

Patent
LICENSING
and
COMPETITION
ISSUES

HALIZA A. SHUKOR
NAZURA ABDUL MANAP

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www.ukm.my/penerbit
e-mel: penerbit@ukm.edu.my

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Preface

Patent licensing is a form of patent exploitation by patent owners. Patent license is a contract entered into by the parties based on their mutually agreed terms. On that basis, contracting parties are free to include provisions in the patent license contract which may contain anti-competitive restrictions in nature. In addition to that, a patent owner may abuse his dominant position in the event the patent owner is the only owner of a patented technology. Engagement with restrictive agreements and abuse of dominant position by a patent owner are prohibited by the competition law. Therefore, assessment of restrictions in the patent license contract and behavior of dominant patent owners are necessary to determine whether there are violations of competition law. In Malaysia, the Competition Act 2010 and the Competition Commission Act 2010 are the main legislations for competition law. In addition to that, there are guidelines being used to guide the competition commission in implementing competition law in Malaysia, namely, Guidelines on Market Definition, Guidelines on Anti-competitive Agreements, Guidelines on Complaints Procedure, Guidelines on Abuse of Dominant Position, Guidelines on Financial Penalties, Guidelines on Intellectual Property Rights and Competition Law and Guidelines on Leniency Regime (the existing Guidelines). However, there is a lack of a specific guideline for implementing competition law in patent license. Therefore, it is the objective of this book to identify the laws governing patent licensing which relates to competition law in Malaysia, the European Union and the United States. In addition, this book seeks to examine issues in patent licensing which relates to competition law and analyse the relevant provisions in the competition and patent legislations in Malaysia, the European Union and the United States. This book employs qualitative research which analyses data from primary and secondary sources using comparative, analytical and critical methods. This writing reveals that there is a need for a specific guideline on patent license in Malaysia. This is due to the fact that the Competition Act 2010 contains general provisions on competition law and insufficient guidance in the existing Guidelines to cater issues in patent license. Therefore, this book suggests elements necessary to be included in a specific guideline for patent license. For that

purpose, amendments of provisions in the Competition Act 2010 and the Patents Act 1983 are necessary in order to ensure effective implementation of competition law in patent license area in Malaysia. We would like to thank Universiti Kebangsaan Malaysia for their support through university grant of DPB-2023-067.

Haliza A. Shukor
Nazura Abdul Manap