

Seen and heard

A round-up of IP-related quotes, observations and opinions from the recent past...

The majority of cases involving a PAE which reach a judgment result in a ruling invalidating the patent. In cases involving PAEs during 2000-2008, only in one minor part of one case was a PAE patent found to be valid. The likelihood of a patent being declared invalid by the PHC [Patents High Court] is therefore high, especially so in comparison to the available evidence on PAE litigation in the US. In our analysis, we argue that the costs regime in the legal system of England and Wales, which requires that the losing party must pay the costs of the other side, acts as another break on PAE litigation ... The high likelihood of having a patent invalidated combined with the large costs which tend to accrue if a case is lost appear to discourage litigation by PAEs.

Extract from *Trolls at the High Court?*, by **Christian Helmers** and **Luke McDonagh**, which found that patent assertion entities (PAEs) have very rarely litigated in the UK, published 23rd September 2012

Acacia Research Corporation ... announced today that a subsidiary has acquired 7 patent portfolios with over 1,900 patents and applications relating to stent grafts, vascular grafts, bypass grafts, graft retrieval technology, graft manufacturing technology, vena cava filter technology, and filter retrieval technology from a leading global medical device company.

Excerpt from a press release issued by Acacia, 2nd October 2012

Last year, Apple had to settle out of court over some of Nokia's patent claims. While numbers were not made public, I've heard that the initial payout was north of US\$500 million and that Nokia could be making between \$5 and \$7 in patent fees from every iPhone sold. Now stop and think about this for a second: for every phone sold by Apple, about 1% of the price goes back to Nokia (remember that the heavy carrier subsidies cover a substantial price of the device, which explains the difference in price between a carrier-locked device and unlocked ones you can buy directly from Apple). And Nokia has similar lawsuits against some Android manufacturers ... In fact, Nokia's patent portfolio may be valuable enough on its own to justify buying the company. With analysts putting its value at anywhere between US\$6 and US\$10 billion, one could buy a patent portfolio and get a telecommunication and mapping company for almost free.

Entrepreneur and journalist **Tristan Louis** explains why Apple should consider purchasing Nokia, *Business Insider*, 7th October 2012

Patent monetization entities play a role in a substantial portion of the lawsuits filed today. Based on our sample, lawsuits filed by patent monetizers have increased from 22% of the cases filed five years ago to almost 40% of the cases filed in the most recent year. In addition, of the five parties in the sample who filed the greatest number of lawsuits during the period studied, four were monetizers and only one was an operating company.

Extract from the abstract of *The America Invents Act 500: Effects of Patent Monetization Entities on US Litigation*, written by **Sara Jeruss**, **Robin Cooper Feldman** and **Joshua Walker**, 7th October 2012

"BDC is a tremendous company with outstanding people, products and prospects. While my decision to leave was difficult, this new entrepreneurial opportunity is something that makes sense for me and my family. This will give me an opportunity to work with a long-time friend at Round Rock as its CFO and help the company execute its growth strategy."

David Elkins, executive vice-president and chief financial officer of Fortune 500 company Becton, Dickinson and Company (BDC), explaining why he is leaving to become CFO of NPE Round Rock Research, BDC press release, 10th October 2012

"It will be systematically disastrous ... Business does not want a system that is pro-patentee – we want one that is fair. It will be a trolls' paradise – an NPE will be able to sue to Europe-wide effect in a distinctly pro-patentee system."

GlaxoSmithKline VP of IP policy **David Rosenberg** talking about the proposed EU patent and court at the annual conference of the Chartered Institute of Patent Attorneys, London, 12th October 2012

"The way I understand it is, it's mostly about the patents, the way you can sort of disarm this huge attack against Android. We talked about prices. There are players in the industry who were unhappy about more competitive pricing for the consumers. They want to keep the prices high, they want to force the price to be so high that operators have to subsidize the devices very highly. That's not only the Cupertino guys but also for the guys up in Seattle. They want higher margins, they want to charge more for software."

Google's director of business development for Android **John Lagerling** explaining what he understands the motives for the company's Motorola purchase were, *New York Times*, 2nd November 2012

ARM ... today announced that it is a leading member of Bridge Crossing LLC, a consortium of major technology companies affiliated with Allied Security Trust, which has entered into an agreement with MIPS to obtain rights to its patent portfolio. The MIPS patent portfolio includes 580 patents and patent applications covering microprocessor design, system-on-chip design and other related technology fields. The consortium will pay \$350 million in cash to acquire rights to the portfolio, of which ARM will contribute \$167.5 million.

Press release issued by ARM, 6th November 2012

HTC and Apple have reached a global settlement that includes the dismissal of all current lawsuits and a ten-year license agreement. The license extends to current and future patents held by both parties. The terms of the settlement are confidential.

Apple press release, 10th November 2012

"I think that these estimates are baseless and very, very wrong. It is an outrageous number, but I'm not going to comment anything on [a] specific number ... I believe we have a very, very happy settlement and a good ending."

HTC boss **Peter Chou** responding to reports that his company would pay Apple a royalty rate of between US\$6 and US\$8 as part of the settlement agreement between the two, 19th November 2012

On Monday November 19, the Member States participating in the enhanced cooperation reached unanimous agreement on the Unitary Patent Package at the meeting of the Committee of Permanent Representatives (Coreper I). Later in the same evening, an extraordinary meeting of the Committee on Legal Affairs of the European Parliament (JURI), took place in Strasbourg where MEPs expressed overwhelming support for the proposal agreed by Member States. Given these positive developments, there is wide spread optimism that the first European unitary patent could be introduced early 2014.

Press release issued by the Cypriot government, which currently holds the presidency of the European Council of Ministers, announcing a potential breakthrough in negotiations over the creation of an EU patent and Unitary Patents Court, 20th November 2012