

Smartphone Makers Battling More In Court Than The Market

Jessica Mintz, AP Technology Writer

SEATTLE (AP) — Competition among smart phone makers is heating up at retail, in advertising and, increasingly, in the courtroom as handset and software makers wield patent lawsuits to protect their turf and slow down their rivals.

Just a few years ago, smart phones were mainly for office workers who needed to check e-mail after hours. For most people, the Web browsers and other programs were too much trouble, and the data connections too slow.

Apple Inc. changed all that with the introduction of the iPhone in 2007. Its touch-sensitive screen and big icons made it easy to use. Its programs were designed from the ground up to work well on the small screen. And the sleek design made it an instant hit with consumers.

Even as competitors have rushed out copycat designs, the iPhone still sets the agenda.

But that throne is weakening. And as the other devices, including those running Google Inc.'s Android system, catch up with the iPhone, smart phone makers are having a harder time standing out to consumers or persuading them to pay more for their devices.

In turn, that has prompted a slew of patent disputes over all aspects of basic phone use, from the way a user swipes a touch screen to perform an action to the method a phone uses to extend battery life. Nokia is suing Apple, Apple is suing HTC, Microsoft is suing Motorola and more.

"In consumer electronics and related fields, it's a great challenge to earn a profit," said Bruce Sunstein, an intellectual property lawyer at Sunstein Kann Murphy & Timbers in Boston. "The way you can usually get profit is through innovation."

Smart phone makers must not only come up with novel features, he said, but must also stake claims to the technology behind them and thus reap the rewards in licensing fees.

Consumers shouldn't worry about buying or using any of those phones. Patent cases can take months or years to resolve — sometimes longer than the life of these phones — and disputes are often settled with licensing deals.

Ultimately, no one company will prevail. Rather, the results will determine how profits are divvied up among a vast number of players.

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It's a pool of money that's growing as smart phone sales balloon. Research group IDC expects global smart phone shipments of 270 million in 2010, a 55 percent increase from last year.

Intellectual property lawsuits can also help distract a rival or make entering the market less attractive. Amid fierce competition, companies are suing first rather than approaching rivals about licensing deals, said Ronald Cahill, manager of the intellectual property department at Nutter McClennen & Fish in Boston.

The rivals countersue, partly to make the other company just as miserable. Plus, when an agreement finally does get hammered out — most of these cases end in settlements — it's more likely that each will license the other's technology.

Among the lawsuits and countersuits so far:

— On Thursday, Nokia Corp. said it filed patent lawsuits against Apple in Britain, Germany and the Netherlands. The actions follow Nokia's 2009 lawsuits against Apple in the U.S. Apple countersued Nokia in late 2009. The features at issue include swiping gestures on touch screens and the built-in "app store" for downloading updated programs.

— In October, Microsoft Corp. sued Motorola over its phones running Android software. Microsoft said the Motorola phones step on Microsoft technology when it comes to synchronizing e-mail, calendars and contacts, among other things. Motorola replied with a lawsuit against Microsoft in November, adding claims that related to computer and server software and the Xbox video game system.

— Apple and Taiwan-based HTC, which makes smart phones that run various software systems, are also suing each other. Apple says it owns patents for the way screens detect more than one finger touch at a time, allowing someone to zoom in or out by spreading their fingers apart or pinching them together. HTC says Apple infringes on patented technology that helps prolong battery life.

"Where you have innovation proceeding at this great pace, it's not surprising that it takes a while for the rights to get settled and adjusted," Sunstein said. "I don't think anybody easily escapes litigation in this space."

While the lawyers file the paperwork, smart phone and software companies continue building new gadgets, adding features and updating software, leaving consumers more choices than ever.

For instance, Research In Motion Ltd. added an "app store" like Apple's to its BlackBerry phones and is now selling a more competitive touch-screen model.

Phones from HTC Corp., Motorola Inc. and others that use Android have matured into credible rivals to the iPhone. They accounted for 26 percent of all smart phones sold worldwide in the third quarter, while the iPhone made up 17 percent, according to research group Gartner Inc. In November, the first phones running new Microsoft software went on sale.

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The rivalry has played out in TV commercials that zero in on the iPhone's flaws.

Verizon Wireless and Motorola ads have cast "Droid" phones as more capable and powerful than the iPhone and mocked reception problems users face on AT&T Inc.'s 3G network.

A recent T-Mobile ad for the Android-based MyTouch 4G parodies Apple's "I'm a Mac" commercials. The iPhone 4 character carries a guy in a suit on his back — AT&T's 3G network — who brags about video-chat over Wi-Fi. The MyTouch character, a pretty woman in a bright sundress, boasts of video chat anywhere over a faster network.

And Microsoft, which comes late to the party, promises in its inaugural Windows Phone 7 "a phone to save us from our phones."

In such a competitive market, patent agreements and even the lawsuits are to be expected, intellectual property experts say. But that doesn't mean the companies are thrilled about the time and money it takes to resolve them.

"Ideally, a lot of these companies would be happy to just compete on the phones," said Cahill, the lawyer, "and not compete by suing each other."

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