



Like a Deranged Easter Bunny

Intellectual Property Analysis of Amazon and the Microsoft Android Licensing Program

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Microsoft recently signed an IP licensing agreement with Quanta, Amazon's Kindle Fire tablet manufacturer. Does Amazon have anything to worry about? Yes! Because Microsoft has plenty of company.

Background

It's settled. We've figured out Microsoft's costume for this year's Halloween party: Ralphie's pink bunny suit from *A Christmas Story*.

Why?

Given its licensing program – and recently, its agreement with Quanta, Amazon's Kindle Fire manufacturer – why not? A look at Microsoft's IP Licensing page tells us the company “has entered into more than 700 licensing agreements and continues to develop programs that make it possible for customers, partners and competitors to access its growing, broad patent and IP portfolio.”²

What a deranged marketing ploy. It's like a creepy dude in an Easter bunny suit offering eggs, and then throwing them if the passerby refuses to take one.

This strategy of “license or we sue” is working for them though, since Microsoft's likely “received five times more income from Android than from Windows Phone” – and this just from HTC phone sales!³ What about the revenue from the other licensees on the right?

Given the Kin's success, Microsoft seems to be hiding any other phone failures by utilizing the size of its portfolio and piggybacking on the Android's success. And this strategy is working because, really, how many manufacturers are going to look through not only Microsoft's 10,000 plus patents, but their own sizeable portfolios as well, just to determine which patents they may or may not be infringing? We doubt even Microsoft's patent lawyers know what's in their own portfolio, let alone what's in their competitors'. (Of course, they could always enlist the help of their old CTO Nathan Myhrvold, since he seems to have a good grasp on searching through a 35,000 plus patent pool to find assertion gems.⁴)

But enough about Microsoft's gameplan. Should Amazon be worried about them or not?

Well, yeah. They appear to be acting like the creepy dude in a bunny suit. But there are others wandering around this Android costume party, so let's unmask them.

Bigger Concerns

So after Microsoft's suit against Barnes & Noble and its Nook manufacturers over the Android platform back in March, everyone's wondering if Amazon's next on Microsoft's list. Maybe. But if we're calculating risk by which entity has the most Android-related patents, Microsoft only comes in second. We looked at the ecosystem around the Android platform, using patents from suits that

Licenseses in Microsoft's Android Licensing Program ¹
Acer
General Dynamics
HTC
Onkyo Corp.
Quanta Computer
Samsung
Velocity Micro, Inc.
ViewSonic
Wistron

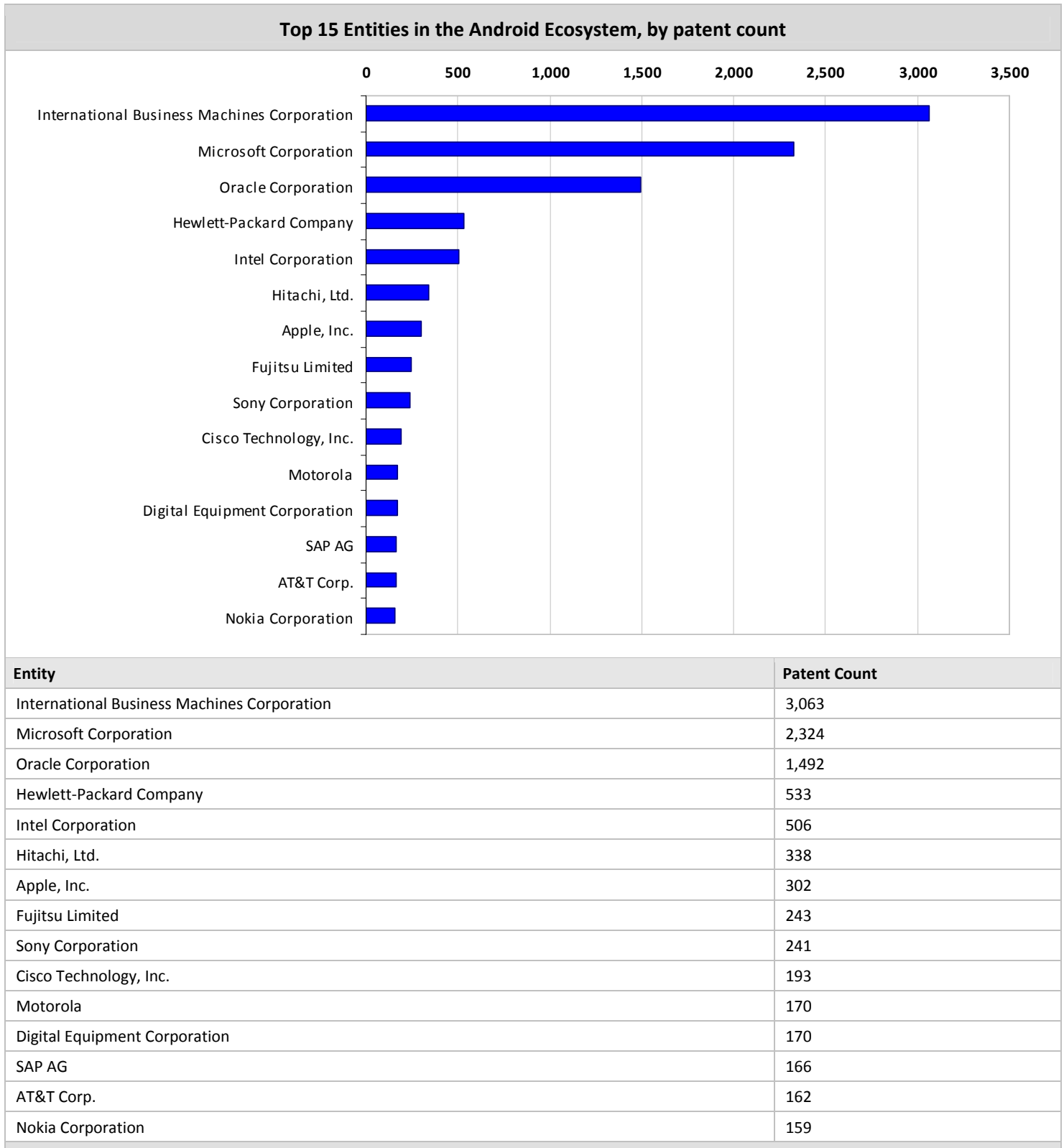
¹ <http://www.microsoft.com/presspass/press/NewsArchive.aspx?cmbContentType=PressRelease>

