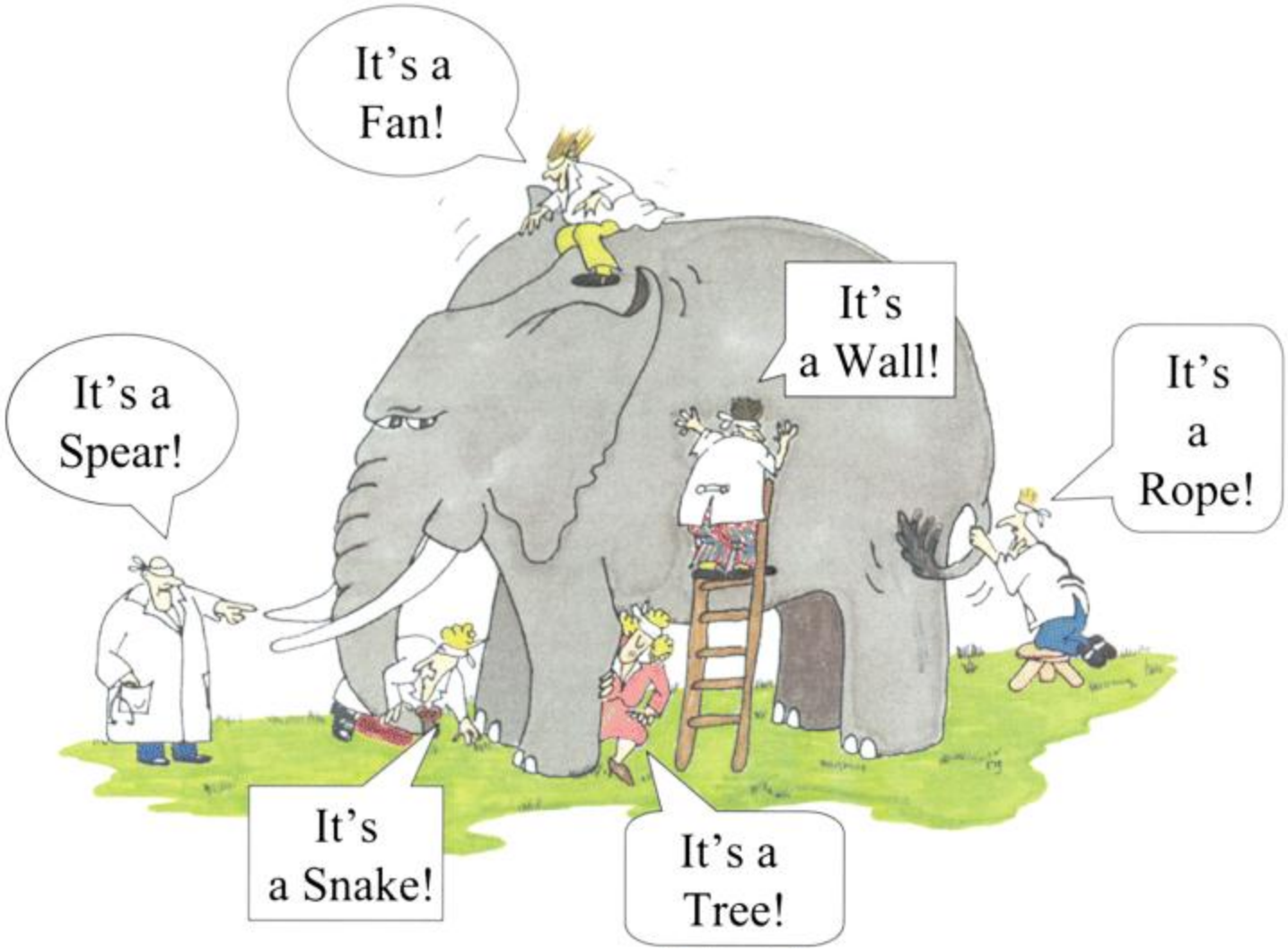
Santa Clara University

Patent Litigation by the Numbers

Professor Colleen Chien

colleenchien@gmail.com

Santa Clara University


It's a Fan!
It's a Spear!
It's a Wall!
It's a Rope!
It's a Snake!
It's a Tree!

Legal Perspective

250K

250K Patents (RPX, 2011)

