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Patent Trolls in the Light of IP Rights and EU Competition Law

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Abstract

The paper deals with the increasing concern among intellectual property academics, economists and practitioners that the strategic use of patent enforcement enables right holders to exploit their patents inappropriately at excessive cost for manufacturers and consumers. Asymmetric information disadvantages resulting from the so called “patent thicket” and a considerable path dependency after the implementation of technological specifications put manufactures under a considerable risk of hold up. The ability to apply the rules of European Competition Law to unilateral patent enforcement remains uncertain. With regard to the recent case-law of the European Court of Justice under Article 102, three possible abuses of a dominant position are being discussed: refusal to license, predatory litigation and excessive pricing. Further attention is drawn to an evolution of the jurisprudence of the US Supreme Court in respect of the grant of injunctive relief and the emerging trend among European Courts to introduce more flexibility into patent infringement proceedings. As a possible remedy inherent to the current patent system, the principle of proportionality may serve as an alternative corrective to individual hardships opposed to a general distinction between different categories of owners under the legal regime governing patents and their judicial enforcement.