

European Union Considering Changes to IP Licensing Rules

By: Sheldon Mak & Anderson

<http://www.eyeonip.net/>

The European Commission recently announced that it is considering new competition rules for the assessment of technology transfer agreements. The changes could impact how companies transfer and license patents, know-how and software copyrights.

Under the [EU's current technology licensing regime](#), a Technology Transfer Block Exemption (TTBER) creates a so-called "safe harbor" for certain agreements deemed to have no anticompetitive effects. For instance, TTBER exempts certain agreements concluded between companies that have limited market power (market share not exceeding 20% for agreements between competitors and 30% for agreements between non-competitors).

As outlined by the Commission, changes to the TTBER would include provisions that lower the market share threshold for certain licensing agreements between non-competitors. In addition, passive sales restrictions between licensees, exclusive grant-back provisions, and no-challenge clauses would no longer fall under the safe harbor of the TTBER.

The Commission also plans to revise its guidelines, which are used to assess whether technology transfer agreements comply with EU competition rules. Under the proposed changes, the guidelines would be amended to include new provisions on "patent pools," i.e., multilateral patent licensing agreements, and certain settlement agreements.

With regard to patent pools, the Commission proposes to clarify that the definition of essentiality covers not only essentiality in relation to producing a particular product but also in relation to complying with a standard. The proposed changes also clarify that licensing agreements between a pool and third parties in principle fall outside the scope of the TTBER. However, the proposal would provide a comprehensive safe harbor for pools covering not only the creation of the pool but also its subsequent licensing out, provided certain conditions are satisfied.

The new draft guidelines also address concerns over "pay-for-delay" agreements. Under the proposed changes, settlement agreements involving a license may run counter to anti-competition rules where a licensee agrees, against a value transfer from the licensor, to more restrictive terms than the licensee would have accepted solely on the strength of the licensor's technology.

Overall, the proposal reflects significant changes in the way intellectual property may be licensed in the European Union. Under several of the proposed changes, a greater percentage of licensing agreements will be subject to antitrust scrutiny. For more information about how the new rules may impact your operations, we encourage you to contact one of our experienced international IP [attorneys](#) for a free 30-minute consultation.

.....

About Sheldon Mak & Anderson

At [Sheldon Mak & Anderson](#), we recognize that innovation is your competitive edge – and it needs protection. As a full-service intellectual property firm with more than two decades of experience, we provide local, regional, national, and international legal services in the following areas: patents, trademarks, copyrights, trade secrets, IP litigation, international patent and trademark prosecution, licensing, alternative dispute resolution, and green technology.

*Contact our knowledgeable [intellectual property attorneys](#) today TOLL FREE at **1-855-UR IDEAS (1-855-874-3327)** or email us at tri@usip.com to find out how we can provide powerful protection for your unique ideas.*