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TFTC approves DVD patent pool formed by LG, Pioneer, Philips and Sony

[Formosa Transnational - Taiwan](#)

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In a decision of 23rd January 2013 the Taiwan Fair Trade Commission (TFTC) approved a DVD patent pool formed by LG Electronics, Inc, Pioneer Corporation, Koninklijke Philips Electronics NV and Sony Corporation, on condition that it complies with five requirements ordered by the TFTC.

For patent pools and other types of merger, the Fair Competition Law requires the parties to the merger to file for approval in advance if:

- The merger will result in a market share of one-third or more.
- One of the parties has a market share of one-quarter or more.
- The annual revenue of one party exceeds NT\$10 billion (approximately US\$33.85 million) and of the others exceeds NT\$1 billion (approximately US\$3.385 million).

The TFTC must issue a decision within 30 days, which can be extended to 60 days.

In 2012 LG, Pioneer, Philips and Sony – which each planned to acquire 25% of One-Red, LLC's shares to form a DVD patent pool – filed the application with the TFTC. One-Red was formed by Philips, Sony and Pioneer. As of 1st July 2012, One-Red started to offer patent licences on behalf of LG, Philips, Pioneer and Sony for DVD products. Before the merger application to the TFTC, Philips, Sony and Pioneer were already shareholders of One-Red. Once LG joins One-Red, LG, Pioneer, Philips and Sony will have essential DVD patents to manufacture DVD products. The basic information of the One-Red merger application was published by the TFTC for public comments from 2nd to 8th January 2013, and on 23rd January 2013 the TFTC approved the One-Red DVD patent pool.

The main reason that the TFTC approved the One-Red DVD patent pool is because a single window for patent licensing will be beneficial to DVD manufacturers in Taiwan considering the transaction costs and royalty rates available. In addition, according to the patent licensing agreement presented to the TFTC, One-Red:

- Licenses only essential, complementary and valid patents.
- Is open to all essential patent holders.
- Obligates patent holders to license their patents on a reasonable and non-discriminatory (RAND) basis.
- Prohibits patent licensors from disclosing confidential information.
- Prevents patent licensors from obtaining licensees' information before the delivery of goods.
- Limits the grant-back requirement to essential patents and allows the licensor of grant-back to license on its own.
- Does not prohibit licensors from using competing technologies or developing competing standards or products.

The TFTC believes that the One-Red DVD patent pool will be beneficial to the industry, making it easier for essential patent users to obtain patent licences, reduce transactional costs and avoid legal risks of patent infringement. The TFTC also believes that the One-Red DVD patent pool would increase competition in downstream market and would not be harmful to vertical competition. The TFTC concluded that the contribution of the One-Red DVD patent pool would be greater than its possible unfair competition effects. The TFTC therefore approved the application of the merger, conditioned on five requirements:

- LG, Pioneer, Philips and Sony shall not enter into agreements or exchange information regarding pricing or quantity of DVD products.
- LG, Pioneer, Philips, Sony and One-Red shall not limit licensees' use of technologies, business deals or product pricing.
- LG, Pioneer, Philips, Sony and One-Red shall not prohibit licensees from challenging the essence or validity of the patents.
- LG, Pioneer, Philips, Sony and One-Red shall not prohibit licensees from researching, developing, manufacturing, using or selling competing products or adopting competing technologies during the licensing period or after the licence has expired.



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- LG, Pioneer, Philips, Sony and One-Red shall not refuse to provide information on the patents, the scope of the patents or the expiry date of the patents.

The TFTC's recent decision is almost identical to its 30th March 2011 decision on the One-Blue, LLC Blu-ray patent pool, wherein Hitachi, Panasonic, Philips, Sony, Samsung and Taiwanese company Cyberlink each sought to acquire one-sixth of the shares of One-Blue to form a patent pool of Blu-ray technologies. In the One-Blue merger decision, the TFTC imposed six requirements and approved the merger. Other than the five conditions mentioned in the One-Red decision, the TFTC also required One-Blue to submit the patent licence agreements executed to it for review.

The approval of the One-Red DVD patent pool and the One-Blue Blu-ray patent pool reflects the TFTC's attitude towards patent licensing, patent pools, standards-essential patents and unfair competition concerns. Contract lawyers must observe the TFTC's practice and guidelines on reviewing patent licensing agreements in order to avoid unfair competition issues. For licensors, the terms of a patent licensing agreement must be carefully drafted so as not to violate the Fair Competition Law. The RAND requirement and other requirements set down by the TFTC must be observed. For licensees, the TFTC's One-Red and One-Blue decisions may serve as a bargaining chip to negotiate more favourable patent licensing agreements. They also show that evolving technologies, patent licensing practice and antitrust issues are always worthy of IP players' attention.

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