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Subjective Criteria of Patent Infringement Compensation in Taiwan: Focusing on Empirical Investigation of Intellectual Property Court's Decisions

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Abstract

Previously, subjective elements of patent infringement compensation were not stipulated in Taiwanese patent law. Most scholars and courts referred to tort law for guidance. They initially disagreed on the issue whether the compensation for patent infringement should be strict liability, negligent liability, or the latter with assumption of negligence, but over time their view converges and largely considered it as a type of negligent liability, which is explicitly adopted by the patent law in 2013. In other words, even though the patent at bar in a litigation is valid and infringed, the patent owner still has to prove the defendant's intent or negligence as to the infringement to recover monetary damages. This paper investigates decisions of the Intellectual Property Court since its establishment in 2008, in search of practical standards that the court exploits to assess intent and negligence in patent cases. The

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findings of this survey indicate that when determining negligence, the scope and content of the duty of care that the defendant should bear plays a critical role. The court categorizes defendants with various backgrounds into groups and differs their duty of care accordingly. In this way, the court actually utilizes multiple standards in assessing negligence. The judicial practice objectivizes the concept of negligence, stratifies it for different groups of defendants, and therefore worthy of notice.

Keywords: Patent Infringement, Subjective Criteria, Negligence, Willfulness, Duty of Care