$12.5 Billion

Google

www.Tech2Date.com

Buys

MOTOROLA MOBILITY

For US $12.5 Billion

$29B

$2.5B

Google's 2010 Revenue	**$29B**
Annual Android Revenue (est)	**$2.5B**

Google's 2010 Revenue	**$29B**
Annual Android Revenue (est)	**$2.5B**

$12.5 Billion

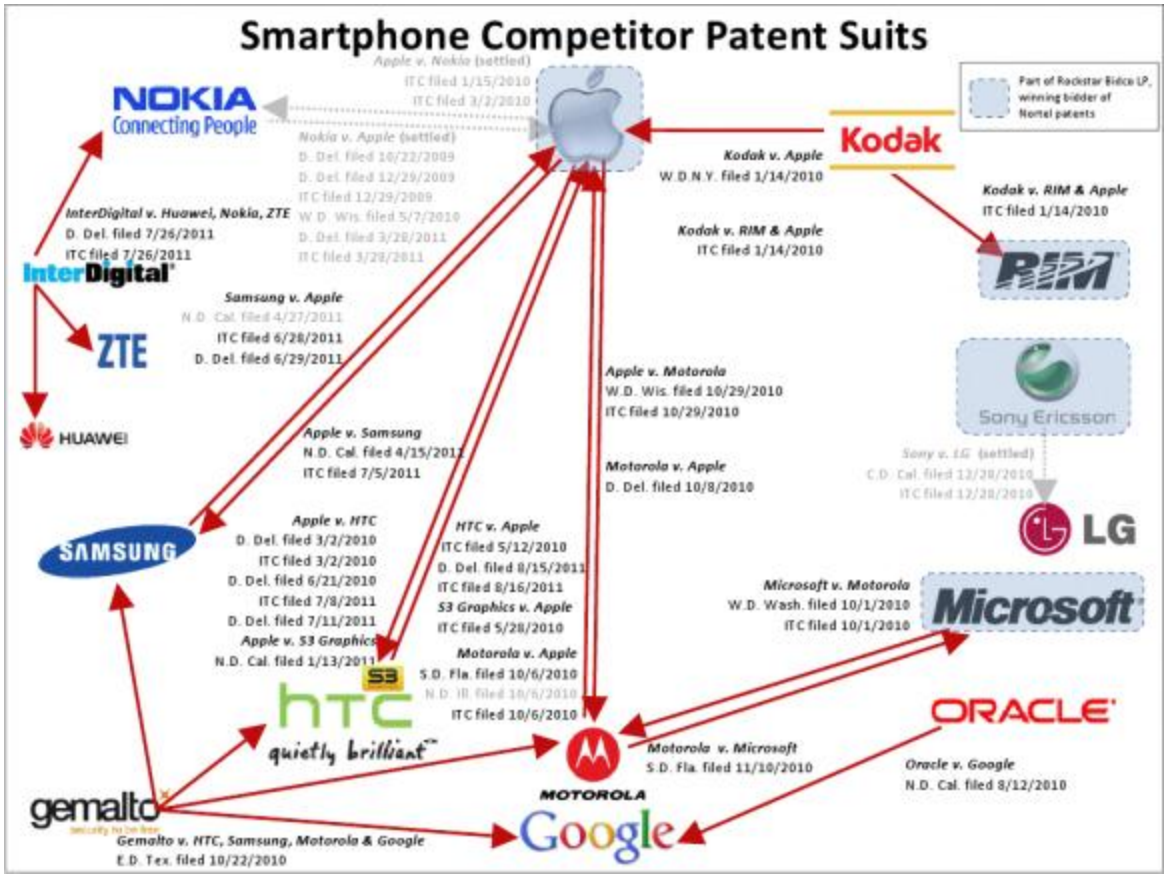
10+

10+

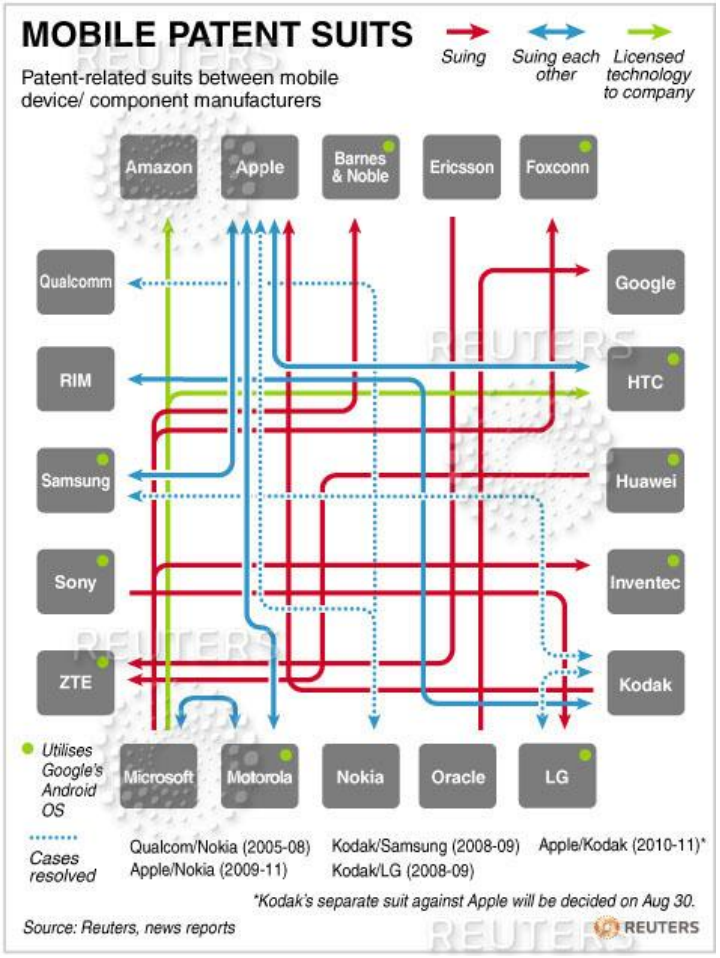
Ways to show the smartphone wars

http://ipinsiders.com/profiles/blogs/total-mess-see-who-s-suing-who-in-mobile-patent-war?xg_source=activity

Geek.com


Smartphone Competitor Patent Suits
Apple v. Nokia (settled)
ITC filed 1/15/2010
ITC filed 3/2/2010
NOKIA
Connecting People
Nokia v. Apple (settled)
D. Del. filed 10/22/2009
D. Del. filed 12/29/2009
ITC filed 12/29/2009
W.D. Wis. filed 5/7/2010
D. Del. filed 3/28/2011
ITC filed 3/28/2011
Part of Rockstar Bidco LP, winning bidder of Nortel patents
Kodak
Kodak v. Apple
W.D.N.Y. filed 1/14/2010
Kodak v. RIM & Apple
ITC filed 1/14/2010
Kodak v. RIM & Apple
ITC filed 1/14/2010
RIM
InterDigital v. Huawei, Nokia, ZTE
D. Del. filed 7/26/2011
ITC filed 7/26/2011
InterDigital
Samsung v. Apple
N.D. Cal. filed 4/27/2011
ITC filed 6/28/2011
D. Del. filed 6/29/2011
ZTE
HUAWEI
Apple v. Motorola
W.D. Wis. filed 10/29/2010
ITC filed 10/29/2010
Sony Ericsson
Sony v. LG (settled)
C.D. Cal. filed 12/28/2010
ITC filed 12/28/2010
Apple v. Samsung
N.D. Cal. filed 4/15/2011
ITC filed 7/5/2011
Motorola v. Apple
D. Del. filed 10/8/2010
LG
SAMSUNG
Apple v. HTC
D. Del. filed 3/2/2010
ITC filed 3/2/2010
D. Del. filed 6/21/2010
ITC filed 7/8/2011
D. Del. filed 7/11/2011
Apple v. S3 Graphics
N.D. Cal. filed 1/13/2011
HTC v. Apple
ITC filed 5/12/2010
D. Del. filed 8/15/2011
ITC filed 8/16/2011
S3 Graphics v. Apple
ITC filed 5/28/2010
Motorola v. Apple
S.D. Fla. filed 10/6/2010
N.D. Ill. filed 10/6/2010
ITC filed 10/6/2010
Microsoft v. Motorola
W.D. Wash. filed 10/1/2010
ITC filed 10/1/2010
Microsoft
S3
htc
quietly brilliant
ORACLE
Motorola v. Microsoft
S.D. Fla. filed 11/10/2010
Oracle v. Google
N.D. Cal. filed 8/12/2010
MOTOROLA
gemalto
Gemalto v. HTC, Samsung, Motorola & Google
E.D. Tex. filed 10/22/2010
Google

