

Cite as: 10 NCTU L. REV., March 2022, at 49

Patent-Linkage-Related Patent Infringement Civil Litigation and Valuation of a Cause of Action

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Abstract

In 2019, the Pharmaceutical Affairs Act introduced a patent-linkage system in generic drug application. The patent-linkage mechanism allows a potential patent dispute to be resolved early when the generic drug application is under review. This article attempts to resolve an issue of valuation of a cause of action in patent-linkage-related patent infringement litigation. The resolution relies on four previous decisions of the Taiwan Intellectual Property Court which relate to patent infringement by generic drug sales. Case 1 and Case 4 involve a brand-named drug company and a generic drug company, where Case 2, Case 3, and Case 4 involve the same generic drug but different infringers, a pharmacy, two local medicine distributors, and a generic drug company. This article proposes a calculating method: (Annual revenue of the brand-named drug company related to the brand-named drug) \times (net profit rate concerning the brand-named drug) \times time period starting from the law suit filing date to the expiration date of the disputed patent).

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Keywords: Patent Linkage, Generic Drug, Brand-Named Drug,
Cause of Action, Patent Litigation