

The Proposed Technology Transfer Block Exemption and Related Guidelines

Is the Patent Thicket Clearing?



CHAIRMEN

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University College London
Partner, Latham & Watkins LLP, London

Professor Steven Anderman

University of Essex

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Mark Powell

White & Case, Brussels

Luc Peeperkorn

DG Competition, European Commission, Brussels

Steven Preece

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Partner, Latham & Watkins LLP, Brussels and London

John Temple Lang

Cleary Gottlieb Steen & Hamilton, Brussels

Jacques Bourgeois

Akin Gump Stauss Hauer & Feld, Brussels

CONFERENCE HIGHLIGHTS:

- The new EC Technology Transfer Block Exemption and Guidelines – The main issues
- Multiparty licensing: The solution, not the problem – an economist's perspective
- The Patent Thicket – pending, unresolved and new issues
 - Standard-setting and patent pools
 - Standards and essential IPRs
 - Patent settlements – emphasis on the pharmaceutical industry
- Article 82 – making sense of foreclosure and discrimination

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The Proposed Technology Transfer Regulation and Related Guidelines Is the Patent System Ready?

Monday 24th November 2003, The Renaissance Hotel

Morning Session

Chair: **Professor John Kallaugher**

Visiting Professor, University College London
Partner, Latham & Watkins LLP, London

09.00 Registration and coffee

09.30 **Chairman's Opening Remarks**

09.35 **New EC Technology Transfer Block Exemption Regulation and Guidelines**

The Main Issues

- Scope of the TTBE
- Competitors and non-competitors: horizontal and vertical distinctions
- The approach to territorial restrictions and market integration aims
- Is the use of market share analysis appropriate and workable?
- Cross-licensing and blocking patents; Royalty-free licensing as a panacea?
- Is *Windsurfing* re-appearing? Does it matter after modernisation?
- The impact of the new rules on subcontracting

Maurits Dolmans

Partner, Cleary Gottlieb Steen & Hamilton, Brussels

Mark Powell

Partner, White & Case, Brussels

10.30 **Moderated Panel Discussion**

Luc Peeperkorn

Administrator, DG Competition
European Commission, Brussels

Steven Preece

Principal Case Handler, Competition Policy Coordination
Office of Fair Trading, London

Robert Skitol

Partner, Drinker Biddle and Reath LLP, Washington DC

11.30 *Coffee*

11.50 **Multiparty Licensing: The solution, not the problem**
An economist's perspective on multiparty licensing rules

- Multiparty licensing can be an effective way allowing for the development of new products and promoting economic efficiency in a world of proliferating patents
- If a few basic principles are followed multiparty licensing can be pursued without compromising competition
- While the proliferation of patents has created some problems, the system of IP rights remains an important incentive for invention and innovation. This should not be eroded by competition rules that

WHY YOU SHOULD ATTEND THIS CONFERENCE

Technology licensing is now at the forefront of the Commission's modernisation agenda: the new Technology Transfer Regulation is currently under review by the Member States and is expected to be published for comments in October 2003 and finally adopted in early 2004. Not only will the Regulation be totally rewritten the Commission plans to accompany the Regulation with Licensing Guidelines that will cover many complex issues for the first time. Licensors and licensees of technology and their advisors need to be fully informed regarding these far-reaching legal developments.

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Transfer Block Exemption and Patent Thicket Clearing?

Hotel, Brussels



restrict licensing terms unless they eliminate competition that would have existed in the absence of a license

- New and creative ways need to be developed to deal with patent proliferation. Suggestion for discussion:
 - New mechanisms for standards setting
 - Industry wide licensing clearing houses

Professor Robert C. Lind

Cornell University, New York

Senior Consultant, Charles River Associates, London

12.50 Discussion and Comment

13.10 Lunch

Afternoon Session

Chair: Professor Steven D. Anderman

Birket Long Professor of Law, Essex University

THE PATENT THICKET – PENDING, UNRESOLVED AND NEW ISSUES

14.30 Standard-setting and Patent Pools

- Antitrust analysis of patent pools arising out of standards
- Essentiality in relation to what – a standard? What if the pool and the standard is formed by the same parties?
- Composition of pools and pricing as patents expire or become non-essential?

Peter Plompen

Competition Law Attorney, Royal Philips Electronics
Senior Vice-President, Philips International, Eindhoven

14.50 Standards and Essential IPRs – Licensing Terms

- Patent ambushes /*Ex ante* disclosure of patent positions
- Requiring FRAND licensing – does it address hold-up issues?
- *Ex ante* negotiation of licensing terms – a more efficient outcome?
- Pool formation and *Ex ante* negotiations (3Gpools in EU and US)

Gil Ohana

Director Legal Service, Antitrust and Competition Law
Cisco Systems, San Jose, California

15.10 Patent Settlements – Emphasis on the Pharmaceutical Industry

- Pro-and anti-competitive effects of settlements
- Striking the right balance
- Lessons from US generic drug cases
- Practical guidance

Nigel Jones

Partner, Linklaters, London

15.30 Tea

15.50 Moderated Panel Discussion

Panellists

Lars Kjölbye

Administrator, DG Competition

European Commission, Brussels

Maurits Dolmans

Partner, Cleary Gottlieb Steen & Hamilton, Brussels

Marc Hansen

Partner, Latham & Watkins LLP, Brussels and London

16.30 Article 82 – Making sense of foreclosure and discrimination

- Harm to consumers under Article 82
- Are the clauses of Article 82 consistent?
- Can national laws protect competitors from competition?
- The issues in IMS Health and Microsoft

John Temple Lang

Cleary Gottlieb Steen & Hamilton, Brussels

Jacques Bourgeois

Partner, Akin Gump Strauss Hauer & Feld, Brussels

17.20 Discussion and further questions

17.30 Close

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FOR FURTHER DETAILS CONTACT:

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The Proposed Technology Transfer Block Exemption and Related Guidelines

Monday 24th November 2003

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