Hybrid Licensing of Product Innovations

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Abstract. This paper shows that when a product innovation is protected by a mixture of patents and trade secrets, under the U.S. law the innovator can be induced to license a rival even if patent protection is very broad and there are no partially competitive older products. This opportunity may benefit society. Nevertheless, some legal restrictions in force at the moment do not permit society to reap all potential gains. Since incentive and efficiency considerations suggest that a socially optimal contract should provide for both a negative fixed fee and post-patent royalties at the same unit level as before patent’s expiration, we conclude that per se prohibitions of these practices are unjustified.

Keywords: patents, trade-secrets, post-expiration royalties, hybrid licensing

JEL classification: K21, L13, O34

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1. Introduction

In an often-cited decision—Brulotte v. Thys Co. 379 U.S. 29 (1964)—the US Supreme Court stated that patentee’s use of a royalty agreement that projects beyond the expiration date of the patent is unlawful per se, on the ground that to collect such royalties was to extend the monopoly of the patent to inventions that are properly in the public domain. The license involved in the case was limited to patents, and the royalty rate, which was based on the licensee’s use of a patented machine, was the same before and after the patent expired (Cohen and Gutterman, 1998).

Charging royalties over a period that exceeds the legal term of patent protection is in any case a lawful practice when licenses tie patents to some other intellectual property rights, such as trademarks or trade secrets (which have no fixed expiration). But since courts presume that as a rule in these hybrid licensing agreements patents are inherently more valuable than tied intellectual property rights, contracts must provide for appropriate decreases in the royalty rates when patents terminate. That is, in this case also it is practically impossible to subscribe an enforceable contract providing for unchanged royalties after patent expiration: consistent with Brulotte, such clause would be invalidated as an unfair attempt by the licensor to use the patent as leverage into the post expiration market.

From an economics perspective, the reasoning underlying the decision in Brulotte has been roundly criticized, among others, by Gilbert and Shapiro (1997) and Judge Posner in Scheiber v. Dolby Labs, 293 F.3d 1014 (7th Cir. 2002).\(^1\) Their counterargument is that since the patentee can in no way extract royalties above the value of the innovation, post expiration royalties do not extend the patent duration either technically or practically: as far as market power is concerned, it is a detail whether the patentee extracts royalties at a higher rate over a shorter period of time or a lower rate over a longer period of time.\(^2\) Moreover, permitting royalties to be paid over a longer period can reduce the deadweight loss from the patent monopoly (Gilbert and Shapiro, 1990). Successively, Law (2004) built a model of hybrid licensing, where in an initially duopolistic market the proprietor of a process innovation, who

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\(^2\) In the Guidelines on the application of Article 81 of the EC Treaty to technology transfer agreements issued in 2004, the European Commission adopted this point of view. See the concluding remark in Section 4 below.
is not a producer of the final good, is considering the prospect of licensing one or both of the producing duopolists. In this context, for non-drastic innovations hybrid licensing can enhance efficiency.\(^3\)

But what we can say about a situation in which a new product enters the market and the innovator is a producer of the final good? In our paper we study this case, under the further hypotheses that the product innovation is drastic, i.e. no one would buy a possible old product (Gilbert, 2006), and the patent is very broad, in the sense that the costs of inventing a non-infringing imitation are greater than duopoly profits (Gallini, 1992).

In analyzing optimal patent design with costly imitation, Gallini (1992) finds that broad patents, with patent life adjusted to generate the desired return from research, are socially efficient in that they permit to avoid socially wasteful imitation costs. This result has been questioned on the ground that imitation costs can be avoided through patent licensing (Maurer and Scotchmer, 2002): if entry by imitation constitutes a credible threat because non-infringing imitations can be obtained at positive but not prohibitive costs, the patent holder will be induced to license. If so, optimality requires long-lived, narrow patents, that is imitation costs has to be very low, whereas the incentive to innovate is preserved through an adequate prolongation of the patent life.\(^4\)

Our paper shows that when a product innovation is protected by a mixture of patents and trade secrets, under the U.S. law the producer-innovator does not exclude the opportunity to license a rival even if patent protection is very broad and there are no partially competitive older products.\(^5\) Such hybrid licensing agreements, which extend royalty payments beyond the expiration date of the patent, improve consumer’s welfare with respect to the temporary monopoly alternative (like narrow, long-lived patents in the case of pure patent licensing). Nevertheless, since consumer’s benefits are at a maximum when the royalty level is the same before and after patent’s expiration, not all opportunities are currently exploited: court decisions that invalidate hybrid licensing contracts with non-decreasing royalty do not permit society to reap all potential gains from these agreements. Moreover, we show that in order to

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\(^3\) A process innovation traditionally is said to be drastic (non-drastic) if the monopoly price with the new technology is below (above) the unit cost with the old technology.