² <http://www.microsoft.com/presspass/presskits/iplicensing/>

³ <http://www.asymco.com/2011/05/27/microsoft-has-received-five-times-more-income-from-android-than-from-windows-phone/>

⁴ <http://online.wsj.com/article/BT-CO-20111006-711459.html>

Microsoft and Oracle have asserted over Android technology.⁵ Below is a display of the top fifteen entities having Android-related technology by patent count.



While Microsoft holds a decent amount of patents in the Android ecosystem, IBM holds the most, with over 3,000 patents in the space. This isn't surprising, given IBM's giant portfolio. What's interesting is there are only a handful of mobile communications names in the list, and they're far from the top. What's especially interesting is Motorola's patent count. This list is by original

⁵ *Microsoft Corporation v. Motorola Inc* (October 1, 2010); *Oracle America, Inc. v. Google Inc.* (August 12, 2010)

assignee, so the “Motorola” in this list includes both Motorola Mobility and Motorola Solutions. Motorola Mobility only makes up 92 of the 170 “Motorola” patents. But that’s an entirely different topic.⁶

So who doesn’t show up in this top fifteen list? Amazon, with a whopping 12 patents in the space. These patents are listed below. It remains to be seen if Amazon will need to rely on these in the future.

Amazon patents found in the Android ecosystem

Document #	Title	Assignee Name	Priority	File	Issue
US 7,792,705	Method and system for placing a purchase order via a communications network	Amazon.com, Inc.	12-Sep-97	21-May-07	7-Sep-10
US 7,428,500	Automatically identifying similar purchasing opportunities	Amazon.com, Inc.	30-Mar-00	30-Mar-00	23-Sep-08
US 6,941,374	Hidden agent transfer protocol	Amazon.com, Inc.	5-Aug-99	5-Aug-99	6-Sep-05
US 6,675,196	Universal protocol for enabling a device to discover and utilize the services of another device	Amazon.com, Inc.	8-Jan-99	5-Aug-99	6-Jan-04
US 6,549,904	Auction notification system	Amazon.com, Inc.	25-Jun-99	25-Jun-99	15-Apr-03
US 6,366,910	Method and system for generation of hierarchical search results	Amazon.com, Inc.	7-Dec-98	7-Dec-98	2-Apr-02
US 6,317,722	Use of electronic shopping carts to generate personal recommendations	Amazon.com, Inc.	18-Sep-98	18-Sep-98	13-Nov-01
US 6,269,369	Networked personal contact manager	Amazon.Com Holdings, Inc.	2-Nov-97	2-Nov-97	31-Jul-01
US 6,266,649	Collaborative recommendations using item-to-item similarity mappings	Amazon.Com, Inc.	18-Sep-98	18-Sep-98	24-Jul-01
US 6,064,980	System and methods for collaborative recommendations	Amazon.com, Inc.	17-Mar-98	17-Mar-98	16-May-00
US 5,963,949	Method for data gathering around forms and search barriers	Amazon.com, Inc.	22-Dec-97	22-Dec-97	5-Oct-99
US 5,960,411	Method and system for placing a purchase order via a communications network	Amazon.com, Inc.	12-Sep-97	12-Sep-97	28-Sep-99

Verdict

So should Amazon be worried? Sure. Should every company selling a product be worried? Sadly, a resounding yes. Until actual patent reform happens – oops, did we just say the latest patent reform bill did nothing to meaningfully improve the system? Yes, we did. – and until the “more is better” stockpiling mentality dissipates from both the overcrowded patent law field and the upper echelons of the corporate tech world, every company large enough to receive attention over its technology is a participant in this cold patent war.

