



Thinking ahead about tablets and smart TVs...and the content and infrastructure they'll need.

## A Brief History of this Patent Mess

Pre-1990s	During this time the typical understanding of patents, especially in the US Patent and Trademark Office, was that software could only be partially patented: you could patent the exact code but not a concept.
1994 – 1998	Major court decisions came during this time, two of which fundamentally changed patent concepts. Software concepts could now be patented.
1999 – 2001	The first years of a 'patent flood' that covered a wide variety of patents relating to the Internet and software, many of which were only available after a 1998 decision.
1999	Peter Detkin at Intel is credited with coining the term "patent troll," referring to companies and individuals that make money off of owning patents and suing when they are infringed upon but make no actual product or innovation themselves.
2002 – 2011	Patents skyrocketed here as did the number of duplicate patents. Now, roughly 35% of the patents that the USPTO has granted were for already-patented concepts and devices.
Mid-2000s	Marshall, Texas is cemented as <i>the</i> place to set up shop if a company is considering going into patent ownership and litigation. It is incredibly favorable to patent holders and has a well documented history of ghost buildings filled with empty rooms and no employees but that are home to patent holding and litigation firms.

## Google-Specific News

2007	Android is released and has since become the most widely used smartphone OS in the US and other parts of the world.
2010 Status: <i>Ongoing</i>	Sued by Oracle over the use of Java in the Android OS. In January, Oracle purchased Sun Microsystems to gain its Java-related patents. Oracle is seeking \$1.4 billion to \$6.1 billion from Google. Trial is expected to happen in October 2011.
Status: <i>Ongoing</i>	Motorola sues Apple and Apple countersues days later. The two are still at war over 42 patents: 24 are Apple's and 18 are Motorola's.

## How Google Learned to Stop Worrying and Love the Patent

The digital era has an arms race of its own: smartphone, tablet and personal media player companies are building patent arsenals.

Over the years, the purchases and acquisitions **Google** has made have often graced the pages of *The Online Reporter*, but Google's most expensive purchase to date — the \$12.5 billion purchase of **Motorola Mobility** — has one very large distinction from its other major purchases: Google isn't interested in Motorola for its products and concepts everyone associates with the company; rather, Google is going after patent gold. Google specifically said it does not want to make hardware and the purchase was not for Motorola's hardware operations.

Google hasn't been on a patent-spree like most of its major competitors and partners, so the Motorola buy is its main foray into this arena. Whether or not this move helps, it is a major sign of the times and is likely only the first such move from Google.

Typically when technology company "A" brings a patent lawsuit against company "B," the latter looks in its bag of patents, finds any that "A" is in violation of and countersues. The two firms then negotiate the settlement that includes a cross-licensing of patents. The one notable tech exception is **Tivo's** successful suit against **Dish**.

So, when **Apple, Oracle** and others started suing over Android, Google looked into its patent bag and found it sorely lacking. Google, feeling that it was the victim of a "hostile, organized campaign" of lawsuits over "bogus patents," has taken the first steps in defending itself by taking from its big bag of money and purchasing roughly 20,000 patents, oh and a smartphone and STB company attached to them.

The problem for Google is that it's currently hard to tell if buying Motorola for its patent portfolio was like finding a diamond in the rough or if it's only the rough. Paying \$12.5 billion for patents — around 12,500 approved patents and another 7,500 that have been filed — makes it even harder to tell since that breaks down to \$625,000 per patent if we take Google at its word that this purchase was all about the patents rather than Motorola's others assets.

Google also purchased a bundle of more than 1,000 **IBM** patents last month, for an undisclosed price

We know not all patents are created equal, but that's still a lot of money to be tossing around for patents that can still get thrown out in a legal battle down the road. According to the legal minds at Apple and Google, there are roughly 225,000 to 250,000 patents that can be applied to smartphones when looking at devices — the OS, internal hardware and software — though not all of these claims would stand up in court.

Google has become the latest to purchase a patent portfolio in hopes to keep some of these patent problems at bay, but any success in the courts with the Motorola buy remains to be seen. We also can't forget that executive time and company money being spent on these patents has to be deducted from the effort to make innovative products and better service customers.