Reuters


MOBILE PATENT SUITS
Suing
Suing each other
Licensed technology to company
Patent-related suits between mobile device/ component manufacturers
Amazon
Apple
Barnes & Noble
Ericsson
Foxconn
Qualcomm
RIM
Samsung
Sony
ZTE
Google
HTC
Huawei
Inventec
Kodak
Microsoft
Motorola
Nokia
Oracle
LG
Utilises Google's Android OS
Cases resolved
Qualcom/Nokia (2005-08)
Apple/Nokia (2009-11)
Kodak/Samsung (2008-09)
Kodak/LG (2008-09)
Apple/Kodak (2010-11)*
*Kodak's separate suit against Apple will be decided on Aug 30.
Source: Reuters, news reports
REUTERS

CNET

Motorola Patent Litigation Since 2010

Lawsuits and patent related complaints by and against

Microsoft vs. Motorola,
Files ITC complaint
Oct 1, 2010

Gemalto vs. Motorola
Along with HTC, Google, Samsung
Oct 22, 2010

Apple vs. Motorola,
For violating six patents
Oct 30, 2010

Microsoft vs. Motorola,
For patent license royalties
Nov 9, 2010

Microunity Systems Engineering vs. Motorola
Along with Apple, microprocessor patents
Jan 27, 2011

Lodsys vs. Motorola,
Along with Motorola Mobility, IP infringement
Feb 11, 2011

Ogma vs. Motorola,
Along with Apple, patent infringement
Mar 14, 2011

Imperium Holdings vs. Motorola,
Along with 7 others, patent infringement
Mar 21, 2011

Ogma vs. Motorola,
Along with others files ITC complaint,
Apr 1, 2011

Gellyfish Technology vs. Motorola,
Along with Motorola Mobility and 30 others, IP infringement
Apr 13, 2011

Hybrid Audio vs. Motorola,
Along with Apple, HTC, Dell, patent infringement
Apr 19, 2011

Apple vs. Motorola,
Design patent infringement in Germany over Xoom
May 27, 2011

Qaxaz LLC vs. Motorola ,
and others, patent infringement
Jun 2, 2011

Arnhouse Digital Devices vs. Motorola Mobility,
Patent infringement
Jun 16, 2011

Cascades Computer Innovation vs. Motorola,
Along with Motorola Mobility and Samsung, patent infringement
July 6, 2011

Multi-Format vs. Motorola Mobility,
and others, patent infringement
Jul 28, 2011

Advanced Digital Technologies vs. Motorola,
Along with Motorola Mobility and Dell, patent infringement
Aug 1, 2011

Companies Litigating Against Motorola

MOTOROLA

Companies Motorola's Litigating Against

Motorola vs. Apple,
Files ITC complaint
Jan 22, 2010

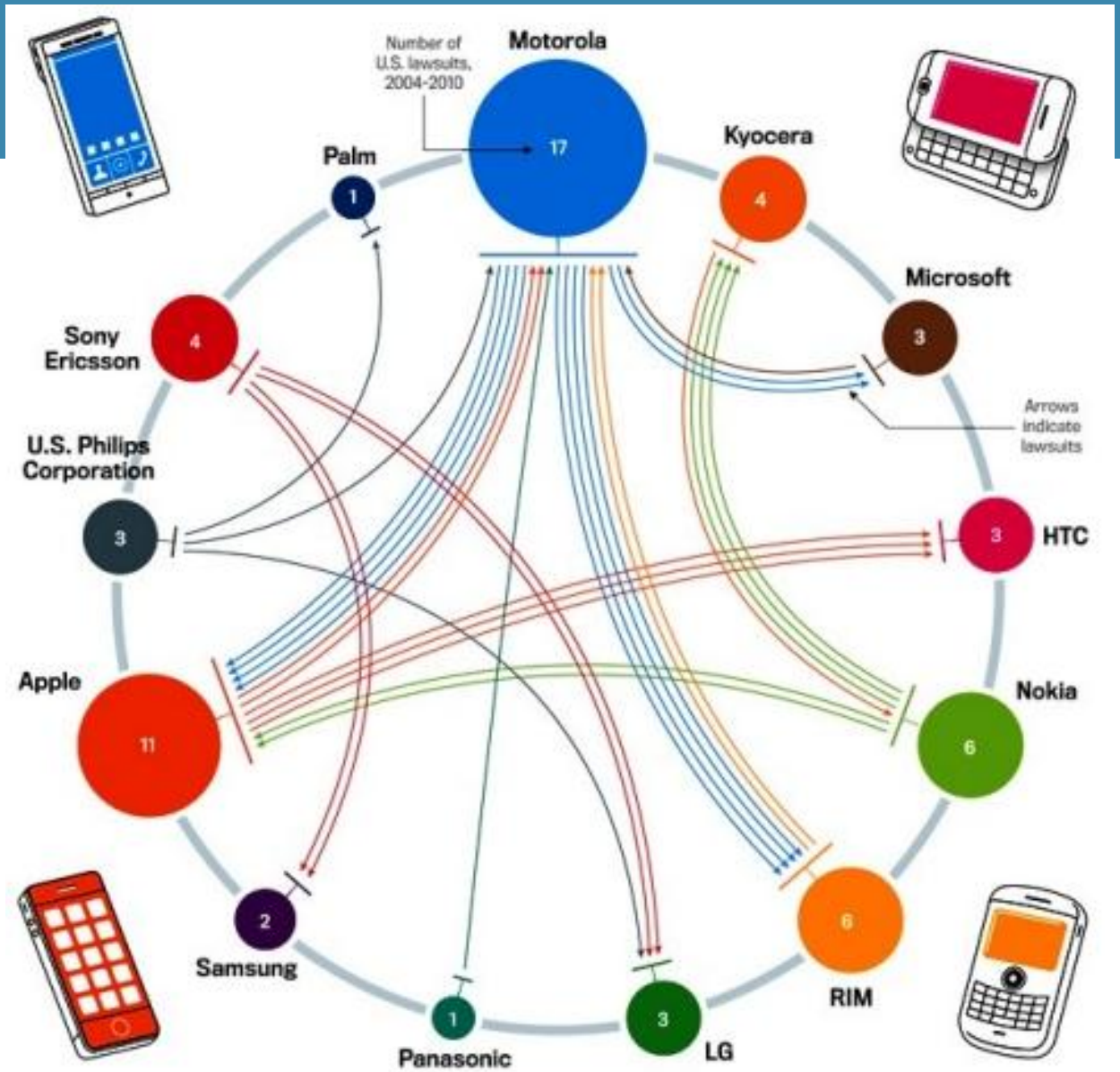
Motorola vs. Microsoft,
Patent infringements found in Xbox
Nov 11, 2010

