

智慧財產權獨占性訂價之研究-以專利權及著作權為中心

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摘 要

在知識經濟的時代中，以知識為基礎的無形資產（特別是智慧財產權）已經成為企業的主要資產與競爭力的重心，對於知識型的產業（包括知識型製造業與知識型服務業）而言，更成為競爭的利基所在，具有特殊的重要性。當今，企業莫不以智慧財產權作為競爭的手段，利用智慧財產權的排他性，築起一面令競爭對手難以跨越的高牆，以維持企業的競爭力，但也伴隨產生智慧財產權獨占濫用的問題。儘管各國對於智慧財產權禁止某些獨占濫用行為，以消除妨礙競爭的行為為主要的管制做法，但智慧財產權的獨占濫用亦常顯現在高額售價及收取高額權利金等濫用的爭議上。

本論文鑑於智慧財產權與競爭法間的特殊關係，但在智慧財產權法保護下，獨占性訂價的爭議有越演越烈之趨勢下。本論文的研究在於市場自癒能力有所限制時，討論智慧財產權獨占性訂價之管制，分析智慧財產權法及競爭法間政策面之適法性，認為獨占性定價管制適用智慧財產權的適法性並無衝突與抵觸之處，並基於智慧財產權的排他性的本質，確實存在獨占性定價，獲取高額暴利的可能性，且在市場自癒能力受限的情況，唯有以績效管制的手段作為保護社會公眾利益的最後手段。在獨占性訂價管制之操作面，嘗試從智慧財產權的角度出發，探就智慧財產權人，未以智慧財產權型式保護時，所可以獲取的利益為基礎，尋找可行的操作方式。同時分別以專利權及著作權的行使態樣為例，分析個別智慧財產權的價值，以鼓勵發明人將其發明技術公開以專利保護，以促進產業的發展，或激勵創作人努力投入創作，以促進社會文化的發展。並試著尋找適當的管制方法，以調和智慧財產權法與競爭法之間的衝突。最終透過本文研究，提供智慧財產權獨占性訂價管制的適用時機及訂價管制的參考標準，同時達到保護發明人或創作者，促進創新，並兼顧市場秩序的維護。

A Research on Monopoly Pricing Related to Intellectual Property Rights : Focus on Patents and Copyrights

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ABSTRACT

In the knowledge economy age, the intellectual properties (IP) become the important assets to a company. Especially to the knowledge industry, the intellectual property right (IPR) is the key measure of a company competing with others. Today, based on the monopoly and exclusiveness characteristic of the IPR, all companies endeavor to get an advantageous position by acquiring the IPRs. But some IP owners misuse their right like tying to acquire the benefit not related to the reasonable IPRs. In the past, the governments around the world have some measures to prohibit the IPR owner's misuse action, but the monopoly pricing like the high royalty and product price is another familiar dispute now. In this thesis, we mainly deal with the monopoly pricing issue related to the IPR.

Considering the special relation between the intellectual property rights law and the competition law, we will discuss the regulation of IPR monopoly pricing only when the market self-healing mechanism is failure. In this thesis, we study the monopoly issue in the policy dimension and operation dimension. In the policy dimension, the intellectual property rights law and the competitive law and policy promote the innovation and benefit in public. In this view, they have the same goal and are not conflict with each other. But when the product is monopoly by IPR, the IPR owner can acquire high profit or royalty because the market self-healing mechanism is failure. In this situation, we have no action to regulate the IPR owner action unless directly regulate the price. So, the regulation of monopoly pricing is last action to protect the benefit in public. In the operation dimension, we try to develop a suitable estimate rule from the IPR law view, and avoid the rule to destroy the IPR system. We focus on patents and copyrights to analysis the law and policy individually, and find the rule to estimate the value of the patents or copyrights to be a reference price comparing with the price of the monopoly product. Finally, we expect the study can eliminate the conflict between the intellectual property rights law and competition law and find a balance point on promoting the innovation and protecting the benefit in public.