

One interesting aspect of the [DOJ Report on Section 2](#) is the scant, episodic treatment of IP issues. The Report rejects the presumption of market power for patent ties (p. 81); has a very brief discussion of refusal to license patented parts in which it properly rejects the reasoning of the Ninth Circuit's *Kodak* decision and aligns itself with the Federal Circuit's *Xerox* decision (p. 121-122). The *Walker Process* case, which held that an infringement action based on an improperly acquired and unenforceable patent could violate §2, is cited in a footnote, and only for the proposition that market power is required in a §2 case (p. 25 n. 53). Finally, the Report contains a brief discussion of the presence of intellectual property in measuring incremental cost for purposes of analyzing predatory pricing (p. 63).

[Read the full piece here.](#)