Motorola vs. Microsoft,
Files ITC complaint
Nov 22, 2010

Motorola vs. TiVo
Patent infringement
Feb 11, 2011

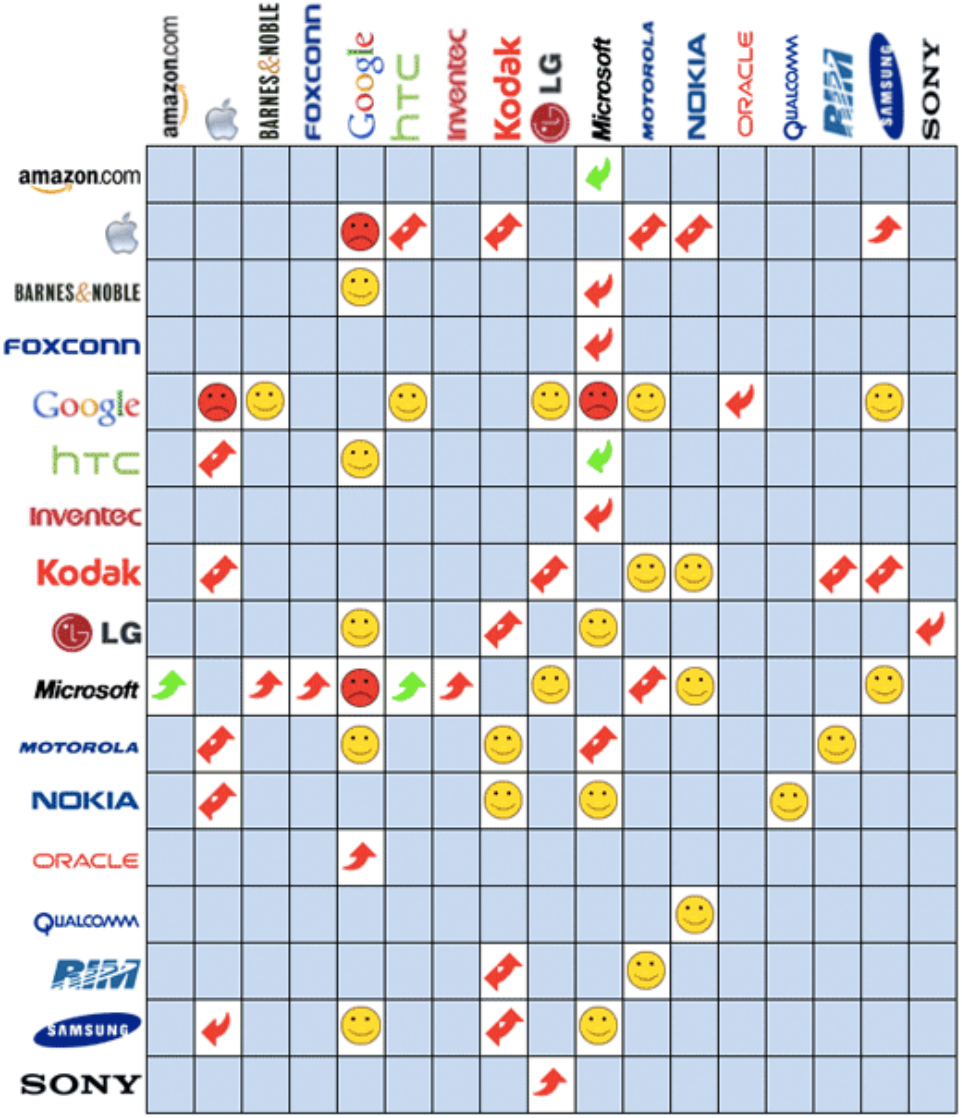
Motorola vs. Apple,
Patent infringement in Germany
April 2011

cnet


Number of U.S. lawsuits, 2004-2010
Motorola
17
Palm
1
Kyocera
4
Microsoft
3
Sony Ericsson
4
Arrows indicate lawsuits
U.S. Philips Corporation
3
HTC
3
Apple
11
Nokia
6
Samsung
2
RIM
6
Panasonic
1
LG
3

