

Cite as: 11 TECH. L. REV., Dec. 2014, at 175.

Empirical Study on Damage Award of Patent Disputes

Ching-Yi Wu *

Abstract

The purpose of this study was to compare the scope of damage compensation and calculations regarding patent infringement between the laws of ROC and America as well as to discuss whether the damage compensation amounts determined by these two countries are sufficient. First of all, it explained that the calculation of damage compensation regarding patent infringement cannot be separated from the but for world (non-infringement world) economy from the economic perspective. Then it briefly introduced the statutory laws and case laws for damage compensation related with patent infringement in America, incorporated with the empirical researches made by American scholars aiming at this issue. Meanwhile, the summary was made against the review and recommendations proposed by the Federal Trade Commission (FTC) to the patent reform. After that, the relief system for patent infringement and legal basis of damage compensation derived from infringement were explained in brief. As to the empirical research, the subjects were judgments of first instance made by intellectual property court for damage compensations in related with patent infringement from July 1, 2008 until April 30,

* Judge, Taiwan Hsinchu District Court; LL.M., College of Law, National Chengchi University; LL.M., Institute of Technology Law, National Chiao Tung University.

2014. It first quantified the “winning rate,” “percentage of damage award,” “compensation amount,” “awarded percentages for various scopes of damage compensation,” and “awarded ratio for punitive damage compensation” via descriptive statistics to explain the judgments made by intellectual property court aiming at damage compensation in related with patent infringement. Following, the judgments of first instance awarded to the patent owners and their damage compensations in preceding research were read carefully to explain the quantitative results via qualitative description and summarized that the reasons why the damage compensation amount made by intellectual property court in first instance was less than the one expected by the patent owner; the reason for relatively low compensation amount determined by intellectual property court; the change of whether to adopt the profit standards in the same industry, and as well as the application of the entire market value rule. It is expected to verify the correctness of various assumptions via empirical approaches and facilitate the sound development of relief system in related with patent infringement.

Keywords: Patent Infringement Damage Award, Lost Profits, Reasonable Royalty, The Entire Market Value Rule, Empirical Study