



赵勇：TRIPS框架下欧盟与美国知识产权许可的反垄断审查比较研究：最新的进展



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TRIPS框架下欧盟与美国知识产权许可的反垄断审查比较研究：  
最新的进展

Comparison of EU and US IP Licensing Antitrust Review in the Framework of TRIPS: Recent Developments

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Abstract: This article examines and compares the differing treatment of Intellectual Property licensing antitrust review under United States (US) antitrust law and European Union (EU) competition law, with the focus on the recent developments, especially on the cases including *Philips*, *Qualcomm*, *Microsoft* and *Rambus*, on both sides of the Atlantic. While in the US antitrust investigations of IP licensing are assessed under the Rule of Reason, in the EU they often are considered illegal *per se*, unless exempt under the EU Technology Transfer Regulation (TTBER) or by an express decision of the Commission addressed to the parties to the licensing agreement. It is generally agreed that there is an inherent tension between IP law and competition law. While both laws have similar policy objectives of encouraging technical development and consumer welfare, they approach these objectives differently. In sum, IP law promotes innovation by allowing restrictions on the sale of new technologies while competition law promotes innovation by prohibiting and preventing market restrictions. EU and US regulators both address this tension when confronted with competition problems caus

ed by the use and abuse of IP rights. While antitrust authorities in both jurisdictions often resolve this tension in a similar way, recent case law suggests that the EU tends to favor the enforcement of antitrust laws whereas the United States leans towards protecting IP rights.

Key Words: IP Licensing, Antitrust Review, Patent Pools, Refusal to License, Unreasonable Royalties

### Contents

1. Introduction
2. Analytical Framework: IP Licensing Rules and Guidelines as Transatlantic Harmony
3. 1 *Philips*/CDR and Patent Pools – U.S. Favors IP Rights Over Competition Law
3. 2 From DVD-Pool, 3G to Qualcomm: the Changing Approach of EU to IP Licensing Review
4. *Microsoft*: Different Approaches in the EU and the US
  4. 1 *Microsoft* and Refusal to License – Europe Tightens the Reigns
  4. 2 United States More Lenient on Refusal to License and Microsoft’s Licensing Practices
5. *Rambus*: EU and US IP Antitrust Licensing Investigations in in the Standard-Setting Context
  - 5.1 The Long Saga of Rambus's Antitrust Battles in the United States
  - 5.2 IP Licensing Antitrust Review of *Rambus* in the EU
  5. 3 *Rambus*: Convergence and Divergence of EU and US IP Licensing Antitrust Review
6. Conclusion

## REFERENCES

### 1. Introduction

This article highlights recent differences in the way the licensing of intellectual property (IP) rights has been handled by the competition law (or antitrust) authorities on both sides of the Atlantic. There is an inherent tension between IP law and competition law. While both laws have similar policy objectives of encouraging technical development and consumer welfare, they approach these objectives differently. IP law grants a limited monopoly for new inventions. IP law thus encourages innovation by allowing owners to restrict the distribution of those technologies once they are invented. Competition law, on the other hand, prohibits anticompetitive agreements and abusive monopoly behavior. Accordingly, competition law seeks to ensure that existing technologies are accessible to competitors and not unfairly restrained by one or a few companies. In this way, competition law encourages innovation within existing technologies and existing markets. In sum, IP law promotes innovation by allowing restrictions on the sale of new technologies while competition law promotes innovation by prohibiting and preventing market restrictions. EU and US regulators both address this tension when confronted with competition problems caused by the use and abuse of IP rights. While antitrust authorities in both jurisdictions often resolve this tension in a similar way, recent case law suggests that the EU tends to favor the enforcement of antitrust laws whereas the United States leans towards protecting IP rights.