

# Current Issues in IP & Antitrust

## ■ Blocking Tactics Against Generics

- Patent thickets (e.g. *Boehringer*)
- Defensive patents
- Patent settlements (e.g. *Schering Plough*, *Servier* investigation)
- Vexatious litigation (*ITT Promedia*)
- Pre-entry agreements (e.g. *Servier* investigation)
- Regulatory complaints (e.g. *Astra Zeneca*)

## ■ Agreements between innovators: R&D restrictions, exclusivity, high market shares

# Ip And Antitrust Ip And Antitrust

**Christina Bohannon**



## **Ip And Antitrust Ip And Antitrust:**

### **Intellectual Property, Antitrust and Cumulative Innovation in the EU and the US** Thorsten Käseberg, 2012-06-08

For decades the debate about the tension between IP and antitrust law has revolved around the question to what extent antitrust should accept that IP laws may bar competition in order to stimulate innovation. The rise of IP rights in recent years has highlighted the problem that IP may also impede innovation if research for new technologies or the marketing of new products requires access to protected prior innovation. How this cumulative innovation is actually accounted for under IP and antitrust laws in the EU and the US and how it could alternatively be dealt with are the central questions addressed in this unique study by lawyer and economist Thorsten Käseberg. Taking an integrated view of both IP and antitrust rules in particular on refusals to deal based on IP, the book assesses policy levers under European and US patent, copyright and trade secrecy laws such as the bar for and scope of protection as well as research exemptions, compulsory licensing regimes and misuse doctrines. It analyses what the allocation of tasks is and should be between these IP levers and antitrust rules in particular the law on abuse of dominance (Article 102 TFEU) and monopolisation (Section 2 Sherman Act) while particular attention is paid to the essential facilities doctrine including pricing methodologies for access to IP. Many recent decisions and judgments are put into a coherent analytical framework such as *IMS Health AstraZeneca*, *GlaxoSmithKline* in the EU, *Apple France*, *Orange Book Standard*, *Germany Trinko*, *Rambus*, *NYMEX*, *eBay*, *US Microsoft* and *IBM T3* both EU and US. Further topics covered include IP protection for software, interoperability, information and databases, industry specific tailoring of IP, antitrust innovation market analysis and the WTO law on the IP antitrust interface.

*Antitrust Law and Intellectual Property Rights* Christopher R. Leslie, 2011. In *Antitrust Law and Intellectual Property Rights: Cases and Materials* Christopher R. Leslie describes how patents, copyrights and trademarks confer exclusionary rights on their owners and how firms sometimes exercise this exclusionary power in ways that exceed the legitimate bounds of their intellectual property rights. Leslie explains that while substantive intellectual property law defines the scope of the exclusionary rights, antitrust law often provides the most important consequences when owners of intellectual property misuse their rights in a way that harms consumers or illegitimately excludes competitors. Antitrust law defines the limits of what intellectual property owners can do with their IP rights. In this book, Leslie explores what conduct firms can and cannot engage in while acquiring and exploiting their intellectual property rights and surveys those aspects of antitrust law that are necessary for both antitrust practitioners and intellectual property attorneys to understand. This book is ideal for an advanced antitrust course in a JD program. In addition to building on basic antitrust concepts, it fills in a gap that is often missing in basic antitrust courses yet critical for an intellectual property lawyer: the intersection of intellectual property and antitrust law. The relationship between intellectual property and antitrust is particularly valuable as an increasing number of law schools offer specializations and LL.M.s in intellectual property. This book also provides meaningful material for both undergraduate and graduate business

schools programs because it explains how antitrust law limits the marshalling of intellectual property rights **Antitrust, Patents, and Copyright** François Lévêque, Howard A. Shelanski, 2005-01-01 In modern markets innovation is at least as great a concern as price competition The book discusses how antitrust policy and patent and copyright laws interact to create market dynamics that affect both competition and innovation Antitrust and intellectual property policies for the most part are complementary sharing common goals of promoting innovation and economic welfare In some cases however their distinct approaches one based on competition and the other on exclusion come into conflict As antitrust authorities focus increasingly on ensuring that firms do not interfere with innovation by rivals or impede the pace of technological progress in an industry they necessarily must confront difficult questions about the strength and scope of intellectual property rights When should private property rights give way to public competition objectives When is it appropriate to remedy anticompetitive outcomes through access to protected intellectual property How does antitrust enforcement or competition itself affect incentives to innovate Leading economists and lawyers address these questions from both US and EU perspectives in discussing salient antitrust cases involving intellectual property rights such as Microsoft Magill Kodak IMS and Intel *IP and Antitrust: An Analysis of Antitrust Principles Applied to Intellectual Property Law, 3rd Edition* Hovenkamp, Janis, Lemley, Leslie, Carrier, 2016-01-01 Intellectual Property and Antitrust Mariateresa Maggiolino, 2011-01-01 This book brings to bear Professor Maggiolino's considerable skills as a comparative competition law scholar on what is perhaps the single most important competition policy issue facing us today namely how to use IP policy and competition policy in tandem to further both economic competition and competition in innovation Professor Maggiolino's book covers a large range of IP practices by dominant firms where competition law can be invoked including sham litigation and product design improper infringement actions predation and refusals to license This book is well researched well written and completely up to date Every serious competition law antitrust and intellectual property scholar and practitioner should regard it as must reading *Intellectual Property and the Limits of Antitrust* Katarzyna Czapracka, 2010-01-01 An excellent account of practice on both sides of the Atlantic regarding the intersection of antitrust and intellectual property rights The author provides a detailed account of the legal discussion in an economics informed manner A must read as far as I am concerned for practitioners and academicians alike Petros C Mavroidis Columbia Law School New York US University of Neuchâtel Switzerland and CEPR UK This book examines the growing divergences between the EU and the US in their approach to antitrust law enforcement particularly where it relates to intellectual property IP rights The scope of US antitrust law as defined in the Supreme Court's decisions in *Trinko* and *Credit Suisse Securities* is much narrower than the scope of EU competition law US antitrust enforcers have become increasingly reluctant to apply antitrust rules to regulated markets whereas the European Commission has consistently used EU competition rules to correct the externalities resulting from government action The contrasting approaches adopted by US and EU antitrust enforcers to these issues as with the