For a more detailed examination of the portfolios of Microsoft or Amazon, please contact us at patentlyobvious@m-cam.com.

⁶ <http://www.m-cam.com/patently-obvious/foregone-conclusion-intellectual-property-analysis-google-s-motorola-mobility-paten>

M-CAM's Patent Glossary

- Aligned Sector:** The business sector in which the product(s) resulting from the patent(s) is currently or intended to be sold.
- Applicant:** The person or corporation that applies for a patent with the intent to use, manufacture or license the technology of the invention; under U.S. law, except in special situations, the applicant(s) must be the inventor(s).
- Application:** Complete papers submitted to the U. S. Patent and Trademark Office seeking a patent including oath, specification, claims, and drawings. This usually does not signify a Provisional Patent Application, but only a regular patent application.
- Art:** The established practice and public knowledge within a given field of technology. This also identifies a process or method used to produce a useful result. A term used in consideration of the problem of patentable novelty encompassing all that is known prior to the filing date of the application in the particular field of the invention.
- Assignee:** The person(s) or corporate body to whom the law grants or vests a patent right. This refers to the person or corporate entity that is identified as the receiver of an assignment.
- Business Method Patent:** A patent that controls the way a business process is undertaken. The issuance of these patents by the United States Patent and Trademark Office (USPTO) is new and controversial, since many allege that it is unfair to allow a patent on a way of doing business.
- Citation:** This may include patents or journal articles that the applicant or examiner deems relevant to a current application. A reference to legal authorities or a prior art documentation are examples of a citation.
- Claim:** The language in a patent application that defines the legal scope of the patent. Most patents have numerous claims. This is typically the single most important section in the application.
- Concurrent Art:** Concurrent art occurs when related patent applications are being examined by the USPTO at the same time. It is difficult for any company or inventor to know, at the time they file for a patent, whether a "related" patent application exists.
- Filing Date:** The date when a properly prepared application reaches the patent office in complete form.
- Innovation Cycle:** A description of the commercialization timeframe for the intellectual property.
- Innovation Space:** M-CAM's representation of the innovation(s) that occur before, during, and after the pending period of the subject patent. The innovation space is the first place to look for patents that are closely related to the subject patent and that may impact the defensibility of the subject patent or create opportunities for patent licensing.
- Issue Date:** Not to be confused with the filing date, which is the date the patent application was physically received by the U.S. Patent and Trademark Office. This is the date on which the patent actually issues.
- Non-Aligned Sector:** Any sector in which the patent can be used or sold, other than the sector for which the patent or resultant product was invented or intended.
- Pod:** A group of patents owned by a company that should be treated as a single unit of innovation (e.g., a certain group of patents that comprise a single product or multiple related products).
- Prior Art:** Any relevant patent that was issued before the patent being analyzed. If this previous patent was specifically mentioned in the new patent's application, the previous patent is referred to as "cited prior art". If it was NOT mentioned, then that previous patent is referred to as "uncited prior art".
- Subsequent Art:** Any patent that has a filing date with the USPTO that is after the issuance date of the subject patent. This subsequent art patent may or may not have cited (see "Citation" above) the subject patent. As subsequent art represents more recent innovation than the subject patent, it has great potential to shrink the market opportunity for the subject patent.

A Brief Primer on the Patent System

In recent years, the importance of patents and intellectual property rights as an important variable in the marketplace has come to the forefront of the public consciousness as world leaders declare their country's lead in the innovation race. Damaging intellectual property litigation is becoming increasingly common across all industries. This is exacerbated when patent rights are granted for non-novel ideas. A vast amount of precedent innovation is unconsidered by patent-granting authorities in the creation of new IP rights. Patent granting authorities including the United States Patent and Trademark Office (USPTO), European Patent Office (EPO), Japanese Patent Office (JPO), Chinese State Intellectual Property Office (SIPO), Korean Intellectual Property Office (KIPO) and many others are constrained by the use of patent classification systems which are routinely circumvented by patent applicants.

There is a two-way social contract underlying the patent system. In the United States, patent terms are generally limited to 20 years from the date of application. By statutory intention, once a patent has expired, the patent holder loses the right to exclude others from fully utilizing any innovation described in the patent. A large number of patents enter the public domain when they are "abandoned" – when owners discontinue paying patent maintenance fees. Patents also only provide an exclusionary right in the country for which the patent is filed. As demonstrated by the Global Innovation Commons⁷ (G.I.C.), using intellectual property available in the public domain eliminates the need to pay licensing fees on those innovations in countries where the patent was never registered, or worldwide, if abandoned.

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⁷ <http://www.globalinnovationcommons.org/>