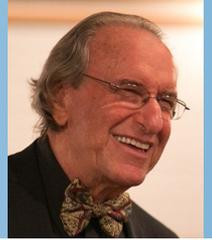


# SMARTPHONE PATENT WARS ESCALATE

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**Patent litigations multiply:** The number of smartphone patent infringement litigations filed in the US is growing. Multibillions of dollars are at stake in this relatively young industry. The warring players in what to some resembles a patent chess game, include Apple Computer, Inc., HTC Corporation, Nokia Inc., Motorola USA, Microsoft Corporation, Sony Ericsson, AT&T, Samsung, Sanyo, LG, Research in Motion Ltd. (RIM), Google Inc. and the members of Google's Open Handset Alliance (OHA). With 65 members at last count and growing, OHA is a coalition of companies dedicated to preventing the world of smartphones from being dominated by Apple's operating system (OS).

**Smartphone defined:** The term 'smartphone' has come to mean a cellular telephone with built-in applications and Internet access. *PC Magazine* defines smartphones as mobile computers and application delivery platforms that provide digital voice service as well as combinations of text messaging, email, Web browsing, still and video cameras, music and video players, and organisers. Examples include the PDA, Pocket PC, Blackberry, Windows Mobile, iPhone and Android devices. Microsoft has attempted to brand the term 'Smartphone' by using an initial capital letter 'S' for its Windows Mobile Platform. Smartphones combine many patentable technologies, business ideas, processes and software—all woven together in a portable device.

**The iPhone and iPad battles:** Competitors envy the extraordinary early successes achieved by Apple with its record-breaking sales of iPhones and iPads. The number of devices and operating systems with similar features is multiplying. Apple, the owner of hundreds of patents, attempted to put a 'chill' on imitators of the iPhone's user interface features by filing a March 2, 2010 complaint with the US International Trade Commission (ITC) against Taiwan-based smartphone manufacturer HTC, whose products include devices incorporating Google's Android OS.

**The players:** Apple's ITC suit against HTC was by no means the first volley in this area. In February, Motorola sued Blackberry-maker RIM, alleging infringement of its wireless technology patents. And Nokia, which currently holds the largest market share and owns a large patent portfolio in the industry, sued Apple in 2009, alleging infringement of its global system for mobile communications (GSM), universal mobile telecommunications system (UMTS) and wireless local area network (LAN) standards. Apple countersued Nokia. SmartPhone Technologies LLC in March filed a lawsuit against Apple, AT&T, Samsung, Sanyo, LG and Motorola alleging patent infringements. These players recall the RIM's 2006 \$612.5 million settlement payment to NTP in order to avoid risking the loss of its Blackberry business.

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**Strategies:** Patent litigants are using both the US district courts and the ITC to do battle with their competitors. As has occurred in the past, intellectual property portfolios, including patents, are being amassed and are being used as weapons by manufacturers to solidify and/or increase their market share. In particular, the use of patent infringement litigation is a deliberate strategic initiative. Manufacturers of smartphones are continually mapping and honing their strategies in a race to capture the booming market for the next generation of products. Patents will play a critical role in deciding which players will be successful.

**Chess game:** Much as in a chess game, success will not be dictated by the earliest of moves. Nor is success guaranteed through the use of overwhelming force. Short and long-term intellectual property strategies that control the application of IP forces are more likely to bring rewards to the victors. Such strategies may include seeking and granting patent licences, as exemplified by Microsoft and HTC's signing of Android licences. Others may enter into technology transfer and joint development agreements without making the pursuit of patents a priority.

**Effects upon innovation:** Costly patent litigations can cause industry upheaval and usually benefit mature companies with financial resources. Whether they contribute to innovation is hotly debated. Litigation costs represent a tax on small company innovation. As observed by University of Pennsylvania Law School Professor R. Polk Wagner, newer technologies can often make patent suits irrelevant. Apple, HTC and Nokia may find themselves fighting over 2009 iPhone technology while 2010 and 2011 versions enter the market. Companies that are able to 'out-innovate' their competitors will win in the long run. Owners of IP must enforce their rights carefully so as to remain within the bounds of antitrust and other laws governing competition. Clearly, the smartphone patent chess game is in its earliest stages.

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