



一、法學概論 50%

(一) 政府推動司法改革，近年來已具有具體成果，當然各項制度亦有檢討之處；試以下列兩項具體成果加以介紹其主要內容。(25%)

1、人民觀審試行條例

2、法官法及其法官評鑑制度

(二) 法律的制裁，常因制裁機關、制裁對象，以及制裁行為的不同而有不同類型；其中「刑事制裁」的法定方式有哪些規定，試加介紹其主要內容。(25%)



## 二、文獻評析(50%)

### Microsoft Joins Apple, Calls for Reasonable Patent Rules

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By Chloe Albanesius

Microsoft today joined the chorus of those calling for basic rules regarding the licensing of wireless standard patents.

"Industry standards are vitally important to the development of the Internet and to interoperability among mobile devices and other computers," the company said in a statement. "Consumers and the entire industry will suffer if, in disregard of this promise, firms seek to block others from shipping products on the basis of such standard essential patents."

At issue is something known as FRAND (fair, reasonable and non-discriminatory) licensing obligations, which are intended to keep major corporations in check and avoid abusive patent-related behavior. Basically, if a company holds a patent on a technology that is essential to a particular industry, they should make every effort to license that technology, even to major rivals.

Still, patent battles over "essential" patents persist, prompting the call for clear rules.

Earlier today, it was revealed that Apple wrote a letter to the European Telecommunications Standards Institute (ETSI) back in November asking the group to develop FRAND-related standards.

Google, which is in the process of acquiring Motorola Mobility, has also pledged to license license patents on a FRAND basis, according to reports.

It shouldn't be surprising that Microsoft is in favor of standards that support patent licensing. In October, Redmond announced that it had patent deals for a "majority" of Android devices. Microsoft holds patents relating to navigation and how Web sites display content; technology used on the Android platform.

In a followup blog post, Dave Heiner, Microsoft's deputy general counsel, said Microsoft has been in talks with European antitrust enforcers about this issue for several months. Among other things, Redmond is against injunctions, said patent holders should not require other firms to license back their patents, and called on patent sellers to require their sellers to abide by the same rules, Heiner wrote.



He also argued that the development of standards benefits the tech community as a whole.

"Firms benefit from having their ideas included in new standards, and in exchange for this, firms usually make a promise: that if they have any patents they have that are 'essential' to implementing a standard, they will make these patents available to all," he wrote. "That way every firm can build products based upon the standard, secure in the knowledge that it can obtain a license to any essential patents."

Heiner insisted that "this system works really well, almost all of the time." But as we've seen in recent years, some cases end up in lengthy court battles. "These outliers create a lot of trouble for the international standards ecosystem," Heiner wrote.

For its part, Microsoft sued Barnes & Noble in March for patent infringement regarding the retailer's Android-based Nook e-readers.

(PC Magazine <http://www.pcmag.com/article2/0,2817,2400019,00.asp>)

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