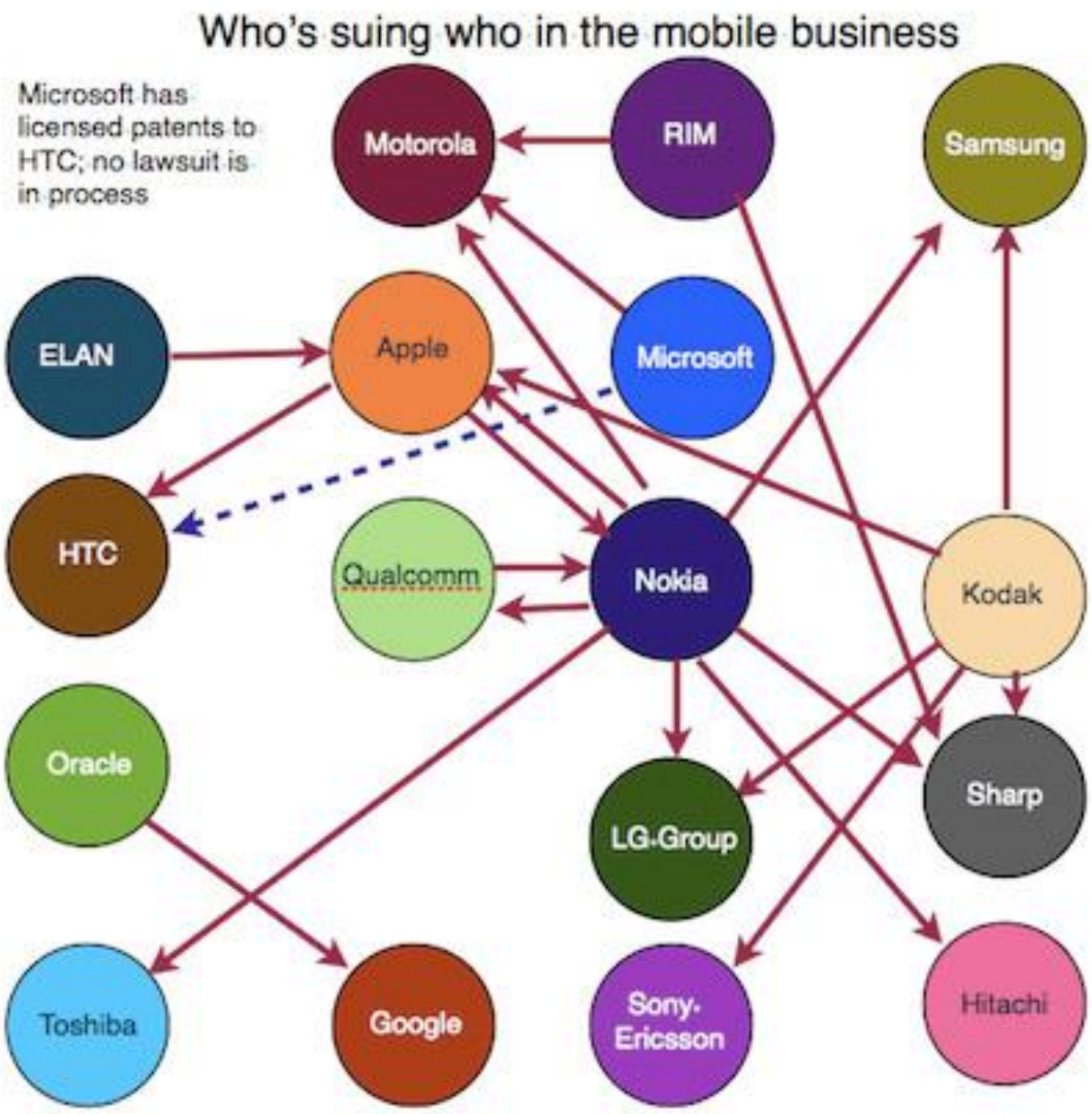
The Mobile Patent Mess

Who's Suing Who?

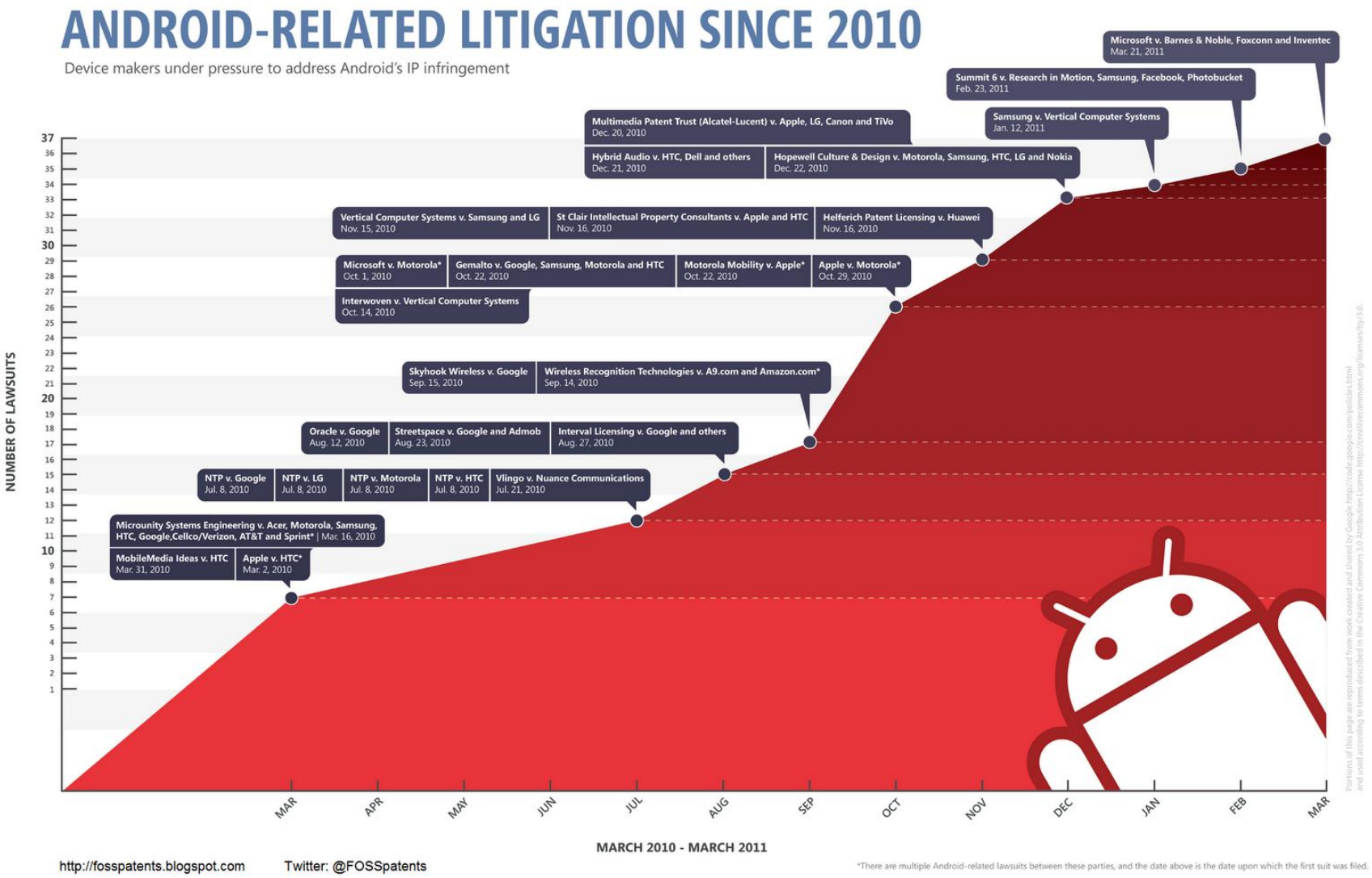


What the Icons Mean:

- Company in row is **suing company in column**
- Company in column is **suing company in row**
- Both companies are **suing each other**
- Company in row has **licensed technology to company in column rather than suing (or after settlement)**
- Company in column has **licensed technology to company in row rather than suing (or afer settlement)**
- Hardware and software companies that **collaborate on devices**
- Companies are **sparring through indirect partner suits**


Who's suing who in the mobile business
Microsoft has licensed patents to HTC; no lawsuit is in process
Motorola
RIM
Samsung
ELAN
Apple
Microsoft
HTC
Qualcomm
Nokia
Kodak
Oracle
Sharp
LG-Group
Toshiba
Google
Sony-Ericsson
Hitachi

