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Adequate Interpretation and Reconstruction of Causation of Patent Damage

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Abstract

Due to the intangibility of patents, the scope of a patent is determined through interpretation of claims. The interpretation of claims is so uncertain that the scope of a patent is hard to function as public notice for the reliance of the public. Moreover, patent infringement never deprives the patentee of the full domination of rights, but has negative impact upon economic interests of the patentee in the market. Consequently, calculation of patent damage is more difficult than that of traditional property damage. If no adequate causation is taken to measure the scope of patent damage, the damage would either overcompensate or frustrate the patentee. In view of the key role the causation is playing in adjusting patent damage, this article attempts to clarify and comment on the evaluation of patent damage under Taiwan patent law and related court cases, through the comparative observation of laws and the recognition of jurisprudence of patent law.

Keywords: Patent Damage, Causation, the Entire Market Value Rule, Equivalent Royalty, Unjust Enrichment

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