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IPFRONTIERS

Nortel auction another battle with mobile device patents

While consumers enjoy the latest advances in mobile technology, mobile device industry titans are waging an all-out patent war against each other. In an effort to capitalize on the surging popularity of smartphones and tablets, stakeholders are asserting their rights in a web of litigation, International Trade Commission complaints, and cross-licensing arrangements.

Since 2009 when Nokia sued Apple based on the success of Apple's iPhone, disputes in the mobile device space have become prevalent, pulling in all of the major handset makers and mobile operating system developers. Today, Apple, Google, Microsoft, HTC, Nokia, Motorola, Research In Motion, Samsung and Sony, among many other prominent players, are involved in some dispute over their mobile technology.

In these 'smartphone patent wars,' it seems everyone lays claim to exclusive rights in some parcel of the mobile technology space, with some parcels being more valuable than others. Ammunition in this fight is obtained via one's own patent portfolio, but not just because it allows the patent owner to initiate lawsuits against potential infringers.

Rather, an equally important aspect of having a large portfolio in this war is the ability to defend oneself. In particular, mobile software and hardware companies being sued for infringement need only reach into their own patent trove and assert a countersuit based on one's own patent collection.

What has emerged is a mess of litigation tending towards this-for-that negotiations in order to settle on licensing terms. Competitive advantage in this game is reliant as much on the stockpiling of a patent arsenal by way of patent purchases as it is on organic innovation.

That is why all eyes were on an auction of over 6,000 patents back in late June from bankrupt Canada-based Nortel Networks. The Nortel portfolio covers just about every area of telecommunication technology and naturally caught the attention of many players in the mobile space.

The auction was initiated in April when Google submitted a

\$900 million bid for the Nortel lot. Google, despite having the world's most popular mobile operating system in Android, has a notoriously weak mobile technology patent portfolio. The Nortel auction was Google's chance to catch up in the patent game, as acknowledged by Google itself.

Google publicly explained its decision to pursue the Nortel patents saying that the patent portfolio in Google's hands will create a disincentive for others to sue Google, while helping Google, its partners, and the open source community continue to innovate. Meanwhile, other industry powerhouses, such as Apple and Microsoft, saw the auction as an opportunity to bolster their own portfolios.

Nortel chose five entities from which it was willing to accept bids: 1) Google (operating under the name "Ranger"); 2) Apple; 3) a consortium called Rockstar Bidco consisting of Microsoft, Research In Motion (maker of the BlackBerry), Sony, EMC and Ericsson; 4) Intel; and 5) Norpax.

Norpax was the first to drop out after initial bidding. By the fifth round, Rockstar Bidco had decided to pull out, but was convinced otherwise when Apple approached the consortium with a proposal for Rockstar and Apple to partner together. Google and Intel eventually formed a merger of their own.

Finally, in the 19th round, Rockstar Bidco prevailed with a winning bid of \$4.5B (it was later revealed that Apple contributed \$2.6B of that bid), making it the largest patent auction ever.

It is not known at this point what the consortium plans to do with the portfolio or how Apple's hefty contribution might play into that decision. Interestingly, consortium members Apple, Microsoft and Research In Motion each has its own mobile operating system in direct competition with each other and with Google's Android operating system.

The aftermath of the Nortel auction has many people wonder-

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ing how Google will deal with mounting opposition to the Android operating system, which is already under fire. As noted, Google's mobile technology patent portfolio is quite weak. Google has approximately 700 patents, with a little over 300 patents and (published) patent applications dealing specifically with mobile technology.

While that might sound like a lot, Microsoft and Nokia, for instance, have over 5,000 combined patents and published applications, and these two companies announced a partnership in February whereby Nokia agrees to favor Microsoft's Windows Phone 7 operating system (Microsoft's answer to Apple's iOS and Google's Android) in Nokia's U.S. product offerings. Microsoft has already been outspoken about alleged patent infringement in the Android OS, saying that there is a patent fee associated with it and that it "is not free" like Google claims it is.

At this point, Microsoft seems to be winning against Android, at least in the patent game. Microsoft already collects licensing fees from various manufacturers of handsets using the Android operating system and most recently has demanded \$15 for every handset manufactured by Samsung.

Meanwhile, Google is embroiled in a heavy battle with Oracle also, based on Google's incorporation of java implementations in the Android operating system. Damages for the alleged infringement in that dispute have been calculated to be in the billions of dollars.

Additionally, HTC, the largest Android handset maker, lost an International Trade Commission complaint lodged by Apple alleging infringement of some Apple patents by HTC's products for their use of Android. That matter is set for an appeal hearing in December to be heard by the full panel.

In a culmination of the above, Google, through its Chief Legal Officer David Drummond, complained of a ganging up on Google's Android OS. The comments irked Microsoft, which took

to twitter to fire back at Google, but perhaps this was intended to incite the attention of the Justice Department, which is rumored to be heavily scrutinizing the outcome of the Nortel auction based on antitrust concerns.

Still, Google is not banking on the Justice Department to step in, and rightfully so. To play this game, a company needs deep patent protection. Google realizes this, which is why it recently purchased over 1,000 patents from IBM. The assignments were recorded after the Nortel auction, although the dates of the assignments were in early May, indicating that Google has been active in seeking patent acquisitions from sources other than Nortel.

Additionally, rumor has it that in the coming months Eastman Kodak will be selling over 1,000 patents related to digital camera technology, which both Apple and Google will likely be interested in. Moreover, there are rumblings of negotiations between Google and InterDigital, a Pennsylvania-based company reported to have over 8,000 patents and 10,000 patent applications nationally and internationally, and which claims to have a patent portfolio more valuable than the recently-auctioned Nortel block.

And so the battles continue, where more patent sales (plus some occasional innovation to spawn new patents) will promote further competition for the strongest portfolio. The price of playing the game is getting expensive, though.

Portfolio purchases in the billions of dollars, together with licensing fees, could lead to higher prices for the consumer in the end as these companies look to recoup these costs of business. Unfortunately for consumers, having the latest advances in technology at our fingertips might be more expensive than we think.

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