

論文要旨説明書

報告論文のタイトル : Strategic Declaration of Standard Essential Patents

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論文要旨 (800 字から 1200 字、英文の場合は 300 から 450 語)

When a new technology is invented, the inventor needs to consider how to obtain revenue from the invention. Standardization is often necessary for the new technology to be adopted widely. A standard is “a document, established by consensus and approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context”(ISO/IEC Guide 2:2004, definition 3.2). DVD or WiFi are examples of such standards. There are also standards that are not set by a recognized body, instead are produced by a private firm, such as Windows OS and QWERTY keyboard. Biddle et al. (2010) counted how many standards are implemented in a modern laptop. They showed that at least 251 interoperability standards included in a laptop. Standardization plays an important role in our lives.

With the technology becoming more and more complicated, there are more instances in which standard implementers need to use patented technology. A patent that protects an essential technology of a standard is called Standard Essential Patents (SEPs). Essentiality not only that the technology is required but also that there are no substitute technologies. By definition, the SEP holder has a strong bargaining power on licensing contracts. In order to avoid problems and negative consequences, Standard Setting Organizations (SSOs) requires in order for essential patented technology to be included in the standard, holder of the SEP must “declare”, i.e., make public, that it is an SEPs and commit to fair, reasonable, and non-discriminatory (FRAND) terms of licensing. Firms can declare if the firm itself judges the technology to be essential. Declaration does not involve any assessment of actual essentiality of the patented technology. A firm can also choose not to declare a technology that is actually essential.

We examine how the ex-post assessment of standard essential patents (SEPs) affect the patent holder’s strategic incentive to declare SEPs. We consider two forms essentiality assessment by an independent organization and assessment by the courts during a patent dispute or challenge initiated by a standard implementer. The assessment by an independent organization can eliminate declared patents whose essentiality is low. The assessment through a dispute can decrease the number of both declared and non-declared, i.e., non FRAND-encumbered, patents different trade-offs affect the right holder’s strategic declaration incentive. We obtain the following results. First, there is less declaration when there is ex-post assessment of either types, compared to no assessment. Second, there is less declaration with assessment by an independent organization than with assessment through disputes We also show the right holder with high essentiality patents sets higher declaration rate than that with low essentiality patents.