

关于禁止滥用知识产权排除、限制竞争行为的规定 Provisions on the Prohibition of the Abuse of Intellectual Property Rights to Exclude or Restrict Competition

发文日期: 2015-04-07 Promulgation date: 2015-04-07  
地域: 全国 Effective region: NATIONAL  
颁布机关: 国家工商行政管理总局 Promulgator: State Administration for Industry and Commerce  
文号: 国家工商行政管理总局令第74号 Document no: Order of the State Administration for Industry and Commerce No.74  
时效性: 尚未生效 Effectiveness: To be effective  
生效日期: 2015-08-01 Effective date: 2015-08-01  
所属分类: 反垄断法 (市场竞争法->反垄断法) Category: Anti-Monopoly Law (Market Competition Law->Anti-Monopoly Law)

关于禁止滥用知识产权排除、限制竞争行为的规定 Provisions on the Prohibition of the Abuse of Intellectual Property Rights to Exclude or Restrict Competition

国家工商行政管理总局令第74号 Order of the State Administration for Industry and Commerce No.74

2015年4月7日 April 7, 2015

《关于禁止滥用知识产权排除、限制竞争行为的规定》已经国家工商行政管理总局局务会议审议通过，现予公布，自2015年8月1日起施行。

The Provisions on the Prohibition of the Abuse of Intellectual Property Rights to Exclude or Restrict Competition, which were deliberated on and adopted at the executive meeting of the State Administration for Industry and Commerce, are hereby promulgated for implementation as of August 1, 2015.

局长 张茅 Zhang Mao, Minister

关于禁止滥用知识产权排除、限制竞争行为的规定 Provisions on the Prohibition of the Abuse of Intellectual Property Rights to Exclude or Restrict Competition

(2015年4月7日国家工商行政管理总局令第74号公布) (Promulgated by Order of the State Administration for Industry and Commerce No.74 on April 7, 2015)

第一条 为了保护市场公平竞争和激励创新，制止经营者滥用知识产权排除、限制竞争的行为，根据《中华人民共和国反垄断法》（以下简称《反垄断法》），制定本规定。

**Article 1** In order to protect fair market competition, encourage innovation, and stop operators from abusing intellectual property rights to exclude or restrict competition, the Provisions on the Prohibition of the Abuse of Intellectual Property Rights to Exclude or Restrict Competition (hereinafter referred to as the "Provisions") are formulated in accordance with the Anti-monopoly Law of the People's Republic of China (hereinafter referred to as the "Anti-monopoly Law").

第二条 反垄断与保护知识产权具有共同的目标，

**Article 2** Anti-monopoly and intellectual property rights protection share a common goal, namely, promoting

即促进竞争和创新，提高经济运行效率，维护消费者利益和社会公共利益。

经营者依照有关知识产权的法律、行政法规规定行使知识产权的行为，不适用《反垄断法》；但是，经营者滥用知识产权，排除、限制竞争的行为，适用《反垄断法》。

**第三条** 本规定所称滥用知识产权排除、限制竞争行为，是指经营者违反《反垄断法》的规定行使知识产权，实施垄断协议、滥用市场支配地位等垄断行为（价格垄断行为除外）。

本规定所称相关市场，包括相关商品市场和地域市场，依据《反垄断法》和《国务院反垄断委员会关于相关市场界定的指南》进行界定，并考虑知识产权、创新等因素的影响。在涉及知识产权许可等反垄断执法工作中，相关商品市场可以是技术市场，也可以是含有特定知识产权的产品市场。相关技术市场是指由行使知识产权所涉及的技术和可以相互替代的同类技术之间相互竞争所构成的市场。

**第四条** 经营者之间不得利用行使知识产权的方式达成《反垄断法》第十三条、第十四条所禁止的垄断协议。但是，经营者能够证明所达成的协议符合《反垄断法》第十五条规定的除外。

**第五条** 经营者行使知识产权的行为有下列情形之一的，可以不被认定为《反垄断法》第十三条第一款第六项和第十四条第三项所禁止的垄断协议，但是有相反

competition and innovation, improving economic operation efficiency, and safeguarding consumer and public interests.

The Anti-monopoly Law does not apply to the exercise of intellectual property rights by operators in accordance with the provisions of laws and administrative regulations concerning intellectual property rights, but applies to the abuse of intellectual property rights by operators to exclude or restrain competition.

