mainly means that the license fee should be reasonable. Because the patentee's right to dispose of the patent right is limited to a certain extent, he has lost the right to refuse the license. The remaining rights are mainly reflected in the collection of license fee. In addition, reasonable license fee should also consider the record of patent license, the amount of previous patent license fee, and the number of necessary patents."Non discrimination" is to give the same license treatment to the standard users with the same conditions. We should pay attention to the following points: for different types of standard users, patentees are allowed to charge different license fees; The patentee is not allowed to pay the license fee higher than the license fee of the patent Union in the case of individual license; It is not allowed to have any reciprocal behavior between Patent Alliance licensors. "Free" means that the patentee license the patent to the standard user free of charge, without any monetary compensation, but the "free" does not mean that the patentee gives up the patent ownership, other patent rights except the right to dispose are still complete, and once the patentee chooses to accept the free patent license agreement of the organization for standardization, it should implement the compulsory RF license.

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4. Conclusion

The key to solve problems above is to define the patent abuse in the standardization process of the patent technology. In order to protect the patent holder to from harm and at the meantime avoid to violate the interests of the applicants who represent the public benefit, the authority abuse ought to be strongly prohibited and the ambiguous cases should be further investigated.

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