\(^4\) In touching the argument of optimal patents we enter a field where the literature is very large. A selection of the first contributions comprehends Tandon (1982), Gilbert and Shapiro (1990), Klemperer (1990), Gallini (1992), and Denicolò (1996).

\(^5\) Our model does not address the question of patentee’s optimal choice of the patent-secret mix. This sort of choice is studied in Ottoz and Cugno (2008) where, however, licensing effects are not explicitly considered.
induce the innovator to strictly prefer a hybrid licensing agreement, although acceptable by the entrant, limited side payments (negative fixed fees) should be permitted. That raises another matter, this time involving the economics basis of antitrust positions.

Section 2 contains a discussion of some legal aspects about royalty terms. In Sections 3 the model is expounded and the results on efficiency and feasibility of hybrid licensing agreements are presented. Section 4 concludes.

2. Royalty terms

The issue of the permissible royalty term has arisen in three distinct contexts: pure patent licensing, pure secret licensing, and hybrid patent-secret licensing agreements.

**Pure patent licensing.** When the subject matter of a license agreement is protected purely by patent law, the reference decision is that of the Supreme Court in *Brulotte v. Thys Co.* 379 U.S. 29 (1964). As summarized in Judge Berzon’s opinion in *Zila, Inc. v. Tinnell* 502 F.3d 1014 (9th Cir. 2007), “...the case involved various patents held by the Thys Company, which sold farmers a hop-picking machine for a flat sum but required them to purchase a license for the patents on the machines in order to use the product. The license contract demanded that, in addition to the initial purchase price of the machines and onerous restrictions on their assignment or use, the farmers pay the larger of a $500 annual royalty or a set royalty rate tied to the amount of hops they harvested each year. The last patent incorporated into the machines expired in 1957. When the farmers subsequently refused to pay the royalty, the Thys Company sued to enforce the licensing contract.”

The Supreme Court invalidated the license agreement as “a bald attempt to exact the same terms and conditions for the period after the patents have expired as they do for the monopoly period.” While conceding that “…a patent empowers the owner to exact royalties as high as he can negotiate with the leverage of his monopoly,” the Court deemed unacceptable to use that same leverage to impose royalty payments for a time extending beyond the patent life. The Court considered the extension of the royalty obligation beyond the patent life as a sort of tying arrangement, whereby a monopolist uses its power in one market to assert itself into another market: a patentee which enjoys a monopoly in the pre-expiration market cannot use that monopoly as leverage into the post-expiration market (Koenig, 2003). As a result, the
Court concluded that a patentee’s use of a royalty agreement that projects beyond the expiration date of the patent is unlawful *per se*, and held the licensee’s royalty obligation unenforceable.

The economic reasoning in *Brulotte* has been recently challenged by Court of Appeals Judge Richard Posner in his decision on *Scheiber v. Dolby, Inc.*, 293 F.3d 1014 (7th Cir. 2002) on the ground that “The duration of the patent fixes the limit of the patentee's power to extract royalties; it is a detail whether he extracts them at a higher rate over a shorter period of time or a lower rate over a longer period of time.” Judge Posner reluctantly applied the *Brulotte* rule to the case at hand, but invited the Supreme Court to overrule it. However the Supreme Court declined to review the decision in *Scheiber*.

**Pure secret licensing.** In the case of pure secret licensing, challenges to the agreement are often brought by the licensee after the trade secret has become publicly available.