**Article 3** For the purpose of the Provisions, "abuse of intellectual property rights to exclude or restrict competition" refers to the operators violating the Anti-monopoly Law when exercising the intellectual property rights, implementing monopoly agreements, abusing dominant market positions and conducting other monopolistic behaviors (except for the price monopoly). For the purpose of the Provisions, "relevant markets", including the relevant commodity markets and the relevant geographic markets, are defined pursuant to the Anti-monopoly Law and the Guidelines of the Anti-monopoly Commission under the State Council concerning the Definition of Relevant Markets, with the effects of intellectual property rights, innovation and other factors taken into consideration. In relation to intellectual property licensing and other anti-monopoly enforcement, the relevant commodity markets may be either technology markets or product markets containing specific intellectual property rights. Relevant technology markets refer to the markets formed through the competition between technologies involved in the exercise of intellectual property rights and alternative similar technologies.

**Article 4** Operators shall not, by way of exercising intellectual property rights, reach among themselves any monopoly agreement prohibited in Articles 13 and 14 of the Anti-monopoly Law, except the operators can demonstrate that the agreement reached complies with the provisions of Article 15 of the Anti-monopoly Law.

**Article 5** If an operator's exercise of intellectual property rights falls under either of the following circumstances, the relevant agreement may not be regarded as a monopoly agreement prohibited in Item 6, Paragraph 1 of Article 13 and Item 3 of Article 14 of the Anti-monopoly Law, except there is contrary evidence indicating that such agreement is of effects to

的证据证明该协议具有排除、限制竞争效果的除外：

（一）具有竞争关系的经营者在受其行为影响的相关市场上的市场份额合计不超过百分之二十，或者在相关市场上存在至少四个可以以合理成本得到的其他独立控制的替代性技术；

（二）经营者与交易相对人在相关市场上的市场份额均不超过百分之三十，或者在相关市场上存在至少两个可以以合理成本得到的其他独立控制的替代性技术。

exclude or restrict competition:

1. the competitive operators' share in the relevant market affected by their behaviors does not exceed 20% in total, or there are at least four alternative technologies under other independent control in the relevant market which may be obtained at reasonable costs; and

2. neither of the shares of the operator and transaction counterparts in the relevant market does not exceed 30%, or there are at least two alternative technologies under other independent control in the relevant market which may be obtained at reasonable costs.

**第六条** 具有市场支配地位的经营者不得在行使知识产权的过程中滥用市场支配地位，排除、限制竞争。

市场支配地位根据《反垄断法》第十八条和第十九条的规定进行认定和推定。经营者拥有知识产权可以构成认定其市场支配地位的因素之一，但不能仅根据经营者拥有知识产权推定其在相关市场上具有市场支配地位。

**Article 6** An operator who is of dominant market position shall not abuse the dominant market position to exclude or restrict competition when exercising intellectual property rights.

The dominant market position shall be recognized and inferred in accordance with Articles 18 and 19 of the Anti-monopoly Law. An operator owning the intellectual property rights may constitute one of the factors to recognize its dominant market position, but an operator shall not be directly inferred to have dominant market position in the relevant market only based on its ownership of the intellectual property rights.

**第七条** 具有市场支配地位的经营者没有正当理由，不得在其知识产权构成生产经营活动必需设施的情况下，拒绝许可其他经营者以合理条件使用该知识产权，排除、限制竞争。

认定前款行为需要同时考虑下列因素：

（一）该项知识产权在相关市场上不能被合理替代，为其他经营者参与相关市场的竞争所必需；

（二）拒绝许可该知识产权将会导致相关市场上的竞争或者创新受到不利影响，损害消费者利益或者公共利益；

（三）许可该知识产权

**Article 7** An operator who is of dominant market position may not, without justification, refuse to license other operators to use its intellectual property rights on reasonable terms so as to exclude or restrict competition under the circumstance that the intellectual property rights constitute a necessary facility for the relevant production and operating activities.

Recognition of the act in the preceding paragraph needs to consider the following factors at the same time:

1. there are no other reasonable substitutes for the intellectual property rights in the relevant market and the intellectual property rights are necessary for other operators to participate in competition in the relevant market;

2. refusal to license the intellectual property rights will have adverse impact on competition or innovation in the relevant market, and harm the consumer or public interests; and

3. licensing the intellectual property rights will not cause unreasonable harm to the operator.

