The misuse doctrine protects against conduct that impossibly extends intellectual property rights beyond their lawful scope. In so doing, it addresses two potential harms: undue restrictions on competition in particular markets, and impairment of public benefits of intellectual property rights such as innovation. As a result, the modern misuse doctrine straddles the intersection of intellectual property law and antitrust—it borrows from both, but is completely at home in neither. This makes misuse a challenging landscape to navigate for antitrust and intellectual property practitioners alike. Yet the consequences of a misuse finding—unenforceability of intellectual property rights or licenses—are serious for intellectual property owners, accused infringers, licensees, and practitioners.

There have been a number of developments in misuse and related law since the first edition of this handbook was published. The Federal Circuit issued two important misuse decisions (Philips v. ITC and Princo v. ITC) addressing tying, patent pools, and agreements not to compete as patent misuse, and more generally clarified that misuse involves leveraging a patent to impose restrictions beyond the patent’s scope with anticompetitive effect. The Supreme Court has decided cases concerning related issues such as market power in the patent context (Illinois Tool Works v. Independent Ink), patent exhaustion (Quanta Computer v. LG Electronics), and the standard for obtaining injunctions against accused infringers (eBay v. MercExchange). In Kimble v. Marvel, the Court revisited whether post-expiration royalties are patent misuse.

This second edition is intended to provide a practical, practitioner-orientated approach to understanding and applying misuse doctrine, and is the result of hard work and dedication of numerous lawyers and economists who devote their precious and limited time to advance the profession and its understanding of the law. Numerous individuals drafted updates to sections and provided substantive comments, including: Carrie G. Amezcua, Eric Barstad, Paul Feinstein, Joshua
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