According to the decision in *Pitney Bowes, Inc. v. Mestre*, 701 F.2d 1365, 1373 (11th Cir. 1983), the validity of the royalty term of a pure secret license is merely a matter of contract law, that is any term freely negotiated by the licensor and licensee is enforceable. If the parties do not stipulate when royalty payments should terminate, the court will not establish such a term but will enforce the obligation as long as the licensee uses the trade secret (Miller, 1989). *Warner-Lambert v. John F. Reynolds, Inc*, 178 F. Supp. 655 (S.D.N.Y. 1955) is the classic reference case in this area. In 1881, the discoverer of the secret formula for Listerine antiseptic granted Warner-Lambert's predecessor the exclusive commercial use of the formula in exchange for a royalty obligation. The contract contained no date of termination. After seventy-five years, Warner-Lambert filed a declaratory judgment action to terminate the royalty payments on the ground that the Listerine formula had become public knowledge since 1931, when it had been published in the *Journal of the American Medical Association*. The court ruled in favour of the defendant holding that, contrary to the case of royalty agreements involving patents, there was no public interest in preventing enforcement of a royalty obligation when the licensed trade secret becomes publicly available. The court noted that Warner-Lambert, acquiring the secret formula subject to the risk of disclosure, won and maintained a dominant position in the antiseptic market through the years. Thus, the plaintiff's obligation was intended to continue until it ceased to manufacture or sell Listerine, whether or not the formula was disclosed.
Hybrid licensing. When a license agreement involves a technology with both patented and unpatented parts, at the expiration of the patent the licensee often suspends royalty payments, while the licensor claims that know-how protected by trade secret supports the royalty obligation after the patents have expired. If the agreement does not clearly differentiate between patents and trade secrets by providing a separate royalty for each, then courts usually decide in favour of the licensee on the basis that a hybrid license cannot be used to extend the patent monopoly in contradiction of Brulotte (e.g., Chromalloy American Corp. v. Fischmann, 716 F.2d 683, 686 (9th Cir. 1983)).

This point is clarified in Aronson v. Quick Point Pencil Co., 440 US 257 (1979). The case concerned a royalty obligation of a licensee who agreed to pay a patent applicant a reduced royalty rate if the patent was not issued within five years. No patent ever granted, and the licensee sought a judgment that state law could not enforce its obligation to continue to pay royalties on the unpatented invention because that would conflict with federal patent. The Court ruled in favour of the licensor, holding that the licensee’s royalty obligation was independent of federal law. Even though the licensed invention could be easily copied, requiring the licensee to pay royalties was consistent with the patent law.

In substance, courts invalidate hybrid licensing agreements providing for “level royalties”, that is royalties which do not diminish after patent’s expiration. Thus, hybrid licenses should include provisions that separate the royalties from different technologies (such as royalties from patented technologies and royalties form use of trade secrets) and eliminate royalties from patents that expire or are invalidated (which stand for the proposition that royalties should not be due on patents upon expiration or invalidation).

3. Hybrid licensing vs. temporary monopoly exploitation

In this section we expound a simple model where a proprietary product is protected by both patent and trade secret. First, we show that even if the patent is very broad, the technology holder may be indifferent between temporarily exploiting monopoly power and licensing to a rival the entire technology from the outset through a hybrid license. The second option would be better for consumers and thus socially superior. Then, we point out that if limited negative fixed fees are allowed, a feasible hybrid licensing agreement which benefits consumers may become the technology holder’s preferred choice.
3.1. The model

Let’s consider a firm able to produce a new good by utilizing a technology jointly protected by patent and trade secret. By assumption trade secret extends beyond the statutory life of the patent, which is meant to have maximum breadth, so that imitation is necessarily infringing.

There is only one potential entrant who, when the patent expires, can enter the market bearing a fixed cost of independent invention of the secret or through a license. (We will consider the case of numerous potential entrants in Subsection 3.4 below.) The purchase of the license is preferred if the royalty per unit of product set in the contract is not higher than \( P_s \). A third opportunity is that the two firms agree from the outset on a hybrid license allowing the immediate entry of the licensee, despite the maximum patent’s breadth, conditional on the payment of a royalty per unit output \( \rho_p \) during the patent life and a subsequent royalty \( \rho_s \) after patent’s expiration.