FOSS

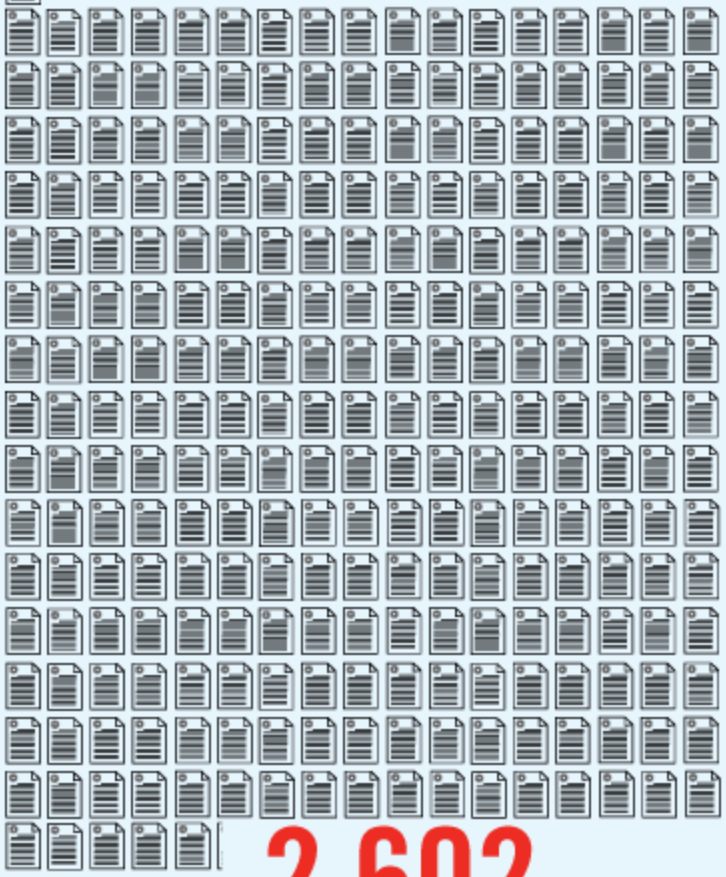

ANDROID-RELATED LITIGATION SINCE 2010
Device makers under pressure to address Android's IP infringement
NUMBER OF LAWSUITS
MARCH 2010 - MARCH 2011
MAR
APR
MAY
JUN
JUL
AUG
SEP
OCT
NOV
DEC
JAN
FEB
MAR
Microsoft v. Barnes & Noble, Foxconn and Inventec Mar. 21, 2011
Summit 6 v. Research in Motion, Samsung, Facebook, Photobucket Feb. 23, 2011
Samsung v. Vertical Computer Systems Jan. 12, 2011
Multimedia Patent Trust (Alcatel-Lucent) v. Apple, LG, Canon and TiVo Dec. 20, 2010
Hybrid Audio v. HTC, Dell and others Dec. 21, 2010
Hopewell Culture & Design v. Motorola, Samsung, HTC, LG and Nokia Dec. 22, 2010
Vertical Computer Systems v. Samsung and LG Nov. 15, 2010
St Clair Intellectual Property Consultants v. Apple and HTC Nov. 16, 2010
Helferich Patent Licensing v. Huawei Nov. 16, 2010
Microsoft v. Motorola* Oct. 1, 2010
Gemalto v. Google, Samsung, Motorola and HTC Oct. 22, 2010
Motorola Mobility v. Apple* Oct. 22, 2010
Apple v. Motorola* Oct. 29, 2010
Interwoven v. Vertical Computer Systems Oct. 14, 2010
Skyhook Wireless v. Google Sep. 15, 2010
Wireless Recognition Technologies v. A9.com and Amazon.com* Sep. 14, 2010
Oracle v. Google Aug. 12, 2010
Streetspace v. Google and Admob Aug. 23, 2010
Interval Licensing v. Google and others Aug. 27, 2010
NTP v. Google Jul. 8, 2010
NTP v. LG Jul. 8, 2010
NTP v. Motorola Jul. 8, 2010
NTP v. HTC Jul. 8, 2010
Vlingo v. Nuance Communications Jul. 21, 2010
Microunity Systems Engineering v. Acer, Motorola, Samsung, HTC, Google,Cellco/Verizon, AT&T and Sprint* | Mar. 16, 2010
MobileMedia Ideas v. HTC Mar. 31, 2010
Apple v. HTC* Mar. 2, 2010
http://fosspatents.blogspot.com
Twitter: @FOSSpatents
*There are multiple Android-related lawsuits between these parties, and the date above is the date upon which the first suit was filed.

MO' PATENTS, MO' PROBLEMS: THE PATENT LAWSUIT ECONOMY

Patent litigation is when an inventor or other practicing entity owns a patent, and that patent is infringed upon by a third party. Patent litigation is usually a lengthy, drawn-out process that can cost both parties a significant amount of money.

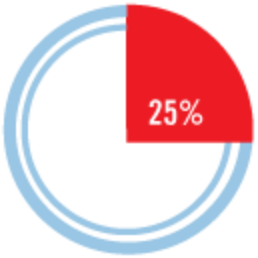
Number of Patents in Litigation 2008

= 10 Patent Litigations



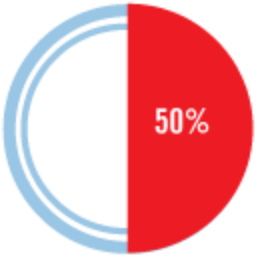
2,602

OF THE PATENTS LITIGATED IN 2008...



The long-term win rate for patent owners is 25%

Only 14% of patent litigations are adjudicated



Half of those are adjudicated on summary judgement

Average Patent Litigation Costs

= End of discovery

= Through diposition

LESS THAN $1 MILLION AT RISK

$350,000

$600,000

BETWEEN $1 MILLION AND $250 MILLION AT RISK

$1,250,000

$2,500,000

GREATER THAN $250 MILLION AT RISK

$3,000,000

$6,000,000

COSTS INCLUDE:

