

## The Mobile Phone Patent Disputes

The last few months have seen a number of developments in the ongoing patent disputes between the major manufacturers in the mobile phone industry.

Motorola Mobility has been found to infringe Apple's "slide-to-unlock" patent. Apple succeeded in thwarting Motorola Mobility's attempt to enforce an injunction based on a patent that is essential to the 3G mobile phone standard. Samsung and Motorola Mobility have been placed under investigation by the European Commission in relation to their enforcement of standards essential patents against Apple. Apple and Samsung are about to go head-to-head in California over their mobile phone patents and designs.

It is interesting to consider the approaches adopted by the different sides.

### Android

The Android manufacturers are primarily trying to enforce patents that have been declared to be essential to the mobile phone standards (such as the 3G standard) that all such devices must operate to.

This has a number of consequences.

Firstly, as the patents have been declared to be essential to the relevant mobile phone standards, in many cases Apple will be unable to avoid infringement of the patents in question. However, to allow for this, the standards setting bodies correspondingly require a holder of a standards essential patent to grant licences to that patent on FRAND (Fair, Reasonable and Non-Discriminatory) terms, and it is understood that any potential infringer who offers to accept such a licence would not then be at risk of an injunction preventing them from using the patented invention.

Motorola Mobility and Samsung have tried to argue in the German Courts that they should be entitled to injunctions and that Apple should pay higher royalty rates on the basis of their standards essential patents, where Apple have not yet taken a licence.

However, an Appeal Court in Germany stayed an interim injunction that Motorola Mobility had been granted against Apple in respect of one of their standards essential patents pending the full Appeal. This suggests it is unlikely that the German Courts will grant injunctions on the basis of standards essential patents. Similar decisions have been made in the Netherlands, France and Italy.

Furthermore, arguing that their standards essential patents should be given stronger relief than the agreement of a FRAND licence with Apple has resulted in Motorola Mobility and Samsung being placed under investigation by the European Commission for potentially breaching European competition law through their assertion of their standards essential patents against Apple.

### Apple

Apple's approach has instead been to try to enforce patents that relate to "softer" aspects of their mobile phones and other devices against Android, such as patents relating to the operation of the iOS user interface.



Apple's success in relation to the "slide-to-unlock" patent is illustrative of this. Apple have many other patents relating to touch screen interactions, and have, for example, similarly been successful in relation to patents relating to the photo gallery and document scrolling arrangements of iOS against Android.

This patent strategy from Apple could be said to be an innovative one. Traditionally patents for mobile phones and similar devices have tended to focus on the core technology of those devices, such as how they must communicate with other devices on the network, rather than "softer" features of the user interface and the way that the user interacts with the device.

Apple have gone against this tradition. They have recognised that it is possible to and beneficial to seek and obtain patents for such "softer" features.

Apple's aim here is to make it difficult for Android to mimic Apple's devices at the user interaction level, such that Apple can maintain its reputation for providing a better user experience.

### So Where Do Things Go From Here?

It is unlikely that the Android manufacturers will be able to use their standards essential patents to force Apple to remove devices from sale. Moreover, if they continue to argue for this, they will run the risk of anti-competition investigations by the European Commission.

If Android mimics Apple's products, then Apple will continue to harass Android with their patents.

Perhaps Android should consider a different approach. If the Android manufacturers could develop different systems and user interfaces that do not require the use of Apple's patents, then the situation could be that Apple will still have to pay royalties for using the Android manufacturers' standards essential patents but Apple will not have such a useful series of patents to enforce against Android. Could that then shift the balance of power in the mobile phone patent disputes?

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