### The Arms Race

The patent buildup is an arms race, plain and simple. Many decry the rise of patents as some sort of revenue shield, but there are a few thoughts on why patents are important and how they came to mean so much to the industry:

- Scaffolding: Some view patents as one of the best means to get a company off the

**Google Specific News:** *continued from page ONE*

2011	Google has an estimated \$39.1 billion in cash.
Status: <i>Resolved</i>	Sued by Bedrock Computer Technologies over the use of the Linux kernel in the Android OS. Bedrock was awarded \$5 million.
	Google's WebM (VP8) video technology allegedly infringes upon the rights of at least 12 different patent holders.
	Google purchased 1,000 patents from IBM, including those on Web-based querying to servers and routers. The price is undisclosed.
	Google is outbid by a group of companies for the Novell and Nortel Networks set of patents. These could cost Google as much as \$15 per Android device.
	Android vendors lose their right to distribute Linux. Nearly the entire field of Android device vendors has lost this right and face a serious risk of enormous patent fees, legal costs and injunctions to stop selling their devices, injunctions that have a very, very high chance of succeeding. The only solution currently available is to gain a new license from each original Linux rights holder, literally thousands of companies and individuals.
	Microsoft has set up deals to license patents to Android handset makers, most of which avail themselves of the deal to avoid losing in a lawsuit.
Status: <i>Ongoing</i>	Oracle asks the court to compel a deposition of Motorola Mobility. Rumors also hit that Oracle is pursuing individual Android vendors for a fee of \$10 to \$15 per Android handset.
Status: <i>Ongoing</i>	Apple continues lawsuits against HTC. Patents covered here cover both the design of physical devices and components key to Android.
Status: <i>Ongoing</i>	Apple ramps up its patent battle with Samsung and wins an injunction barring Galaxy Tab device sales in Germany. Samsung agrees not to sell the tablet in Australia. Google will possibly be impacted by the loss of device sales.
Status: <i>Ongoing</i>	Apple has also filed a new EU suit against Motorola (patents here are included in the total above) and JAY-tech which focuses on both design and Android components.
	Apple has found about half a dozen patents that successfully win in cases against Android handsets — both in terms of injunctions and final court/ITC decisions.
	Google begins an acquisition of Motorola Mobility for \$12.5 billion. This likely will not impact existing litigation involving either party.
	Google is said to be eyeing the patent portfolios of both InterDigital and Kodak.
Status: <i>Ongoing</i>	In the Microsoft v Motorola case in the US, a Florida case is moved Washington and its trial date is set back until 2012 but may be delayed longer. The ruling seems to cast some favor on the chances of a successful Microsoft outcome for the main lawsuit and the counterclaims already filed.
	There are currently about 50 patent-infringement lawsuits that cover parts of Android.

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ground. Patents give investors a reason to dump cash into a startup and protect startups with novel ideas from getting ripped off by larger companies that can put more resources into a “copy that” approach than the small company did into its true innovation. This thought also strikes against those who say patents of software or some hardware must go, arguing that removing these supports would simply mean a cycle of little innovation followed by a push to reintroduce the support structure.

- Innovation of thought versus construction: Some ideas are truly unique, but they're hard to make. The goal of a patent can sometimes be to protect an idea that a company or person has before shopping that concept around to see if anyone could actually develop or build the product and make a profit off of it. Here, patents protect the innovator that doesn't have the resources of Google and others.

- Protection: The reason many think Google bought Motorola is for protection. Patents defend companies against infringement suits as much as they allow companies to sue for infringement. Patents can provide a strong shield even at unlikely times. As **Samsung** is currently being sued by Apple for a design infringement in Germany (previously the whole of the EU but now relegated to just that single country), Samsung has some patents in its arsenal that pertain to its tablet's construction that could defend design similarities because of the hardware pieces they need.

- Revenue Streams: This is the reason patent companies like **Lodsys** exist. Patents can be great revenue streams if you can afford to buy the patents. The best part of this approach is that no one is immune to a good patent claim. In 2005, **InterDigital** was able to get \$252 million from **Nokia** over patent disputes. Even Apple has failed to get a favorable patent litigation against Nokia and ended up paying Nokia last time they went at it. Still many more people in every sector have heard of Apple than InterDigital.

