Table of Contents

List of	Abbre	ontext Ing the Context arch Questions ature Review sof the Research eture of the Book	ix
Part I		CO,	
Setting	the C	ontext	1
Crrimm	n 1	NO Y	
Снарте		41 5 ⁴	
Introdi	ıctıon		3
§1.01	Settii	ng the Context	3
§1.02	Rese	arch Questions	10
§1.03	Liter	ature Review	11
§1.04	Goal	s of the Research	16
§1.05	Struc	eture of the Book	18
Снарте	R 2		
Standa	rds an	d Standard Essential Patents	21
§2.01	Industry Standards		
	[A]	Standards	21
	[B]	Standard-Setting Organizations	23
	[C]	De Facto Standards	25
§2.02	Antitrust Concerns with Industry Standards		26
	[A]	Traditional Antitrust Concerns: Collusion and Foreclosure	26
	[B]	New Antitrust Concerns: Standard Essential Patents	28
		[1] Standard Essential Patents	28
		[2] The SEP Owner's Opportunism	30
	[C]	The Criticisms of the Holdup Theory	33
82.03	Indu	stry Developments and the Role of Competition Law	3/1

Table of Contents

Снартея	2.3	
The Int	erplay between Intellectual Property Rights and Competition Law	41
§3.01	Patents: A Brief Introduction	41
	[A] Patent Rights	41
	[B] Patent Rights and Competition Law	44
	[C] The Relevant Antitrust Provisions	45
	[1] Article 102 TFEU	45
	[2] Section 2 of the Sherman Act	46
62.02	[3] Section 5 of the FTCA	47
§3.02	The Patent Owner's Antitrust Liability	49
	[A] Patent Owner's Market Power	49
	[B] The Anticompetitive Conduct	51
	[1] Refusal to License	51
	[a] The "Exceptional Circumstances" Test under EU	52
	Competition Law [b] Limited Liability under U.S. Antitrust Law	52 57
		60
	[2] Excessive Royalties [3] Conditional Licensing	64
§3.03	A Comparative Evaluation	65
PART II	[3] Conditional Licensing A Comparative Evaluation P Owner's Liability 4 P Owner's Market Power The Current Approach towards the SER Owner's Market Power	03
The SE	P Owner's Liability	67
Снартей	R 4	
The SE	P Owner's Market Power	69
§4.01	The Current Approach towards the SEP Owner's Market Power	69
§4.02	The Economic Perspective	71
	[A] Intra-standard and Inter-standard Competition	71
	[B] The Relevance of Sunk Costs and the Lock-in Effect	73
	[C] The Risk's of a Narrow Market Definition	76
Снартег		
_	ve Conduct during the Standardization Process	79
§5.01	Types of Deception	79
§5.02	Antitrust Liability	81
	[A] Liability under EU Competition Law	81
	[1] SEP Owner's Dominance at the Time of the Deception	81
	[2] SEP Owners That Are Not Dominant at the Time of	0.5
	Deception [D] A stitute to L.	85
	[B] Liability under U.S. Antitrust Law	88
	[1] Section 2 Liability	88
2 .	[2] Section 5 Liability	94
§5.03	Limitations in Addressing SEP Owners' Deceptive Conduct	99

Снарті	er 6		
		ensing Practices	103
§6.01		s of Strategic Licensing Practices	103
§6.02	The .	Antitrust Liability	105
	[A]	Refusal to License a SEP	105
	[B]	Patent Holdup	111
		[1] Excessive Royalties	112
		[a] The EU Approach	112
		[b] The U.S. Approach	117
		[2] The SEP Owner's Request for an Injunction	119
		[a] The EU Approach	119
		[b] The U.S. Approach	124
	[C]	Licensing Practices that Harm Rivals' Ability to Compete	127
		[1] The EU Approach	127
		[2] The U.S. Approach	129
§6.03	The l	Limitation in Addressing the Strategic Use of SEPs	132
Снарті Interin		rvations: Divergences, Legal Gaps, and Legar Uncertainty	135
Part II	П	45)	
		d the Informal Antitrust Intervention	139
Crraper	n 0	200	
CHAPTE	ıst Ren	nadios	141
88.01		edies and Sanctions	141
30.01	[A]	The Goals of Antitrust Remedies	141
	[B]		145
		The Selection of the Antitrust Remedy	147
	[D]	Procedural Matters	150
§8.02		edies in the Existing Legal Practice	152
0	[A]	Remedies for the SEP Owner's Deceptive Conduct	153
	[B]	Remedies for the Strategic Use of SEPs	155
		[1] Prohibitory Remedies	156
		[2] Access Remedies	157
§8.03	The	Controversial Effect of Settlements	159
§8.04	Conc	lusion	162
Снарті	er 9		
		Preventing Disputes in the SEP Context: The Informal	
		ervention	163
§9.01		sion of the SSOs' Rules	164
	[A]	The EU Approach towards SSOs' Rules	164
	[B]	The U.S. Approach towards SSOs' Rules	167

Table of Contents

	[C]	Did Competition Law Have a Role in the Revision of SSOs' Rules?	171	
§9.02	Esc. A			
		nte Discussion of Licensing Terms	174	
§9.03		cial Remedies	176	
	[A]	Injunctions and Exclusion Orders	177	
		Definition of FRAND Terms	180	
§9.04	The	Way Ahead	182	
Снартег				
Conclus	sion		185	
Bibliog	raphy		191	
Table of Cases				
Γable of Statues, Regulations and Guidelines				
		400Kshop.		
		ues, Regulations and Guidelines Hill		