对该经营者不会造成不合理的损害。

第八条 具有市场支配地位的经营者没有正当理由，不得在行使知识产权的过程中，实施下列限定交易行为，排除、限制竞争：

（一）限定交易相对人只能与其进行交易；

（二）限定交易相对人只能与其指定的经营者进行交易。

**Article 8** An operator who is of dominant market position may not, without justification, place the following restraints on transactions so as to exclude or restrict competition in exercising intellectual property rights:

1. specifying that the transaction counterparts can only trade with it; and
2. specifying that the transaction counterparts can only trade with the operators it designates.

第九条 具有市场支配地位的经营者没有正当理由，不得在行使知识产权的过程中，实施同时符合下列条件的搭售行为，排除、限制竞争：

（一）违背交易惯例、消费习惯等或者无视商品的功能，将不同商品强制捆绑销售或者组合销售；

（二）实施搭售行为使该经营者将其在搭售品市场的支配地位延伸到被搭售品市场，排除、限制了其他经营者在搭售品或者被搭售品市场上的竞争。

**Article 9** An operator who is of dominant market position may not, without justification, implement at the same time the tied sale meeting the following conditions so as to exclude or restrict competition in exercising intellectual property rights:

1. compulsorily bundling or combining different products for sales in violation of trade practices or consumption habits, or by ignoring the function of products; and
2. implementing tied sale enabling the operator to extend its dominant market position from the tying product market to the tied product market which excludes or restrains the competition from other operators in the tying product market or tied product market.

第十条 具有市场支配地位的经营者没有正当理由，不得在行使知识产权的过程中，实施下列附加不合理限制条件的行为，排除、限制竞争：

（一）要求交易相对人将其改进的技术进行独占性的回授；

（二）禁止交易相对人对其知识产权的有效性提出质疑；

（三）限制交易相对人在许可协议期限届满后，在不侵犯知识产权的情况下利用竞争性的商品或者技术；

（四）对保护期已经届满或者被认定无效的知识产权

**Article 10** An operator who is of dominant market position may not, without justification, implement the following behaviors with unreasonable restrictive conditions so as to exclude or restrict competition in exercising intellectual property rights:

1. requiring the transaction counterparts to license back the technologies improved thereby exclusively;
2. prohibiting the transaction counterparts from questioning the validity of its intellectual property rights;
3. restraining the transaction counterparts from making use of the competitive commodities or technologies in the case of non-infringement of intellectual property rights after the expiration of the license agreement;
4. continuing to exercise the rights to the intellectual property the protection period of which has expired or which has been determined to be invalid;
5. prohibiting the transaction counterparts from trading with any third party; and
6. adding other unreasonable restrictive conditions to the transaction counterparts.

权继续行使权利；

（五）禁止交易相对人与第三方进行交易；

（六）对交易相对人附加其他不合理的限制条件。

第十一条 具有市场支配地位的经营者没有正当理由，不得在行使知识产权的过程中，对条件相同的交易相对人实行差别待遇，排除、限制竞争。

**Article 11** An operator who is of dominant market position may not, without justification, implement differential treatment on the transaction counterparts with the same conditions so as to exclude or restrict competition in exercising intellectual property rights.

第十二条 经营者不得在行使知识产权的过程中，利用专利联营从事排除、限制竞争的行为。

专利联营的成员不得利用专利联营交换产量、市场划分等有关竞争的敏感信息，达成《反垄断法》第十三条、第十四条所禁止的垄断协议。但是，经营者能够证明所达成的协议符合《反垄断法》第十五条规定的除外。

**Article 12** An operator may not make use of patent pool to exclude or restrain competition in exercising intellectual property rights.

Members of patent pool may not use patent pool to exchange the yield and market segmentation and other sensitive information in relation to competition, and reach any monopoly agreement prohibited in Articles 13 and 14 of the Anti-monopoly Law, except the operator can demonstrate that the agreement reached complies with the provisions of Article 15 of the Anti-monopoly Law.

