

# Japanese Perspective on Relationship between IP and Antitrust

Masayuki Koyanagi

Director

Institute of Intellectual Property

JETRO New York

May 23, 2002

# Relationship between IP Acts and the Antimonopoly Act in Japan

## Section 23 (now 21) of the Antimonopoly Act

“The provisions of this Act shall not apply to such acts recognizable as the exercise of rights under the Copyright Act, the Patent Act, the Utility Model, the Design Act or the Trademark Act.”

# Guideline for Patent and Know-How Licensing Agreement

- .JFTC published the Guideline (Feb. 15, 1989)
- .JFTC revised the Guideline (Jul 30, 1999)

# New Guideline for Patent and Know-How Licensing Agreement (1999)

- ◆ The policy on patent licensing agreements under Section 23 of the Antimonopoly Act
- ◆ The policy on patent and know-how licensing agreements from the standpoint of the Antimonopoly Act, Section 3
- ◆ The policy on patent and know-how licensing agreements from the standpoint of unfair trade practice
- ◆ The scope of application and the consultation system

# Policy on Patent and Know-How Licensing Agreements from Standpoint of the Antimonopoly Act, Section 3

## Section 3 of the Antimonopoly Act

“No entrepreneur shall effect private monopolization or unreasonable restraints of trade.”

# Policy on Patent and Know-How Licensing Agreements from Standpoint of the Antimonopoly Act, Section 3 (Contin.)

- ◆ Unreasonable restraints of trade
- ◆ cross licensing
- ◆ multiple licensing
- ◆ patent pools

# Policy on Patent and Know-How Licensing Agreements from Standpoint of the Antimonopoly Act, Section 3 (Contin.)

- ◆ **Private monopolies**
- ◆ patent pools
- ◆ accumulation of patents
- ◆ restrictions under licensing agreements

# Policy on Patent and Know-How Licensing Agreements from Standpoint of Unfair Trade Practice

- ◆ Newly designated restrictive provisions as white ones
- ◆ granting licenses separately in categories such manufacturing, use and sales with regard to know-how
- ◆ restrictions of geographic region with regard to know-how
- ◆ restrictions of R & D activities with third parties in order to prevent diversions of know-how

# Policy on Patent and Know-How Licensing Agreements from Standpoint of Unfair Trade Practice (Contin.)

- ◆ Newly designated restrictive provisions as gray ones
- ◆ restrictions of geographic regions (where the rights have been exhausted but the sales region is restricted)
- ◆ obligations not to assert the licensee's patent rights
- ◆ restrictions on maximum production quantity

# Policy on Patent and Know-How Licensing Agreements from Standpoint of Unfair Trade Practice (Contin.)

- ◆ Restrictive provisions changed from gray to white
- ◆ obligation to notify knowledge and experience obtained
- ◆ Restrictive provisions changed from black to dark-gray
- ◆ restrictions on use of technology and obligations to pay a royalty after expiration of patent rights

# Policy on Patent and Know-How Licensing Agreements from Standpoint of Unfair Trade Practice (Contin.)

- ◆ Restrictive provisions changed from black to dark-gray (contin.)
- ◆ restrictions on R & D activities
- ◆ obligations to assign rights and grant exclusive licenses for improvement inventions
- ◆ restrictions on manufacture or use of competing goods and on employing competing technology
- ◆ restrictions on sales of competing goods

# The Latest Development

- ◆ Report on relationship between technology standard and competition policy (July 25, 2001)
- ◆ Report on relationship between software and antimonopoly act (March 20, 2002)
- ◆ Research committee relating to patents and competition policy (in progress)

# Report on Relationship between Technology Standard and Competition Policy

- ◆ Issues before technology standard is established
  - ◆ Refusal of participation in forum
- ◆ Issues after technology standard is established
  - ◆ Refusal of license
  - ◆ Refusal of providing technical information
  - ◆ Royalty

# Report on relationship between software and antimonopoly act

- ◆ Antimonopoly act and the providing of technical information for platform software
  - ◆ Refusal of providing technical information
  - ◆ Accumulation of technology
- ◆ Antimonopoly act and software licensing agreements
  - ◆ Restrictions relating to reproduction
  - ◆ Restrictions on modification
  - ◆ Prohibitions against reverse engineering

# Research committee relating to patents and competition policy in New Fields

- ◆ Main points to be considered
- ◆ analysis and study of competition policy relating to the granting of business method patents and biotechnology patents and the exercise of such rights

# Research committee relating to patents and competition policy in New Fields (Contin.)

- ◆ Obstruction of competition through wrongful applications
- ◆ Restriction of competition through dependency relationship of gene patents
- ◆ Reach-through license
- ◆ Refusal of license, accumulation of patents, etc., for the purpose of stifling R & D
- ◆ Financial patents
- ◆ Use of patent pools

Thank you