- Bartering: Let's turn a phrase from someone who may have been in some trouble if copyright and patent laws were a good bit older: “To patent, perchance to trade. Aye there's the rub.” One of the underlying goals of owning a patent portfolio is to barter with it. This is typically done as cross licensing agreements where both sides agree to give access to patents they own in order to develop new products freely and prevent litigation. This is looked down on from the outside because it restricts competition from smaller companies, but it is a great strategy for those already in the game. The big head scratcher is why it took Google so long to realize this.

- Deterrence: One thing a big patent portfolio does is keeps people from suing each other — sometimes. This mainly works against smaller companies but typically means that it is often cheaper and easier to come up with a patent agreement or find an acceptable license fee than it is to take the matter to court. Defending against litigation, even in relatively small cases, can cost millions of dollars in legal fees. Settlements are often a fraction of total expected court fees.

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Mobile Device Patents			
	Grants	Applications	Total
RIM	893	2,241	3,134
Nokia	618	2,037	2,655
Microsoft	846	1,748	2,594
Qualcomm	316	2,277	2,593
AT&T	442	1,425	1,867
Samsung	282	1,427	1,529
IBM	353	720	1,073
Sony	241	814	1,055
Motorola Solutions	280	739	1,019
HP	277	615	892
Intel	267	539	806
Motorola Mobility	210	496	706
Alcatel-Lucent	216	464	680
Yahoo	103	562	665
Broadcom	162	351	513
Apple	53	424	477
Cisco	190	262	452
Ericsson	115	300	415
Verizon	46	307	353
Google	60	257	317
<b>Totals</b>	<b>5,970</b>	<b>18,005</b>	<b>23,795</b>

*Source: MDB PatentVest*

**Duck When the Shooting Starts**

Patents are the equivalent of nuclear deterrents: all sides build them up, no one should use them if at all possible and, once the shooting starts, the only ones that matter are those that hit and those that keep others from hitting.

Of the approximately 20,000 patents Google picked up in the Motorola purchase, only a handful are any kind of successful deterrent for actual Android- and mobile-based litigation. That said, just having 20,000 additional patents on hand will give Google a bigger posture, keeping those that don't want to dig through the patent mess a reason to stay away.

Once shots are fired — and trust us, shots will be fired in all of the mobile and smartphone space — it won't be the size of the arsenal that matters, it's the ones that actually hit. Most patent claims and the typical counterclaims that come from the same action involve under a dozen patents. While these portfolios make it easier to hit back, they don't matter as much once patent litigation starts. This raises some concerns for Motorola, since it is already embroiled in litigation against others, and Google said it will largely stay out of this until it acquires Motorola — something it has given itself at least until early 2012 to do.

It is quite possible that Google's acquisition of Motorola could come at a time when Motorola would be barred from importing Android devices into the US. It isn't the most likely outcome, but it is still a possibility.

**Google's Move**

There is one issue with the purchase that has a lot of people in the patent community scratching their heads: Motorola's intellectual prop-

erty doesn't help Google with the current legal battles it has against Apple and Oracle, nor does Google seem willing to step in and help Motorola and Samsung with their existing legal woes.

On the Google/Android side of this, current litigation is already pretty far along, and the vast majority of it will start this autumn, meaning Google won't even have its Motorola patent pool available during these fights. Google giving itself until March 2012 to complete the acquisition means Google may be looking at this solely to prevent future litigation, which will lead to a lot of questioning about Motorola's purchase price and why Google didn't simply attempt to buy the patent portfolio while leaving the rest of Motorola alone.

Another question is whether the Motorola patents will do what everyone thinks Google wants them to do. We know that Apple, which has been lawsuit-happy over Android-based products all around the globe, has not been scared by what Motorola has. By seeking a declaratory judgment last October, Motorola went for an early hit that makes it seem the company isn't ready for a full-on confrontation.

Florian Mueller of *FOSSpatents* said, "Motorola Mobility's portfolio has failed to deter, and it has so far failed to make any meaningful headway in litigation," and that it "is on the losing track against the very two companies Google says those patents will provide protection from."