differences in addressing market dominance have had a profound impact on the scope of antitrust intervention in the IP field. This book provides an in depth analysis of the relevant recent developments on both sides of the Atlantic and identifies the pitfalls of regulating IP through competition rules. With a unique comparative perspective this book will be an invaluable resource for postgraduate students, academics and practitioners in IP and competition law.

**IP and Antitrust** Herbert Hovenkamp, Mark D. Janis, Mark A. Lemley, Christopher R. Leslie, Michael A. Carrier, 2017. Maximize intellectual property rights and minimize antitrust risks with the Third Edition of *IP and Antitrust: An Analysis of Antitrust Principles Applied to Intellectual Property Law*. While intellectual property licensing agreements are generally pro competitive, antitrust issues can arise. Licensing arrangements raise concerns under the antitrust laws if they are likely to adversely affect the prices, quantities, qualities or varieties of goods and services available. Therefore, companies MUST factor these antitrust considerations into the drafting and review of these licensing agreements. The Third Edition of *IP and Antitrust: An Analysis of Antitrust Principles Applied to Intellectual Property Law* is reorganized and rewritten to address the following important topics: Exclusion payment settlements in the pharmaceutical industry; Post expiration royalties and payments; Monopolization and Refusals to License; Tying; Exclusive Dealing and Related Licensing Practices; REMS; product hopping and manipulation of the regulatory process; Package Licensing; Blanket Licenses and Block Booking; Anticompetitive Royalty Provisions; Resale Price Maintenance. Confidently draft and review intellectual property licensing agreements with *IP and Antitrust: An Analysis of Antitrust Principles Applied to Intellectual Property Law*.

*Antitrust Enforcement & Intellectual Property Rights: Promoting Innovation & Competition* United States. Department of Justice, 2007. IP and Antitrust Christina Bohannon, 2013. IP and Antitrust Herbert Hovenkamp, 2002. *The Intersection of Antitrust and Intellectual Property* Gary Myers, 2007. As intellectual property has grown in importance, the interaction between antitrust law and intellectual property has developed into a crucial part of the legal landscape. This new text is the first casebook expressly designed for a course on the intersection of intellectual property and antitrust law or for an advanced seminar on intellectual property misuse. It may also be suitable for supplemental use in a course on intellectual property licensing or litigation. Written by a professor who has worked in both the antitrust and intellectual property fields for over two decades, the casebook addresses both the rights of authors and inventors and the interest of society in promoting competition, expanding its base of knowledge, improving technology and protecting consumer welfare.

**Intellectual Property and Antitrust Handbook**, 2007

**Antitrust Issues in Intellectual Property Law** Bradford P. Lyerla, 2016. Focusing on specific recent developments in antitrust law, this guide helps the intellectual property lawyer stay informed about the many ways in which antitrust law limits disciplines and counterbalances intellectual property law and vice versa. Practical and clearly written, this is a concise and handy resource to help you understand the issues and outcomes for clients who will be directly affected by the interplay of these two areas of law. Topics cover these IP antitrust issues from a practitioner's viewpoint: Acquisition, procurement and

ownership of IP Licensing Litigation Settlements under the Hatch Waxman Act Incorporation of IP into a standard set by a standard setting organization SSO