The price of the good and the quantity produced are respectively \( P \) and \( X \) and the inverse demand function is \( P = a - X \). Let’s assume then that unit production cost is constant and set equal to zero. The two firms compete à la Cournot so that, calling \( X^A \) and \( X^B \) the production flows of the proprietary firm before and after patent’s expiration, and \( X^A_p \) and \( X^B_p \) the production flows of the entrant firm, in the case of hybrid license we have

\[
X^A_i = \frac{a + \rho_i}{3}, \quad X^B_i = \frac{a - 2\rho_i}{3}, \quad i = p, s. \tag{1}
\]

The corresponding profit flows, including royalties paid by the licensee, will be

\[
\Pi^A_i = \left(\frac{a + \rho_i}{3}\right)^2 + \rho_i \left(\frac{a - 2\rho_i}{3}\right), \quad \Pi^B_i = \left(\frac{a - 2\rho_i}{3}\right)^2, \quad i = p, s. \tag{2}
\]

Let’s now indicate with \( \tau \) patent’s length and suppose, without loss of generality, that secret duration is infinite. Then, setting \( T = 1 - e^{-\tau r} \) where \( r \) is the discount rate, we can write the present values of the two firms’ profits as

\[
V^A = \frac{T}{r} \left[ \left(\frac{a + \rho_p}{3}\right)^2 + \rho_p \left(\frac{a - 2\rho_p}{3}\right) \right] + \frac{1 - T}{r} \left[ \left(\frac{a + \rho_s}{3}\right)^2 + \rho_s \left(\frac{a - 2\rho_s}{3}\right) \right], \tag{3}
\]

\[
V^B = \frac{T}{r} \left(\frac{a - 2\rho_p}{3}\right)^2 + \frac{1 - T}{r} \left(\frac{a - 2\rho_s}{3}\right)^2. \tag{4}
\]
In turn, the value of consumer’s surplus is given by

\[ W = \frac{1}{2} \left[ \frac{T}{r} \left( \frac{2a - \rho_p}{3} \right)^2 + \frac{1-T}{r} \left( \frac{2a - \rho_s}{3} \right)^2 \right]. \]  

(5)

3.2. Social efficiency

Equations (3), (4) and (5) encompass the case of entry of the rival firm after patent’s expiration by the means of a pure secret license. This case is obtained by setting \( \rho_p = a / 2 \) (implying \( X_p^B = 0 \)) and \( \rho_s = \bar{\rho}_s \). Thus, in order to evaluate the effects on social welfare of the two different types of license we do not have to introduce new equations.

Proposition 1. There exists a set of couples \((\rho_p, \rho_s)\) such that a hybrid license is equally profitable for both firms than a pure secret license.

Proof. Let \( V^A \) and \( V^B \) be the present values of the technology proprietor’s profits and of the entrant if entry happens after patent’s expiration by the means of a pure secret license \((\rho_p = a / 2 \text{ and } \rho_s = \bar{\rho}_s)\). By setting \( V^B = \bar{V}^B \) in (4) we obtain the pairs \((\hat{\rho}_p, \hat{\rho}_s)\) which makes hybrid license as profitable as pure secret license for the entrant firm, given by

\[ \hat{\rho}_p = \frac{a}{2} - \frac{1}{2} \sqrt{\frac{1-T}{T} \left[ (a - 2\bar{\rho}_s)^2 - (a - 2\hat{\rho}_s)^2 \right]}. \]  

(6)

Analogously, by setting \( V^A = \bar{V}^A \) in (3), we obtain the combinations between \( \rho_p \) and \( \rho_s \) that make the hybrid license as profitable as pure secret license for the technology proprietor firm. Some calculation shows that the relation in (6) applies to it too. Summing up, all hybrid licensing agreements that respect condition (6) are equally profitable for both firms and are equally profitable as compared to a pure secret license. \( \square \)

We now see the effects on consumer’s surplus.

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\(^6\) Obviously, \( X_p^B = 0 \) for all \( \rho_p \geq a / 2 \).
**Proposition 2.** A hybrid license implying the same profitability of a pure secret license is preferable for consumers.

**Proof.** Differentiating consumer’s surplus in equation (5) and the condition for equal profitability of contracts in equation (6) we can verify that \( dW \geq 0 \) if

\[
(2a - \hat{\rho}_s) (a - 2\hat{\rho}_p) \leq (a - 2\hat{\rho}_s) (2a - \hat{\rho}_p). \tag{7}
\]

This condition is satisfied if \( \hat{\rho}_p \geq \hat{\rho}_s \). Hence starting from a situation where \( \rho_s = \bar{\rho}_s \) and \( \rho_p = a/2 \) (pure secret license) it is possible to increase consumer’s surplus without reducing firms’ profitability shifting to a hybrid license implying a reduction in \( \rho_p \) coupled with an adequate increase in \( \rho_s \). □

Since \( dW > 0 \) as long as \( \hat{\rho}_p > \hat{\rho}_s \), it immediately follows that a hybrid license implying \( \hat{\rho}_p = \hat{\rho}_s \) maximizes consumer’s surplus subject to \( V^B = \overline{V}^B \) and \( V^A = \overline{V}^A \). Then, the following proposition holds.