- ATTORNEY FEES
- PRODUCTION COSTS
- DOCUMENT MANAGEMENT
- TRAVEL EXPENSES
- WITNESS FEES

IF ALL PATENT LITIGATIONS WERE ADJUDICATED IN 2008 **THE TOTAL COST WOULD HAVE BEEN** **$31,224,000,000**

Average Damage Awards

PER LITIGATION

PRACTICING ENTITIES

$3.4 MILLION

NON-PRACTICING ENTITIES

$12 MILLION

PATENT TROLLS

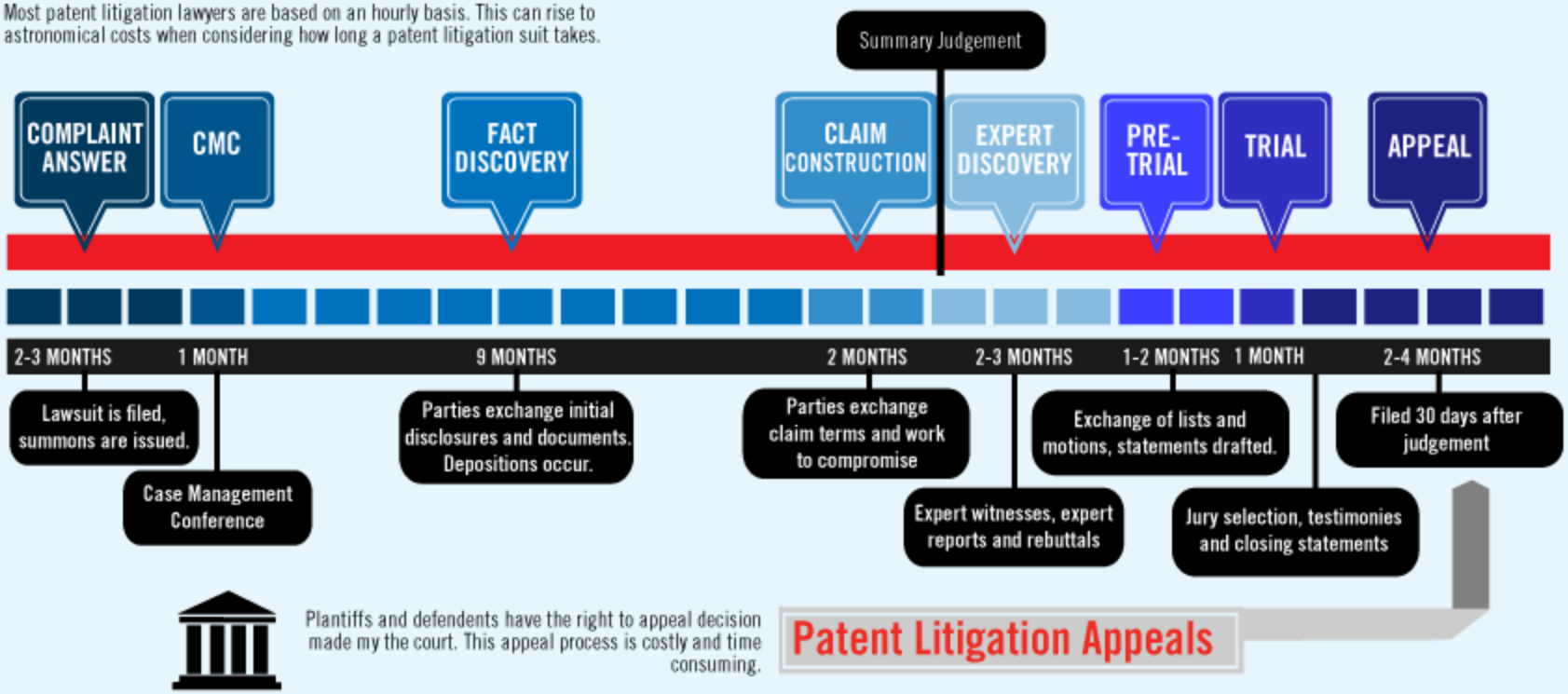
A NPE or Non-Practicing Entity is sometimes referred to as a Patent Troll. Patent trolls are companies that acquire patents and seek payment from companies they claim are infringing on

NPE'S have a 67% trial success rate

67%

Patent Litigation Timeline

Most patent litigation lawyers are based on an hourly basis. This can rise to astronomical costs when considering how long a patent litigation suit takes.

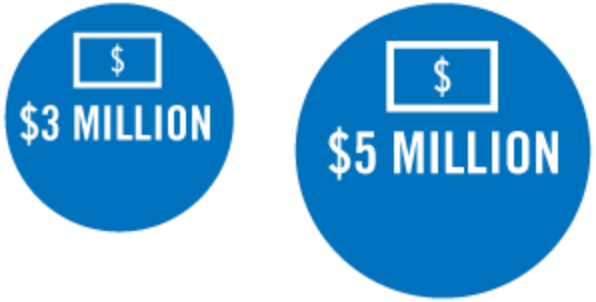


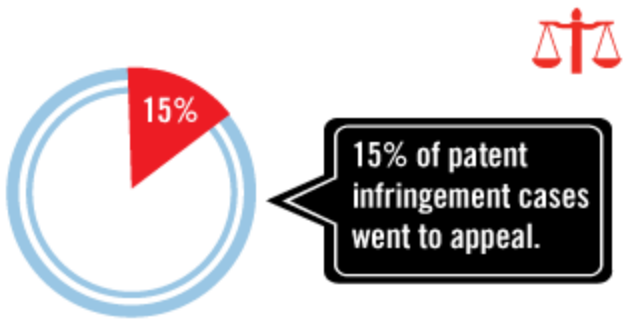
Patent Litigation Appeals

Plantiffs and defendents have the right to appeal decision made my the court. This appeal process is costly and time consuming.

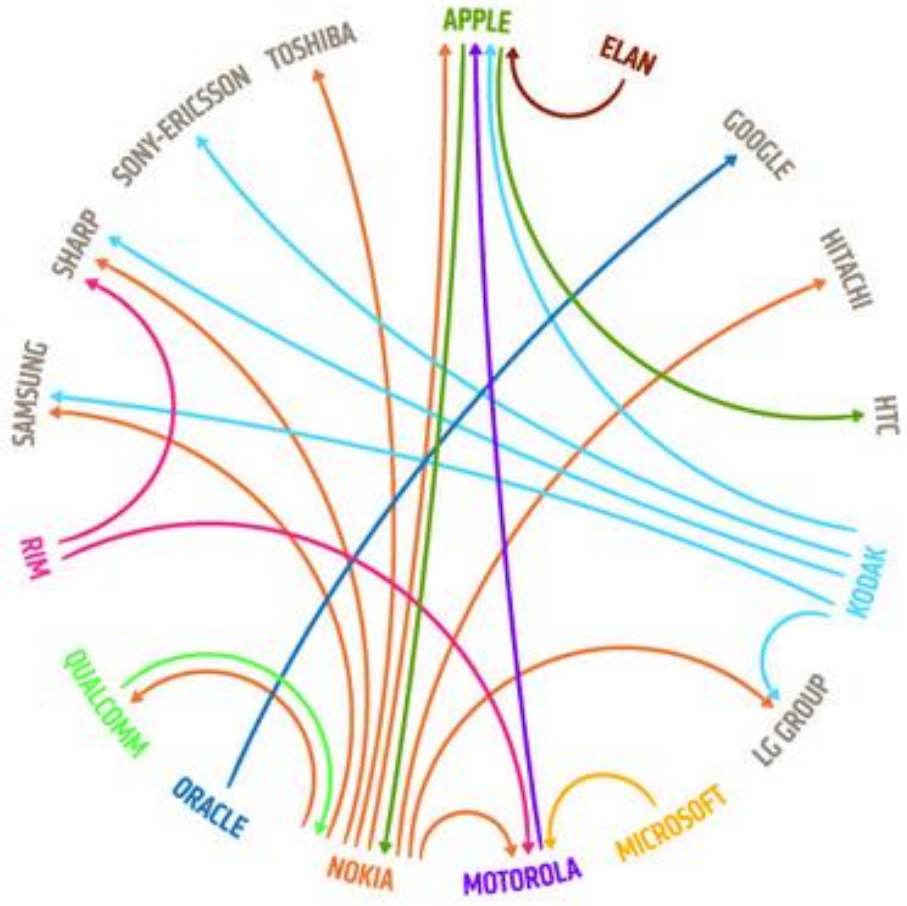
Cost of an Appellate Trial:

