



# Triangle Relation Theory of Patent License, Standardization and Anti-trust

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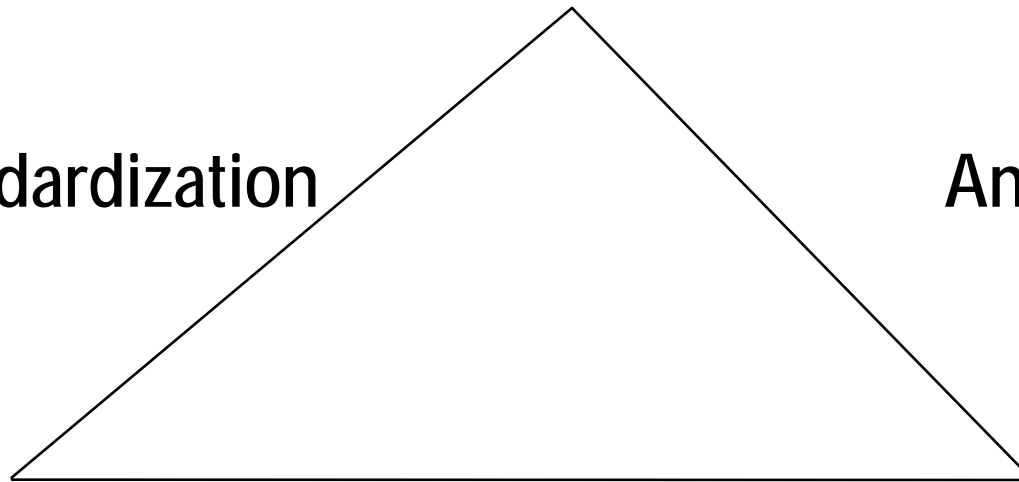


# Analytic Model of Triangle Relation

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Standardization

Anti-trust



Patent License



# Empirical Conditions of Triangle Relation

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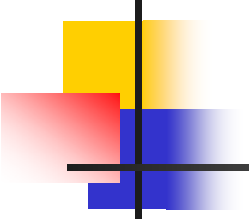
- Patent license : the important component of patent system ;
- Standardization: essential condition for broad modern industry;
- Anti-trust: the core part of the market economic system.



# Present Situation of Triangle Relation System

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- USA: patent license, standardization and anti-trust system
- EU: patent license, standardization and anti-trust system
- PRC.: patent license, standardization and anti-trust system
- International organization: the present situation of triangle relation system.



# USA Patent License, Standardization and Anti-trust System

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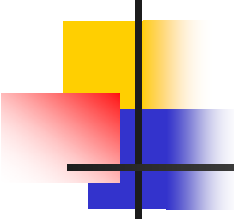
- Patent license: relations of private rights protected by patent law rigidly; traditional strong legal status in triangle relations.
- Standardization:
  - ANSI — Non-governmental membership organization;
  - ANS — Voluntary consensus technical standard;
- Anti-trust: Not make clear reference to the standard problem relating to patent pool in "*Antitrust Guidelines for the Licensing of Intellectual Property*", implement flexible anti-trust policy in the aspect of patent licensing in standardization.



# EU Patent License, Standardization and Anti-trust System

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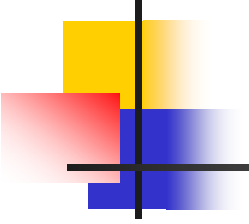
- Patent license: the patent laws of EPC and contracting states protect patent licensing rights, and infringement will be punished in accordance with the law of contracting states. The private right has reliable status in the triangle relations.
- Standardization: EU organization for standardization, CEN, CENLEC, ETS coordinate the development of European standards, which are accepted by relevant countries and adopted voluntarily by industry and enterprises;  
CERN/CENLEC2001 *Standardization and Intellectual Property Policies* (Guidance 8) and ETSI 2006 *Guidelines for Intellectual property* pay attention to coordinate the relationships between the private right of intellectual property and commonality of technical standards.
- Anti-trust: EU 2004 Guide to *Technical Transfer Agreement* stipulates that patent pool, containing the industrial standard, may result in cartel anti-competitive effect and should be handled case by case.



# China Patent License, Standardization and Anti-trust System

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- Patent license: adjust patent licensing relations through *Patent Law*, *Law of Contract*, and *Administrative Measures on Filing Patent License Contracts*.
- Standardization: SAC— Administrative agency that is responsible for unified management of national standardization.  
National standard / Industry standard—mandatory, recommended
- *Provisional Regulations on National Standards Involving Patents* (Draft) refers to US, EU and ISO/IEC practice.  
Model of national standards involving patent technology: AVS patent pool.
- Anti-trust: Article 66 of *Anti-trust Act* (Draft), Article 329 of *Law of contract*, , and Article 30 of *Foreign Trade Law*  
No express provisions in *Patent License and Anti-trust in Standardized Relations*.



# International Organization: Present Situation of Triangle Relation

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- WIPO: The regulation of mandatory licensing in The Paris Convention contains the patent licensing right.
- WTO: TRIPS agreement explicitly provides for the protection of patent licensing right and allow voluntary legislation to limit anti-competitive practice in the license agreement.
- UN: *International Code on Transfer of Technology (draft)* has no actual sanction force.
- ISO/IEC: patent policy regulation—Section 2 in 2004 instruction  
ITU: patent part in intellectual property policy  
Common features: disclosure system of patent information in the process of standard formulation;  
RAND conditions in the process of standard implementation.



# WTO: Issues of Intellectual Property in Standardization

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- Legitimacy: TBT requires adopting international technical standards and qualified evaluation system as far as possible in order to prevent technique trade barriers. Therefore, it is proper to discuss trade technical standard in WTO.
- Necessity: Patented technology increasingly is infiltrated into international standard, and thus it is necessary to discuss the issues of intellectual property in standardization within WTO.
- Possibility: TBT: Prevent technical standard becoming the trade barrier;  
TRIPS: Protect intellectual property, and prevent the measures and procedures to implement intellectual property becoming trade barriers at the same time. Therefore, it is possible to discuss this issue in WTO.
- Universality: issues that members with different level of economic development will be facing sooner or later.



# Conclusion

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- The relationship between patent license, standardization and anti-trust is one of the most important and complicated issues of intellectual property problem related with international trade in 21st century.
- Dealing with the relationship between patent license, technical standard and anti-trust from the systemic perspective of is the common task that international community and governments of different countries and regions have to face.
- Chinese government raises the issues of intellectual property in standardization in WTO, which bears legitimacy, necessity, possibility and universality.

Thank you

