

標準必要專利FRAND權利金計算 ——兼論智慧財產法院105年度 民專上字第24號判決

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摘要

本文回顧各國法院關於標準必要專利公平、合理、無歧視（FRAND）之權利金計算所作成之司法判決，從比較研究之觀點進行分析及歸納。自美國法院於 2013 年作成第一個關於標準必要專利 FRAND 權利金計算的判決，各國法院在 FRAND 權利金計算的議題上，已陸續發展出許多值得參考的判決與方法論。本文深入個案進行判決之研究，從中萃取重要之計算方法與論理，描繪出可供依循之 FRAND 權利金計算架構，而各國法院採納之具體方法論以「由上而下法」與「可比較授權法」為主流，有僅採用其中一種方

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法，亦有見兩種方法並用作為交叉檢驗者，決定出標準必要專利最終之 FRAND 權利金費率。其後聚焦我國智慧財產法院 105 年度民專上字第 24 號判決，並就飛利浦與國碩公司間損害賠償額之決定，以各國相關司法判決為借鏡，分別解析一、二審法院計算賠償數額之方法論。本文主張可比較授權之授權金應僅為計算合理權利金之起始點，仍應將系爭專利貢獻度納入考量進行分配，俾使個案中合理權利金之數額能適度，避免專利箝制與權利金堆疊的風險。故期待本文對 FRAND 權利金計算之比較研究觀察與啟示，能作為資訊通訊產業界與我國司法實務界面臨相關爭議時之參考。

關鍵詞：標準必要專利、公平合理無歧視、合理權利金、由上而下法、可比較授權

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FRAND Royalties for Standard Essential Patents and Case Review of Philips v. Gigastorage in Taiwan IP Court

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Abstract

The article reviews judicial decisions of fair, reasonable, non-discriminatory (“FRAND”) royalties in various jurisdictions. Starting with *Microsoft v. Motorola* in 2013, the first FRAND royalty decision ever made, courts from different juris-

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dictions have addressed their opinions on how to determine FRAND royalties. After exploring rationales in each case, the article then extracts useful approaches and key implications for determining FRAND royalties in order to depict an applicable framework. Courts now primarily consider either “top down approach” or “comparable license analysis,” or even both as a reliable cross-check, to come up with final FRAND royalties for SEPs in suit. The article further focuses on *Philips v. Gigastorage*, a controversial patent infringement case where Taiwan Intellectual Property Court awarded the patentee (Philips) an outrageous amount of damages. The article respectively analyzes and discusses the methodology the court adopted in its first and second instance. The article then suggests that under the comparable license analysis, royalties from a comparable license should be considered as a starting point for the calculation, and that the court should further consider apportioning economic value of the infringed patent(s) from the entire patent portfolio. The consideration could help avoid risk of patent hold-up and royalty stacking. The implications and trends in the article may shed some light on future FRAND royalty calculation, for corporations in the global telecommunications arena as well as for the judiciary in Taiwan.

Keywords: Standard Essential Patent (SEP), Fair, Reasonable, Non-Discriminatory (FRAND), Reasonable Royalty, Top Down Approach, Comparable License