

**Why Android's Success Makes it a Target for Patent Infringement.
By Eric Halber 2012**

Why are manufacturers of Android-based phones, and the owner of the operating system (Google), major targets for patent infringement lawsuits? The answer highlights a key issue in the continuing dispute over the boundaries of software-related patents, as well as the impact of market share and open source operating systems.

Full featured smart phones like those based on the Android OS or the iPhone represent an incredible integration of programming knowledge from developers with several decades of experience. As a result of this integration there are numerous interesting and useful features built into these phones. But, to put it in simple terms, interesting and useful features are typically the subject matter of patent applications. Therein lies the rub - a perfect storm so to speak.

Over the past 15 to 20 years cell phones have migrated to an "all-encompassing" platform. At the same time, companies, teams of engineers and individual inventors have been developing many of these features outside of the major corporate systems. Patent applications were filed on a substantial number of these development efforts. One needs only to search cell-phone related patents starting in the late 1990's to see the beginnings of this process.

In 2012 we now see a cell phone capable of making calls, taking pictures and video, recording audio and acting as the desktop computer of only a few years ago. How many inventions are contained within such features? Hundreds, thousands? The sheer number of features available in such phones is the main reason for the explosion of patent infringement lawsuits. The features are the targets and with so many targets contained in a single product it's not hard to understand why Google and the Android manufactures are getting sued.

Apple also has it's share of litigation for similar reasons. However, the Android OS is spread out over a larger share of the market. Whereas Apple tightly controls it's product, the Android OS is available to anyone under various open source licensing arrangements.

In essence, Apple's more limited iPhone market share versus the market for Android phones can be compared to the early fight between Apple and Microsoft for the PC market. By making it's Android OS available under various open source licenses, Google continues to capture a greater market share. Accordingly, the Android ecosystem seems to be the biggest target at present. On the other hand, there is still more than enough patent infighting going on between the major phone manufacturers to keep things interesting.

Some may feel that the increase in Android-related lawsuits underlines the problems with extending patent protection to software-related inventions. Others feel the system tends to shake out frivolous suits rather quickly - mostly based on finding prior art that was not addressed during prosecution at the PTO.

In fact, Rule 11 of the Federal Rules of Civil Procedure requires that the law firm representing a potential plaintiff conduct a reasonable pre-suit investigation on the merits of the case. Many times this investigation will identify several related references that address the features recited in the patent's claims. Many times one or more of these references will prevent a case from going forward.

Since these potential cases do not see the light of day there is no way to quantify the number that are not filed in federal court. However, those with personal knowledge would likely say with some certainty that the number is substantial. As such, it appears that the current system appropriately handles the validity (or patentability) of software related inventions. At the same time, one can understand the frustrations of those that end up as defendants in such suits.

However, these target companies would not be this position were it not for their success in bringing to market a product that can do so much. Historically, such lawsuits have done little to prevent successful products from coming to market or remaining available to the public, thus creating profits for the same companies that are being sued. It's just the way business is done in the United States and elsewhere. Success breeds challenges, legal and otherwise.

Authorship:

"Eric Halber is a patent attorney with over 20 years of litigation experience. He has worked with, and consulted for, IEC&A in the areas of pre-suit investigation and reverse engineering. IEC & Associates located, in Raleigh, NC, is an Electrical and Electronic Investigative Engineering firm specializing in Patent Infringement Analysis, Claim Chart Mapping, Reverse Engineering and Product Teardowns services"