

Seen and heard

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

One consistent theme was that regulators should focus on the behavior of patent-holders, not their identity. There were lots of call for more data, as what is currently available is not seen as enough; and some discussion of the transparency issue, but more focus on operating companies working deals with PAEs in possibly anti-competitive ways.

Peter Detkin, co-founder and vice chairman of Intellectual Ventures, commenting on the Patent Assertion Entities Workshop jointly hosted by the US Federal Trade Commission and the Department of Justice, 10th December 2012

I found the FTC/DOJ Workshop on "Patent Assertion Entity Activities" absolutely terrifying. If you were attending to get some guidance about what kind of activities might be considered 'suspect' from a competition authority perspective, you would have left the conference more concerned and confused than at the start of the day. From chairman Jon Leibowitz's opening remarks to the final panel of antitrust academics, there were numerous statements about the "obvious concerns" raised by Patent Assertion Entities, but absolutely no consensus about what actions might be considered 'safe', and which might raise FTC/DOJ 'concerns'. There were panelists who expressed antitrust concerns about the most basic patent sales transactions and others who found little or no need for competition authority intervention whatsoever... The risk of harm from competition authority intervention in the patent system is extremely concerning. It is unclear to me why any of the issues discussed at the workshop should be addressed by the FTC or DOJ, and can't be adequately addressed by the PTO, the courts, Congress and the marketplace.

Ralph Eckardt, managing director of 3LP Partners on the FTC/DOJ hearing

EU inventors will soon be able to get a unitary patent at last. After over 30 years of talks, a new regime will cut the cost of an EU patent by up to 80%, making it more competitive *vis-à-vis* the US and Japan. MEPs cut costs for small firms and tailored the regime to their needs, in a compromise deal with the Council endorsed by Parliament on Tuesday.

Press release issued by the European Parliament following its vote to approve proposals to create a unitary patent and court for the European Union, 11th December 2012

Judge Ellis also detailed the economic terms of the assignment between BT and IPValue. Specifically, BT is entitled to "50% of the 'Adjusted Gross Proceeds' derived from exploitation of the '835 Patent, except 'that, where there is a sale of any [patent] during the first twelve (12) months, [BT] will receive 90% of the Adjusted Gross Proceeds received from such a sale.'" In other words, IPValue had a year to try to sell the patent in exchange for a 10% commission on the sale's profit, or otherwise exploit the patent through licensing. By transferring the patent to a wholly-owned subsidiary (Suffolk) and bringing suit against AOL and Google ...

The Gametime IP blog reveals BT's use of patent privateer Suffolk Technologies to enforce a patent alleged to cover a certain type of mobile technology against AOL and Google, 12th December 2012

In sum, to the limited extent that Apple has been able to show that any of its harms were caused by Samsung's illegal conduct (in this case, only trade dress dilution), Apple has not established that the equities support an injunction. Accordingly, Apple's motion for a permanent injunction is DENIED.

The final paragraph of a decision from **Judge Lucy Koh**, which found that Apple should not be granted the right to a permanent injunction in its ND California case against Samsung, despite prevailing at the trial and receiving a US\$1 billion jury award, 17th December 2012

Eastman Kodak Company has completed a series of agreements that successfully monetizes its digital imaging patents... The proposed transaction, which achieves one of Kodak's key restructuring objectives, follows other recent major accomplishments that include an agreement for interim and exit financing for the company's emergence from its Chapter 11 restructuring, and resolution of U.S. retiree non-pension benefits liabilities. Kodak's monetization of IP assets further builds on its momentum toward a successful emergence in the first half of 2013 ... Under the agreements, Kodak will receive approximately \$525 million, a portion of which will be paid by 12 intellectual property licensees organized by Intellectual Ventures and RPX Corporation, with each licensee receiving rights with respect to the digital imaging patent portfolio and certain other Kodak patents. Another portion will be paid by Intellectual Ventures, which is acquiring the digital imaging patent portfolio subject to these new licenses, as well as previously existing licenses.

Part of a press release issued by Eastman Kodak announcing the long-anticipated sale of a portfolio of digital imaging patents, 19th December 2012

Nokia has entered into a new patent license agreement with Research In Motion. The agreement will result in settlement of all existing patent litigation between the companies and withdrawal of pending actions in the US, UK and Canada related to a recent arbitration tribunal decision... The financial structure of the agreement includes a one-time payment and on-going payments, all from RIM to Nokia. The specific terms of the agreement are confidential.

Extract from a Nokia press release announcing the settlement of worldwide patent litigation with RIM, 21st December 2012.

Eastman Kodak Company and JK Imaging, Ltd. today announced that they have entered into a multi-year agreement for JK Imaging to license the Kodak brand name for certain consumer products, including digital cameras, pocket video cameras, and portable projectors. JK Imaging plans to launch its first products in the second quarter of 2013.

Part of a press release issued by Eastman Kodak announcing a brand licensing agreement with JK Imaging Ltd, 7th January 2013

In consideration for the Ericsson Transferred Patent Portfolio and the Additional Patents, UP will pay Ericsson the following portion of UP LLC's cumulative gross revenue on a quarterly basis in accordance with the provisions of the MSA (the "Gross Revenue Payments"): (i) 20% of the amount of Cumulative Gross Revenue, until the Cumulative Gross Revenue equals \$100 million; plus (ii) 50% of the amount of Cumulative Gross Revenue in excess of \$100 million, until the Cumulative Gross Revenue equals \$500 million; plus (iii) 70% of the amount of Cumulative Gross Revenue in excess of \$500 million. Revenue sharing may be adjusted in Ericsson's favor in certain circumstances...

Extract from a Form 8-K filing to the SEC by Unwired Planet providing details of its acquisition of over 2,000 patents from Ericsson, 10th January 2013