According to Motorola, many of its patents are in "video compression, decompression and security technologies." These areas will do little to help Google in its fight against Oracle over Java patent infringement or against the multiple patents Apple says are violated by Android. Motorola has also been a big believer in licensing its patents, meaning that most of the companies that could be deterred by the purchase are already safe from Google's wrangling.

Motorola was one of the first to patent technologies related to GSM phone services, which it has successfully used for years to keep some revenue coming in as well as to keep its costs low, but that still doesn't provide Google with a strong safety net.

"Now that I see the break-up fee and have thought some more about the overall situation, I've reached the point at which I simply don't buy the 'protection' theory anymore," said Mueller.

The worry here is that Google may end up similar to Nokia after the latter took control of the Symbian OS. Nokia's Symbian efforts have ended up faltering in the long term in many countries, and now it is relegated to backing **Microsoft's** Windows Phone OS, with continuing rumors that it will be bought out by the PC giant.

**Opponents' Patents, Portfolios & Protections**

With all the patent moves being taken by Google and both its competition and Android partners, there are events in the patent world that show a trend:

- **Nortel's** 6,000 patents were sold to a group of companies including Apple and Microsoft for \$4.5 billion, around \$750,000 per patent. Google was invited to bid with the group but declined. This is more than what Google paid for Motorola per patent, but the patents were acquired by more companies and weren't as heavy a burden on one company, such as Google with Motorola Mobility. The Nortel patents are valuable because they were not previously licensed to many companies. After the group won the bid the companies established a licensing option for the open-source community.

- InterDigital seems to be up for sale, or at least its patents are, and the company has a valuation of \$3 billion. Among the bidders are

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Apple, Nokia and Qualcomm, while Google was once considered a possible buyer it seems to be out of the running after the Motorola purchase. InterDigital has around 8,800 patents, including some that are crucial to 3G and 4G/LTE handling. The problem here is that, like Motorola, there are many companies already licensing their patents. Estimates have up to 50% of the current 3G market licensing from InterDigital's portfolio. However, the patents covering 4G technology are comparatively unlicensed.

- Samsung's Galaxy Tab 10.1 has had sales halted in Germany and Australia due to possible infringement upon designs Apple has registered for its iPad. After striking down an EU-wide ban, Samsung is only limited to not selling these devices in Germany and Australia and cannot export any devices from Samsung Germany's operations. The implication for Google is that limiting Android devices from being sold will hurt Android's market share, but at the same time Google has already made money off the devices being held up. If Apple loses the cases, it'll be forced to pay out a hefty sum to Samsung. Apple and Samsung started a suit-countersuit dance over these design issues in April.

- Size doesn't always matter. **HTC** bought **S3 Graphics** for its patents and was able to use two successfully against Apple. The other two patents involved in the suit were dismissed. For smartphones and mobile devices, the two are still duking it out with Apple being the latest to file suit this week for another three patents being infringed.

- Recent patents don't always matter either. In a case Apple won last month against HTC, the two patents the court found HTC to have violated in its smartphones were patents Apple was issued for its Mac computers back in the mid 1990s.

- **Kodak's** patents are also up for sale. The assumed bidders are Google, Apple, RIM, Microsoft, HTC and Samsung. Kodak wants to sell just 10% of its portfolio, about 1,000 patents. This will spark a major bidding war between at least Apple and RIM. These two companies are currently in a patent dispute of their own that involve Kodak's imaging patents being put up for sale. The patent sale seems to come from Google's Motorola purchase. Kodak is worried that someone may be willing to pay more than its \$650 million value just to get at these patents. Also, a patent sale would be a better way to immediately bring in some cash instead of long litigation against the likes of Apple.

This is a patent bubble that's going to take a lot of money out of the mobile sector before it goes 'Pop!' and everyone is left with stacks of papers that simply gather dust.

**What's a Patent Among Friends?**

Unfortunately for everyone involved, the whole patent debacle is going to strain a lot of relationships that were once beneficial.

Google has been 'forced' to buy Motorola for patent protections, but this is going to hurt relations with the rest of the Android community like Samsung, HTC and LG. Even if Google promises to run Motorola as a separate entity, every time Motorola gets a product out first or is the first to get a new Android version or update, there are going to be others complaining about the fairness of it all.