具有市场支配地位的专利联营管理组织没有正当理由，不得利用专利联营实施下列滥用市场支配地位的行为，排除、限制竞争：

（一）限制联营成员在联营之外作为独立许可人许可专利；

（二）限制联营成员或者被许可人独立或者与第三方联合研发与联营专利相竞争的技术；

（三）强迫被许可人将其改进或者研发的技术独占性地回授给专利联营管理组织或者联营成员；

（四）禁止被许可人质疑联营专利的有效性；

（五）对条件相同的联营成员或者同一相关市场的被许可人在交易条件上实行差别待遇；

（六）国家工商行政管

A patent pool administration organ who is of dominant market position may not, without justification, implement the following acts of abuse of dominant market position by use of patent pool so as to exclude or restrict competition:

1. constraining the members of patent pool from licensing patents as independent licensors other than in patent pool;
  2. constraining the members of patent pool or licensees to research and develop, independently or jointly with any third party, technologies competing with the parent pool;
  3. forcing the licensees to license back the technologies improved or researched and developed thereby exclusively to the patent pool administration organ or the members of patent pool;
  4. prohibiting the licensees from questioning the validity of patent pool;
  5. treating differently the members of patent pool with the same conditions or the licensees in the same relevant market in terms of the transaction conditions; and
  6. other abuse of dominant market position identified by the State Administration for Industry and Commerce.
- For the purpose of the Provisions, "patent pool" refers to an agreement arrangement under which two or more patentees license the parents they own respectively to a third party in a certain manner, such as establishing a

理总局认定的其他滥用市场支配地位行为。

本规定所称专利联营，是指两个或者两个以上的专利权人通过某种形式将各自拥有的专利共同许可给第三方的协议安排。其形式可以是为此目的成立的专门合资公司，也可以是委托某一联营成员或者某独立的第三方进行管理。

第十三条 经营者不得在行使知识产权的过程中，利用标准（含国家技术规范的强制性要求，下同）的制定和实施从事排除、限制竞争的行为。

具有市场支配地位的经营者没有正当理由，不得在标准的制定和实施过程中实施下列排除、限制竞争行为：

（一）在参与标准制定的过程中，故意不向标准制定组织披露其权利信息，或者明确放弃其权利，但是在某项标准涉及该专利后却对该标准的实施者主张其专利权。

（二）在其专利成为标准必要专利后，违背公平、合理和无歧视原则，实施拒绝许可、搭售商品或者在交易时附加其他的不合理交易条件等排除、限制竞争的行为。

本规定所称标准必要专利，是指实施该项标准所必不可少的专利。

第十四条 经营者涉嫌滥用知识产权排除、限制竞争行为的，工商行政管理机关依据《反垄断法》和《工商行政管理机关查处垄断协议、滥用市场支配地位案件程序规定》进行调查。

special joint venture for such purpose and entrusting a member of parent pool or an independent third party to administrate.

**Article 13** An operator shall not use the formulation and implementation of the standards (including the mandatory requirements of national technical specifications, hereinafter the same) to exclude or restrict competition in exercising intellectual property rights.

An operator who is of dominant market position may not, without justification, implement the following acts of excluding or restricting competition in the course of formulation and implementation of the standards:

1. when participating in the formulation of the standards, deliberately not disclosing information on its rights to the standards developing organization, or explicitly waiving its rights, but claiming its patent rights to the implementers of a standard after the standard involves the patent.

2. after the patent has become an essential patent of the standards, in violation of the fair, reasonable and non-discriminatory principles, implementing denial of license, conducting tied sale of products, adding other unreasonable trading conditions in the transaction or implementing other acts of excluding or restrict competition.

For the purpose of the Provisions, the "essential patent of the standards" refers to the patent which is essential to the implementation of such standards.

**Article 14** Where an operator is suspected of abusing the intellectual property rights to exclude or constraint competition, the administration for industry and commerce shall perform the investigation in accordance with the Anti-monopoly Law and the Provisions of the Administrations for Industry and Commerce on the Procedures for the Investigation and Penalties of Monopoly Agreement Cases and Abuse of Dominant

