

Are Patents Still The Smart Option?

Motorola has just announced that it is suing Apple under several of its patents which cover various aspects of smartphone technology. This is just the latest in a recent spate of patent lawsuits between the big players which was kicked off a year ago when Nokia sued Apple. By way of example, Apple has sued Nokia and HTC, Kodak has sued RIM and Apple, and Microsoft has sued Motorola.

The smartphone market is exploding rapidly; they are no longer the preserve of elite business users but increasingly essential kit for anyone to stay in touch and informed. In expanding markets a fight for dominance is almost inevitable. The market has not yet settled into the international standards and patent pools which have govern 'dumb' mobile phone technology. The aim of a patent pool is to restrict the royalties that manufacturers would have to pay if they had to license competitors' technology individually. The patents are pooled and licensed en bloc for an agreed royalty.

At first sight patents seem badly designed for rapidly-moving technologies. When you consider that it typically takes 3 to 5 years or more for a patent to be granted, won't the technology be obsolete long before it is patented? Generally, no; patents are often powerful commercial tools for many years.

Although a patent may originate from innovation in a device which has a life-cycle measured in months, in the hands of a skilled Patent Attorney, the patent will be far more wide-ranging than a single product and can actually protect the basic technical concept which is used in a whole string of future products. It may be several years since Apple first launched its iPhone but the multi-touch technology this introduced will still be used for some time yet. Dyson patented the vortex system for vacuum cleaners many years ago but was still litigating the patent in its final years.

Technology we are now seeing being launched in smartphones has been in development for some years, and manufacturers have known what direction their competitors are going in. Patent applications are published eighteen months after they have been filed, so that everybody can read about the inventions and plan their own development and patent strategies accordingly.

As the recent headlines show, there are some fields where you just can't afford to be left out of the patents game. If you have your own portfolio of patents there will often be something to retaliate with if you are suddenly faced with a lawsuit that could take your products off the market overnight. You will have something to bargain with and if the end result is co-existence that is much better than withdrawing technology.

I believe most of these cases will settle without us missing out on the ever-increasing wealth of features we've come to expect, but it is still too early to tell who are likely to emerge as winners. It's going to depend partly on who has the hidden patent 'gems' - filed several years ago with hundreds of others - which just happen to protect those small bits of technology we consumers have decided we simply cannot live without. What can be guaranteed is that none of these companies is now regretting having their patents.

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