

Patent and Antitrust Issues in Standard Setting for High-Tech Industries

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Standard setting organizations generate significant pro-competitive benefits for both manufacturers and consumers, advancing new technologies and fostering interoperability between products. Yet the standard-setting process can be abused by patent holders. A participant in the standard setting process who enforces its patent covering the standardized product or method can in effect impose a patent tax on an entire industry segment, and may gain significant market power.

A recent decision of the Court of Appeals for the Federal Circuit highlights the risk for patent holders who take this “patent hold-up” route – unenforceability of the patents at issue and an award of attorneys’ fees. In *Qualcomm Inc. v. Broadcom Corp.* the Federal Circuit affirmed in part a district court’s ruling rendering two patents unenforceable as to standard-compliant products because the patent holder, Qualcomm, breached a duty to disclose the patents to a standard setting organization. However, the standard setting group’s rules must be clear in requiring disclosure. In another recent decision, *Rambus, Inc. v. FTC*, the Court of Appeals for the D.C. Circuit reversed the FTC’s finding of a Section 2 violation. The court found “expectations” of disclosure by members of the group, and a member’s plans for patent applications, insufficient evidence of deception. Nevertheless, the court agreed that if deception results in patented technology being standardized in place of alternative, patent-free technology, antitrust liability may be found.

Mr. Keville will discuss these and other recent developments, as well as prior case law concerning patents and antitrust issues in the standard setting context. He will discuss the impact on litigators, as well as for standard setting organizations and participant companies.

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Cases Discussed

Am. Soc'y of Mech. Eng'rs v. Hydrolevel Corp.,
456 U.S. 556 (1982)

Allied Tube & Conduit Corp. v. Indian Head, Inc.,
486 U.S. 492 (1988)

In re Dell Computer Corp.,
121 FTC 616, 1996 WL 350997 (May 20, 1996)

Broadcom Corp v. Qualcomm Inc.,
501 F.3d 297 (3rd Cir. 2007)

Qualcomm Inc. v. Broadcom Corp.,
548 F.3d 1004 (Fed. Cir. 2008)

Rambus, Inc. v. FTC ,
522 F.3d 456 (D.C. Cir. 2008)

Hynix Semiconductor, Inc. v. Rambus, Inc.,
609 F. Supp. 2d 988 (N.D. CA 2009)