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An Empirical Study on the Damage Award of Patent Infringement in the U.S., Taiwan and China

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Abstract

This paper performs an empirical study on the regulatory frameworks and practical measures of the court decisions of patent damages among US, Taiwan and China.

The basic principles employed in assessing patent damages seem similar among the above jurisdictions. Nevertheless, the outcomes of court decisions vary significantly due to the burden and standard of proofs of losses suffered by the patentees. Since 2000, the approach of reasonable royalty has overtaken the lost profit as the dominant measure of damage awards in the U.S. 65% of awarded damages were based on the measure of reasonable royalty, as contrast to 83% of lost profits during 1980 to 2000. It is also found that the difficulties of proving the amount of actual loss of patentees, as well as the cause-effect relationship directly caused by the infringing conducts, the damages decided by the courts of Taiwan and China are in general much lower than expected. In China, most of the compensations are determined with the statutory damages ranged from RMB 5,000 to 500,000, and more than 98% are lower than RMB 300,000.

It is concluded that: (1) Court decisions indicate the differences of the legal infrastructures, the experience of judges, the enforceability of patent types and market structures among different jurisdictions. The U.S. courts are more inclined to recognize the evidences on a relatively broad and reasonable basis, nevertheless, the courts of Taiwan and China are considered less experienced in such decisions. (2) The party bearing the burden of proof finds the uncertainty of convincing evidence and also the risk of disclosing proprietary information, thus it results that the damages are primarily statutory provisions in China. Furthermore, Taiwan's courts tend to utilize objective, though may not be proper, financial data as the base for damage measures. (3) Small damages are commonly granted in the courts of Taiwan and China. (4) In China, most of the patent lawsuits occurred among domestic companies with the new model and design patents, only very limited cases are associated with invention patents. So far as most international firms are concerned, instead of seeking monetary compensations, their litigations are mainly focused on acquiring the market shares by preventing the distribution of infringing products in China, and in the meantime, reducing the exportation of infringing products from China. It therefore leads to the frequent use of administrative enforcement, injunctions and boarder measures, in lieu of the damage claims in the judicial courts.

Keywords: empirical study, patent infringement, patent litigation, damage award, lost profit, reasonable royalty