

Effects of new IEEE rules still unclear, economist says

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A leading economist yesterday said controversy remains over how rules changes made by the Institute of Electrical and Electronics Engineers might affect the licensing of standard-essential patents.

Speaking yesterday during an American Bar Association panel, James Langenfeld, the current managing director of Navigant Economics' antitrust practice, said economists have yet to analyse whether the IEEE's new rules are actually benefiting consumers and stimulating innovation as they are intended.

The 2015 revisions to IEEE rules made it more difficult for patent owners to win injunctions against infringers of standard-essential patents, or SEPs, as well as established compulsory licensing on the component level.

Langenfeld said standard-setting involves trying to balance the interests between innovators, or those who own the patented technology that form the basis for the standard, and implementers, which use the patents deemed essential to standard technologies to develop consumer goods.

"Standards try to balance the interests of these two groups because obviously if you have a patent, you want to get a higher rate on royalties," Langenfeld said. "And if you want to be an implementer, you want to [pay] a lower rate."

He said the IEEE's provisions took away some of the original innovators' bargaining power in setting royalty rates, which critics say could result in stifled innovation.

The IEEE has been under attack recently, with several companies filing appeals with the American National Standards Institute, the governing body of standard-setting organisations, over the new rules.

Cisco in-house antitrust counsel Gil Ohana, who also spoke on the panel, said he would like to see more research being done on effects of different SEP rule structures.

"The IEEE's experience so far has been increased interest in IEEE standards development, at least measured by number of new standards development projects that have been initiated since the adoption of the updates in February 2015," Ohana said.

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Cisco, a network company and member of the IEEE, wants standard-setting organisations to answer “basic questions” regarding the basis for calculating a royalty rate on fair and reasonable terms, as the organisations often require, and under what circumstances an SEP owner that has committed to license on fair terms can brandish “the very powerful weapon” of an injunction, Ohana said last year at GCR Live’s IP & Antitrust conference in Washington, DC.

Rajesh James, an attorney in the FTC’s anticompetitive practices division, also spoke on the panel.