**The Interplay Between Competition Law and Intellectual Property** Gabriella Muscolo, Marina Tavassi, 2019-01-17 Although competition law and intellectual property are often interwoven until this book there has been little guidance on how they work together in practice As the intersection between the two fields continues to grow worldwide both in case law and in regulation the book s markets based approach focusing on sectors such as pharmaceuticals IT telecoms energy and agriculture in eleven of the world s most active jurisdictions provides a much needed in depth understanding of how this interplay reveals itself among the different legal systems Written by a range of authors including judges regulators academics economists and practitioners in both fields the book provides an international comparative perspective as well as detailed analysis of specific cases policies and proposals for change Among the issues and topics covered are the following free movement of goods and the protection of intellectual property rights standard essential patents intellectual property rights between technological development and consumer protection geo blocking online platforms and antitrust excessive prices In this context special attention is paid throughout to the increasing dialogue among Competition Authorities and between Judges and Competition Authorities around the world As matchless remedy for the lack of uniformity heretofore the book s investigation of the nexus between competition law and intellectual property in different sectors and in various countries takes a giant step towards a more balanced approach and more levelled regulation and practices It will be warmly appreciated by policy makers decision makers regulators practitioners and academics in both competition law and intellectual property fields

**Intellectual Property and Antitrust Law** William C. Holmes, 1983

*A New Balance Between IP and Antitrust* Mark A. Lemley, 2011 In this article I introduce the interaction between intellectual property IP and antitrust law I describe the ways in which these two important areas of government regulation are and are not in tension and discuss the history of the relationship between these laws I argue that IP and antitrust have cycled between over and under protection and that we are currently and mistakenly conditioned to think of private property and private ordering as efficient in and of themselves rather than as efficient only in the context of robust market competition Further I argue that antitrust can serve the goals of innovation and dynamic efficiency directly in circumstances in which competition not monopoly serves as a spur to innovation The goal of the IP and antitrust laws should be to seek a robust balance between competition and monopoly in the service of dynamic efficiency When IP laws are strong antitrust laws should also be strong and vice versa

Intellectual Property Rights and Competition in Standard Setting Valerio Torti, 2015-10-05 Competition and intellectual property rights IPRs are both necessary for a market to work efficiently and to promote consumer welfare Properly applied intellectual property rules define a legal framework which allows undertakings to profit from their inventions This in turn encourages competition among firms and enhances dynamic efficiency to the benefit of consumer welfare Standard setting represents one of the fields where the interaction between competition law and

IPRs clearly comes to light The collaborative goal of standard setting organizations SSOs is to adopt and promote standards that either do not conflict with anyone s right or if they do are developed under condition that patents are licensed under defined terms This book examines the tension between IPRs and competition in the standard setting field which can arise when innovators over exploit the rights they have been granted and hold up an entire industry The book compares EU and U S jurisdictions with a particular focus on the IT and telecommunication sectors It scrutinizes those practices which could harm standard setting and its goals looking at misleading conducts by SSOs members which may lead to breach the EU and U S antitrust provisions on abuse of market power Recent developments in EU and U S standard setting are analysed highlighting the differences in enforcement approaches The book considers how the optimal balance between IPRs and industry standards can be struck suggesting a policy model which takes into account both innovators interests and SSOs goals *Federal antitrust guidelines for the licensing of intellectual property* , **Intellectual Property and**

**Competition Law** Peter Chroczel,Moritz Lorenz,2016-05-15 Inevitably every marketed product or service can always be located at the intersection of intellectual property law and competition law a nexus rife with potential problems throughout the life of an intellectual property IP right This important book is the first to focus in depth on this intersection in the European context masterfully elucidating the consequences for IP rights owners from the right s inception to its transfer sale or demise The authors describes and analyses the following topics and more in detail characteristics purpose and theoretical justifications of IP rights obtaining maintaining and exploiting an IP right effects of provisions of European competition law regarding cartels block exemptions abuse of dominant position free movement of goods and merger control competition between originator companies and generic companies licensing especially the problem of refusal to grant a license and enforcement of an IP right The book analyses all major cases affecting aspects of the intersection supported by an examination of the historical background and political influence concerning the two areas of European law There are also special chapters on the prominent and influential national legal systems of Germany the United States China The Netherlands and the United Kingdom An annex provides texts of the major antitrust regulations dealing with European IP rights As a biography of IP rights focusing on areas of entanglement with European competition law this book is without peer Its clear sighted view of the status quo and emerging trends in the two fields will be of immeasurable value to practitioners policymakers and academics dealing with issues at the intersection of intellectual property law and competition law in Europe and elsewhere [The Intellectual Property and Antitrust Review](#) Thomas Vinje,2020

## **Ip And Antitrust Ip And Antitrust** Book Review: Unveiling the Power of Words

In some sort of driven by information and connectivity, the energy of words has become more evident than ever. They have the capability to inspire, provoke, and ignite change. Such may be the essence of the book **Ip And Antitrust Ip And Antitrust**, a literary masterpiece that delves deep in to the significance of words and their effect on our lives. Published by a renowned author, this captivating work takes readers on a transformative journey, unraveling the secrets and potential behind every word. In this review, we will explore the book is key themes, examine its writing style, and analyze its overall affect readers.

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