

Chapter 2 Historical Outlook

A. *Case Survey: The First Distinguished Patent Pools*

Patent pools are a quite recent phenomenon, making their first appearance on the licensing scene only in the second half of the XIX century.¹¹¹ Here is a selection and a short description of the most significant examples of patent pools throughout the history.¹¹²

I. Sewing Machine

Actually, when retracing the story of patent pools throughout the last technological developments, it is widely agreed that one of the first recognized examples of a patent pool has been established in 1856 by sewing machine manufactures with the Sewing Machine Combination, consisting of sewing machine related patents aggregated together.

By the 1890s, pooling agreements had become a commonplace in the United States. The rising interest in technology pools stemmed in part from the widely felt desire to avoid the anti-competitive scrutiny pursuant to the Sherman Act of 1890, as patent pools were curiously considered as exempted from regulatory restrictions. This privileged perception was buttressed when in 1902 the US Supreme Court refused to invalidate and dissolve a patent pool, asserting “the general rule is absolute freedom in the use or sale of patent rights under the patent laws of the United States”.¹¹³

II. Motion Picture

In December 1908, the Edison Film Manufacturing Company, the Biograph Company, and the other Motion Picture Patents members ended their competitive feuding in favour of a cooperative system under which the four firms assigned “all the patents in the early-day motion picture industry” to a newly created pool. The

111 Merges R., “Institutions For Intellectual Property Transactions: The Case of Patent Pools”, in “Expanding the Boundaries of Intellectual Property: Innovation Policy for the Knowledge Society”, August 1999, available at: <http://www.law.berkeley.edu/institutes/bclt/pubs/merges/pools.pdf>

112 Consumer Project on Technology (CPTech) on Collective Management of IP Rights, “Patent Pool”, available at: <http://www.cptech.org/cm/patentpool.html>

113 Bement E. & Sons v. National Harrow Company, 186 US 70, 1902, p. 91 *et seq.*