

**The CD product patent
licensing practices in Taiwan
were in violation of the Fair
Trade Law**

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Respondents:

- **Koninklijke Philips Electronics ,
N.V. (the Netherlands)**
- **Sony Corporation (Japan)**
- **Taiyo-Yuden Co., Ltd. (Japan)**

Industry

Information Storage Media
Production Industry

Relevant Laws:

- **Articles 10(1)(ii)**
- **10(1)(iv)**
- **14**

of the Fair Trade Law

Summary

- To facilitate patent licensing to CD-R producers around the world, the respondents adopted **a joint licensing arrangement**
- Sony and Taiyo-Yuden first licensed their patent rights to Philips
- Philips bundled the rights together for licensing to other companies

Issues

- the joint licensing practices were in violation of provisions of the Fair Trade Law (FTL) regarding **concerted actions**
- **price setting by monopolistic enterprises**
- joint licensing caused such important trading information as patent terms and contents to be unclear and was in violation of provisions of the FTL regarding **abuse of market position** by a monopolistic enterprise

Investigations of TFTC

- (1) competition relations among the respondents:
- the respondents adopted a joint licensing or "patent pool" arrangement in which a consensus was reached on royalties and others

Investigations of TFTC

- (2) setting of royalties :
- respondents possessed an overwhelming advantage due to the patent technologies owned by them and the joint licensing practices among them

Investigations of TFTC

- the licensing agreement stipulated royalties to be paid as “3 % of the net selling price with a minimum of 10 Yen [per licensed product].”
- CD-R prices had fallen substantially at the time, 10 Yen was obviously the larger figure. Hence royalties was up to at least 20 or 30 % of the selling prices.

Investigations of TFTC

- (3) refusal of providing important information :
- such as licensing agreements and others
- during the process of negotiating, Philips, who represented the three above-mentioned companies, granted nearly 200 patents to an individual firm. Philips *did not provide individual patent licensing offer*; instead, it merely listed the numbers and names of the patents at issue in the U.S. and Japan.

Grounds for Disposition

- (1) the respondents' agreement apparently affected the market function of supplying and demanding for CD-R patent
- because of concerted act's restricting market competition, impeding the functioning of price mechanisms and damaging consumer rights and interests, the FTL imposes a relatively strict prohibition on concerted action
- The respondents failed to apply to the FTC for an exemption

Grounds for Disposition

- (2) the joint licensing agreement among the respondents enabled them to obtain an overwhelming position in the CD-R patent licensing market; hence they constitute monopolistic enterprises under Article 5 of the FTL
- supply and demand in the market had changed, the respondents, who maintained their method of calculating royalties, and failed to effectively respond to changes in supply and demand in the market

Grounds for Disposition

- (3) § 10(1)(iv) of the FTL provides that monopolistic enterprises shall not abuse their market position by other acts
- While refusing to provide the licensees with important trading information, Philips demanded that the *licensees signed the contested licensing agreement*, and *sought payment of royalties*
- the agreement also demanded that the licensees withdraw any invalidation actions against the patents at issue
- Relying on its dominant position Philips obviously compelled the licensees to accept the licensing agreement

Grounds for Disposition

- (4) After considering the unlawful acts' impact, as well as the respondents' motives for the violation, benefits obtained thereby, and considerable business scales and prominent market standing, the TFTC imposed administrative fines of NT\$ 8 million on Philips, NT\$ 4 million on Sony, and NT\$ 2 million on Taiyo Yuden, and ordered the companies to immediately cease the illegal practices