**Proposition 3.** The legal prohibition to enter a hybrid licensing agreement providing for the same royalty before and after patent’s expiration is socially inefficient.

Anyway, as asserted in Proposition 2, in our model hybrid licensing agreements improves social welfare even if per unit royalties must decline after patent expiration. This welfare improvement is due to the fact that if hybrid licensing agreements were not feasible the royalties would be \( \rho_p = a/2 \) –which would imply monopolistic exploitation of the patent– and \( \rho_s = \bar{\rho}_s \), while hybrid licenses permit a lesser difference between \( \rho_p \) and \( \rho_s \), and this smoothing favours consumers. In other words, allowing for the immediate entry of the rival firm in spite of the drastic nature of the innovation, during the patent life hybrid licensing benefits consumers more than it will damage them successively.

### 3.3. Incentives to adopt hybrid licensing

Till now we saw that the present value of consumer’s surplus is higher if royalties \( \rho_p \) and \( \rho_s \) are chosen according to condition (6) as compared to the case of pure secret license, while the
present values of profits accruing to both the innovator and the entrant remain unaltered. Obviously, this means that the innovator will be indifferent between offering a hybrid license from the outset and offering a pure secret license in the future while retaining the monopoly privilege during the patent life. That is, in this case the innovator has no compelling reasons to offer a hybrid license. The following proposition show how the possibility of including in the contract a clause providing for a side payment would induce the licensor to strictly prefer hybrid licensing. If this side payment is limited, consumers continue to benefit from the agreement.

**Proposition 4.** If licensing agreements providing for negative fixed fees are feasible, it is possible to obtain, in comparison with a pure secret license, an increase both of the present value of consumer’s surplus and present value of licensor’s profits.

**Proof.** By setting \( \rho_p = a/2 \) and \( \rho_s = \bar{\rho}_s \) in equation (5) we obtain the pairs \( (\tilde{\rho}_p, \tilde{\rho}_s) \) letting consumers indifferent between a hybrid license and a pure secret license, given by

\[
\tilde{\rho}_p = 2a - \sqrt{\frac{9a^2}{4} + \frac{1 - T}{T}[(2a - \bar{\rho}_s)^2 - (2a - \tilde{\rho}_s)^2]}.
\] (8)

Differentiating licensor’s profits in equation (3) and the condition in equation (8) we can verify that \( dV^A > 0 \) if

\[
(2a - \tilde{\rho}_s)(a - 2\tilde{\rho}_p) < (a - 2\bar{\rho}_s)(2a - \tilde{\rho}_p).
\] (9)

This condition is satisfied if \( \tilde{\rho}_p > \tilde{\rho}_s \). Thus, starting from a situation where \( \rho_s = \bar{\rho}_s \) and \( \rho_p = a/2 \) (pure secret license) it is possible to increase licensor’s profits without reducing consumer’s surplus shifting to a hybrid license implying a reduction in \( \rho_p \) coupled with an adequate increase in \( \rho_s \). Since a royalty contract \( (\bar{\rho}_p, \bar{\rho}_s) \) increases licensor’s profits with respect to a pure secret license, whereas a contract \( (\hat{\rho}_p, \hat{\rho}_s) \) leaves them unchanged, when \( \bar{\rho}_s = \hat{\rho}_s \) we must have \( \bar{\rho}_p > \hat{\rho}_p \).

Let’s then set \( \tilde{\rho}_s = \hat{\rho}_s \) and suppose it is chosen a \( \rho_p \) such that \( \hat{\rho}_p < \rho_p < \tilde{\rho}_p \). This licensing agreement implies, as compared to the pure secret license, higher present values of consumer’s surplus and licensor’s profits and a lower present value of entrant’s profits, which represents a violation of the participation constraint. If benefits of the technology proprietor
firm outweigh the losses of the entrant, the participation constraint may be satisfied with a lump-sum transfer from the licensor to the licensee.