## Market Position Cases.

第十五条 分析认定经营者涉嫌滥用知识产权排除、限制竞争行为，可以采取以下步骤：

（一）确定经营者行使知识产权行为的性质和表现形式；

（二）确定行使知识产权的经营者之间相互关系的性质；

（三）界定行使知识产权所涉及的相关市场；

（四）认定行使知识产权的经营者的市场地位；

（五）分析经营者行使知识产权的行为对相关市场竞争的影响。

分析认定经营者之间关系的性质需要考虑行使知识产权行为本身的特点。在涉及知识产权许可的情况下，原本具有竞争关系的经营者之间在许可合同中是交易关系，而在许可人和被许可人都利用该知识产权生产产品的市场上则又是竞争关系。但是，如果当事人之间在订立许可协议时不是竞争关系，在协议订立之后才产生竞争关系的，则仍然不视为竞争者之间的协议，除非原协议发生实质性的变更。

第十六条 分析认定经营者行使知识产权的行为对竞争的影响，应当考虑下列因素：

（一）经营者与交易相对人的市场地位；

（二）相关市场的市场集中度；

（三）进入相关市场的难易程度；

（四）产业惯例与产业的发展阶段；

（五）在产量、区域、消费者等方面进行限制的时

**Article 15** When the acts of operators suspected of abusing intellectual property rights to exclude or restrict competition are analyzed and identified, the following steps may be taken:

1. determining the nature and form of the exercise of intellectual property rights by operators;

2. determining the nature of the relationship between the operators who exercise the intellectual property rights;

3. defining the relevant market involving the exercise of intellectual property rights;

4. recognizing the market position of the operators who exercise the intellectual property rights; and

5. analyzing the impact of the acts of the operators on competition in the relevant market in exercise of the intellectual property rights.

Analyzing and identifying the nature of the relationship between the operators need the consideration of the characteristics of the exercise of intellectual property rights per se. In case that intellectual property licensing is involved, the operators who are originally in a competitive relationship are in a trading relationship under a license contract, and the licensor and the licensee are in a competitive relationship in the market in which they both use the intellectual property rights to manufacture products. However, if when the license agreement is entered into, the parties are not in a competitive relationship, and a competitive relationship arises after the agreement is entered into, such agreement shall not be regarded as an agreement between competitors, unless the original agreement substantial changes.

**Article 16** When impacts of the acts by operators to exercise the intellectual property rights on competition are analyzed and identified, the following factors shall be considered:

1. market position of the operators and the transaction counterparts;

2. concentration degree of the relevant market;

3. degree of difficulty to enter the relevant market;

4. industry practices and the development stage of industry;

5. time limit and scope for limitation to production output, territory, consumers and other aspects;

6. impact on the development of innovation and technology promotion;

7. operators' innovation capability and technological

间和效力范围；

（六）对促进创新和技术推广的影响；

（七）经营者的创新能力和技术变化的速度；

（八）与认定行使知识产权的行为对竞争影响有关的其他因素。

change speeds; and

8. other factors related to identification of the impacts of exercise of intellectual property rights on competition.

第十七条 经营者滥用知识产权排除、限制竞争的行为构成垄断协议的，由工商行政管理机关责令停止违法行为，没收违法所得，并处上一年度销售额百分之一以上百分之十以下的罚款；尚未实施所达成的垄断协议的，可以处五十万元以下的罚款。

经营者滥用知识产权排除、限制竞争的行为构成滥用市场支配地位的，由工商行政管理机关责令停止违法行为，没收违法所得，并处上一年度销售额百分之一以上百分之十以下的罚款。

工商行政管理机关确定具体罚款数额时，应当考虑违法行为的性质、情节、程度、持续的时间等因素。

**Article 17** If an operator's abuse of intellectual property rights to exclude or restrict competition constitutes a monopoly agreement, the administration for industry and commerce shall order the operator to stop the illegal act, confiscate the illegal income, and impose a fine of not less than 1% but not more than 10% of annual sales of the previous year; if the operator has not yet implemented the monopoly agreement reached, the operator may be imposed a fine of not more than CNY500,000.

If an operator's abuse of intellectual property rights to exclude or restrict competition constitutes an abuse of dominant market position, the administration for industry and commerce shall order the operator to stop the illegal act, confiscate the illegal income, and impose a fine of not less than 1% but not more than 10% of annual sales of the previous year.

When determining the specific amount of the fine, the administration for industry and commerce shall consider the nature, circumstance, extent, duration and other factors of the violations.

第十八条 本规定由国家工商行政管理总局负责解释。

**Article 18** The Provisions shall be interpreted by the State Administration for Industry and Commerce.

第十九条 本规定自2015年8月1日起施行。

**Article 19** The Provisions shall come into force as of August 1, 2015.