



Intellectual Property Justifications

Antitrust
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Konomark
Most rights sharable

Some things you definitely can do with a patent

- Charge monopoly prices
- Completely refuse to license to anyone
- Give an exclusive license
- Divide markets geographically with exclusive licenses
- Sue people who are competing with your patented product by making unauthorized products that meet the claims of your patent and get an injunction stopping them from competing with you in this way
- Refuse to make the patented product, refuse to license it, and stop anyone who makes or uses the product with lawsuits and threats of lawsuits

Some things you could do with a patent that might incur antitrust liability

- Grant-back clauses: Require licensees to assign to you any patents on improvements of your invention.
- Tying arrangements: Trying to extend the patent monopoly to unpatented goods by forcing customers to purchase unpatented goods if they want to get the patented goods.
- Block-booking: Forcing a licensee to pay for licenses to a group of patents when the licensee only wants to license one.
- Settling a patent dispute in a way that extends market power or eliminates competition (e.g., *Actavis*).

Licenses with horizontal price conditions

Elhaug's synthesis: “[L]icenses with horizontal pricing conditions are

- legal if the patent is so valuable that the licensee (or licensees) could not make a competitive product without the license, which was true in *General Electric* but demonstrably untrue in *New Wrinkle*. ...
- illegal when, as in *New Wrinkle*, (1) the patent is not very valuable and (2) the parties to the licensing agreement have enough market power that the pricing condition could have an anticompetitive effect.” (bullets added)