Thus, a patent can be thought of as a bundle of rights to exclude, for it is the right to exclude that is "at the very heart of patent law."[106] Accordingly, royalty rights arising from a license agreement have been held not to confer standing, as the royalty rights are "merely a means of compensation under the agreement," rather than a part of the patent right itself.[107] The United States District Court for the Eastern District of Texas has stated: "A patentee's right to royalty payments or infringement damages does not limit or detract from the assignment of a patent or substantial rights thereunder."[108]

The patent right to exclude could be broken down further: exclude from making, exclude from using, etc., but as a shorthand, it can be thought of as the right to exclude others from infringing the patent. As explained in the previous Part, it is still a bundle in the sense that it is in rem, not just a right to exclude one party from infringing, but rather a right to exclude (in the bundle) for each potential infringer. With the patent conceptualized as a bundle of rights to exclude, this article now looks at the effect of patent transfer on various aspects of patent licenses.

A. Arbitration Clauses

The coexistence of the encumbrance theory alongside elements of the bundle theory is well demonstrated in the following paragraph from the Federal Circuit's decision in *Datatreasury Corp. v. Wells Fargo & Co.*:

> Appellants rely on cases standing for the general proposition that because the owner of a patent cannot transfer an interest greater than that which it possesses, an assignee takes a patent subject to the legal encumbrances thereon. . . . However, the legal encumbrances deemed to "run with the patent" in these cases involved the right to use the patented product, not a duty to arbitrate. The cases do not support a conclusion that procedural terms of a licensing agreement unrelated to the actual use of the patent (e.g. an arbitration clause) are binding on a subsequent owner of the patent.[109]

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[106] Penril Datacomm Networks, Inc. v. Rockwell Int'l Corp., 934 F. Supp. 708, 712 (D. Md. 1996).

[107] Chan v. Time Warner Entm't Co., No. SA-03-CA-0087-RF, 2003 U.S. Dist. LEXIS 16390, at *19 (W.D. Tex. July 23, 2003).

[108] Dexas Int'l, Ltd. v. Tung Yung Int'l (USA) Inc., No. 6:07cv334, 2009 U.S. Dist. LEXIS 34766, at *28 (E.D. Tex. Feb. 25, 2009) (citing Vaupel Textilmaschinen KG v. Meccanica Euro Italia S.P.A., 944 F.2d 870, 875 (Fed. Cir. 1991)).

[109] Datatreasury Corp. v. Wells Fargo & Co., 522 F.3d 1368, 1372–73 (Fed. Cir. 2008).