Partially differentiating $V^A$ and $V^B$ with respect to $\rho_p$ we obtain

$$\frac{\partial V^A}{\partial \rho_p} = T \frac{2(a + \rho_p)}{9} + T \frac{a - 4\rho_p}{3}, \quad \frac{\partial V^B}{\partial \rho_p} = -T \frac{2(a - 2\rho_p)}{9},$$

(10)

and it is easy to verify that for $\rho_p < a/2$ we have $\partial V^A / \partial \rho_p + \partial V^B / \partial \rho_p > 0.\Box$

As it has been widely recognized, permitting negative fixed fees in licensing contracts can be somewhat dangerous. If side payments of this kind are allowed, a licensing contract may become equivalent to a bribe paid by the licensor to induce the potential entrant to stay out the market (Shapiro, 1985). Outside a patent settlement context in which the parties aim to avoid litigation costs for alleged infringement, such a payment would always appear to be harmful for consumers and thus blatantly unlawful under the antitrust laws (Lemley and Shapiro, 2005): a monopolist is not allowed to pay a potential entrant to stay off the market or to pay a rival to reduce its output. On the other hand, in a hybrid licensing context side payments could not result in anti-competitive effects. Provided negative fees and royalties per unit output are not too high, they can make privately convenient licensing agreements that enhance consumers’ welfare. Thus, even without the patent settlement context, negative fixed fees should not be per se illegal under the antitrust law: reasoned case-by-case decisions seem to be the best course.

3.4. Numerous potential entrants

The extension to the case of $n > 1$ identical and identified potential entrants is a straightforward exercise which adds nothing relevant for the topic addressed in this paper. In effect, in this case the technology proprietor is able to sign licenses with all industry participants providing for adequate royalties before and after patent expiration. Then, it is easy to show that equations from (6) to (10) continue to hold, keeping unaltered our results on both feasibility and efficiency of hybrid licensing.

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7 In our framework, this extreme outcome would be obtained with a contract envisaging royalties $\rho_p, \rho_s \geq a/2$, so that $X^B_p, X^B_s = 0$, and a negative fixed fee high enough to compensate the potential entrant for giving up entry through independent invention of secrets after patent’s expiration.
If from the very beginning not all potential entrants are identified, a hybrid licensing agreement should include a proviso which binds the technology holder not to grant pure secret licences after the expiration of the patent. Otherwise, since a hybrid licensing agreement has to fix a post-expiration royalty greater than that which reflects the trade secret value, hybrid license assignees would take the risk of becoming uncompetitive with respect to the as yet unidentified assignees of pure secret licenses (Gilbert and Shapiro, 1997).

4. Concluding remarks

The paper shows that when a product innovation is protected by a mixture of patents and trade secrets, under the U.S. law the innovator can be induced to license a rival even if patent protection is very broad and there are no partially competitive older products. These hybrid licensing agreements, which extend royalty payments beyond the expiration date of the patent, can benefit consumers with respect to the temporary monopoly alternative. Nevertheless, not all opportunities are currently exploited. Given innovator’s benefits, consumers’ welfare is maximized when the innovator is able to extract the same royalty per unit output before and after patent’s expiration. In turn, innovator’s benefits depend on the legal admissibility of licensing agreements providing for (limited) negative fixed fees. Thus, court decisions relative to post-patent royalty levels and antitrust concerns about negative fixed fees either are not justified on efficiency grounds or, if justified as in the case of negative fees, should not lead to a per se prohibition.

We conclude by noting that with regard post expiration royalties the EU adopted an approach similar to that proposed by Judge Posner. Paragraph 159 of the Guidelines on the application of Article 81 of the EC Treaty to technology transfer agreements issued by the European Commission (2004) states: “Notwithstanding the fact that the block exemption only applies as long as the technology is valid and in force, the parties can normally agree to extend royalty obligations beyond the period of validity of the licensed intellectual property rights without falling foul of Article 81(1). Once these rights expire, third parties can legally exploit the technology in question and compete with the parties to the agreement. Such actual and potential competition will normally suffice to ensure that the obligation in question does not have appreciable anti-competitive effects.” Thus, in the EU patent licensing clauses requiring royalty payments beyond the temporal duration of the underlying patent could not
be considered per se invalid by local courts. In this respect, EU regulation seems to favor efficient arrangements more than the US law.

References