With new Android version coming out every few months, can we really expect Motorola to always be the second or third to get access to it; and if so will Motorola be happy about that or will it drive away the

innovators on staff?

If your ultimate boss were Google, would you really not want to spend more time developing Google-friendly technology or better ways to use existing Google platforms and services? Can running Motorola as a separate company truly stop Motorola employees and higher-ups from wanting to please their overlords?

And what if down the road adopting a non-Android OS made sense for Motorola's STBs, smartphones or tablets? Who would make that decision, Motorola or Google?

Whether or not Motorola gets early access or special privileges, it will be perceived that Motorola does and that will cause problems. Motorola, unless or until spun-off, will cause headaches for Google and Android.

"Everyone who is a long-term player in the industry has at some point sorted out patent issues with Motorola," Mueller wrote. "Don't expect that Google can use all 17,000 patents in an attack to defend Android."

Even among those with friendly relationships, patents can be a hassle. Think of the ongoing spat between Samsung and Apple over the Galaxy line of smartphones and tablets and the iOS devices. Samsung's largest customer for semiconductors is Apple worth about \$5.7 billion in 2010. Will relationships between these two sour as products are blocked in some countries, even if only temporarily? Patent disputes will color their relationship and make them less likely to do business with each other.

**A Microsoft Counterstrike?**

There have been a few reports that Google only entered negotiations to buy Motorola after it heard Microsoft was looking into making the acquisition. This could be true because Google purchased **DoubleClick** for \$3.2 billion, taking victory away from the \$2 billion Microsoft bid. As a side note, investors at the time called even the \$2 billion bid far too high, so Google is definitely willing to burn some cash just to keep Microsoft at bay.

This may not have been Google's only motive, but it would be a bit of icing on the cake for Google to beat out Microsoft. It would also explain why Google was willing to pay that 60% premium for Motorola as well as a \$2.5 billion payment to Motorola if the deal doesn't go through for any reason.

**A Future with an Atomic Glow**

The problem with the way patents are progressing is that they're encouraging a war over limited resources, and fees incurred are slowly going to damage the returns everyone sees. Think of the patent fights as a war for water: no new reservoirs are sought, so it's turning more people and companies into buckets in a world full of fewer and fewer taps.

Some pretty awful news comes from two companies that are looking to sell their patents. InterDigital and Kodak have worked to become worth billions of dollars, giving jobs to thousands of people and developing physical products that consumers can both name and purchase. They have spent years to get where they are. However, when all is said and done, the things that make them worth the most are concepts scribbled on paper that may or may not have anything to do with the company's current production.

The worst in all of this is that these companies are spending billions of dollars to "purchase" concepts, ideas and conjecture. Instead of Google dumping \$12.5 billion into making Android a truly stunning OS or developing a new interface for tablets that would help its device part-

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ners stem the iPad-tide, it bought Motorola Mobility and all the problems and complications that come with making hardware.

Each patent lawsuit costs millions of dollars for both sides, and there are currently at least 50 patent lawsuits going on in the US and Europe that relate to Android alone. There are at least another 25 separate lawsuits that deal with hardware in the mobile space. This is thousands of hours of executive time and billions of dollars that could be spent on making superior products for consumers and better serving consumers. Instead it's being burnt up.

There has never been a better reason for the industry to take another look at exactly what patents are doing for and to everyone involved.

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Send questions and comments to: Charles Hall ([Charles@riderresearch.com](mailto:Charles@riderresearch.com)), Baton Rouge, LA 225-769-7130

Author: Geoff Whiting, ([whiting@onlinereporter.com](mailto:whiting@onlinereporter.com))

Production: Michael Kearns, ([quark@riderresearch.com](mailto:quark@riderresearch.com))

North America Subscriptions: ([sales@riderresearch.com](mailto:sales@riderresearch.com)) 225-769-7130;

Europe, Asia, Pacific, Middle East and Africa subscriptions: Simon Thompson ([simon@riderresearch.com](mailto:simon@riderresearch.com)), Buckingham, UK +44 (0) 1 280 820 560  
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