The cost of an appellate trial can raise the cost of patent litigation from $3 Million to $5 Million dollars on average.



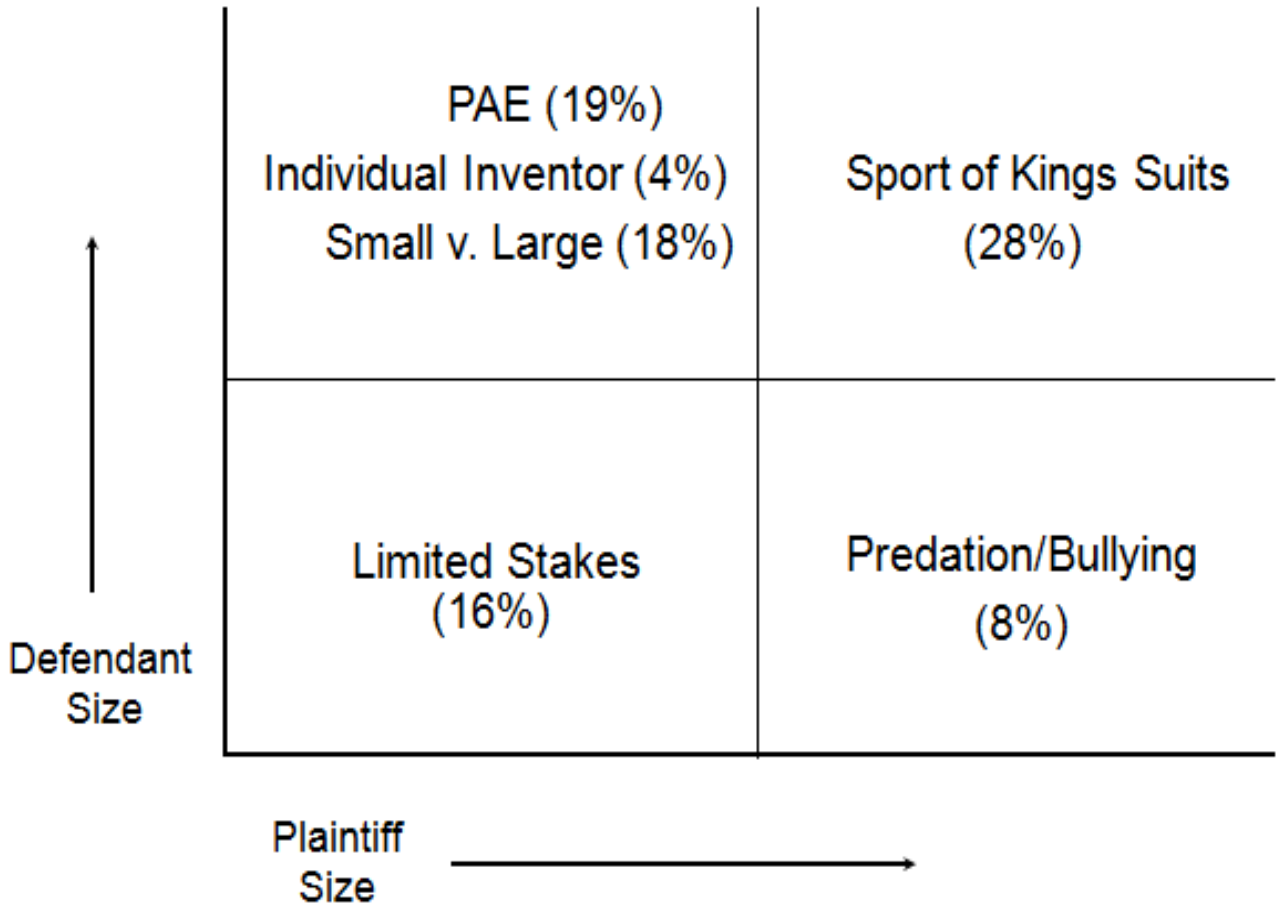


LAWSUITS IN THE MOBILE BUSINESS



(19%)

(28%)


PAE (19%)
Individual Inventor (4%)
Small v. Large (18%)
Sport of Kings Suits
(28%)
Limited Stakes
(16%)
Predation/Bullying
(8%)
Defendant
Size
Plaintiff
Size

Chien, 2009

15%

The New York Times

Business Day

New Law Creates a Demand for Patent Specialists

By BLOOMBERG NEWS
Published: October 9, 2011

Patent lawyers are in such demand that their specialty may account for more than 15 percent of law firm job openings while representing just 3 percent of lawyers in the United States.

15%

Consumer Perspective

Available on Amazon.com

3

20+

Available on Amazon.com

3 iPhone models

20+ Android devices

500,000 +

299,290

Available iPhone Apps: **500,000 +**

Available Android Apps: **299,290**

Free

$60

Price of Android

Google's Desired Price: Free

Android Handset maker est Royalties: $60

- IAM Blog 10/2011

0% and 26

0% and 26%: The percentage of iPhone components Apple makes; the percentage of iPhone components Samsung supplies, respectively

- The Economist, Aug 2011

Investor Perspective

At least 380

At least 14

At least 380 – NPEs tracked by Patent Freedom

At least 14 – publicly-traded NPEs

48

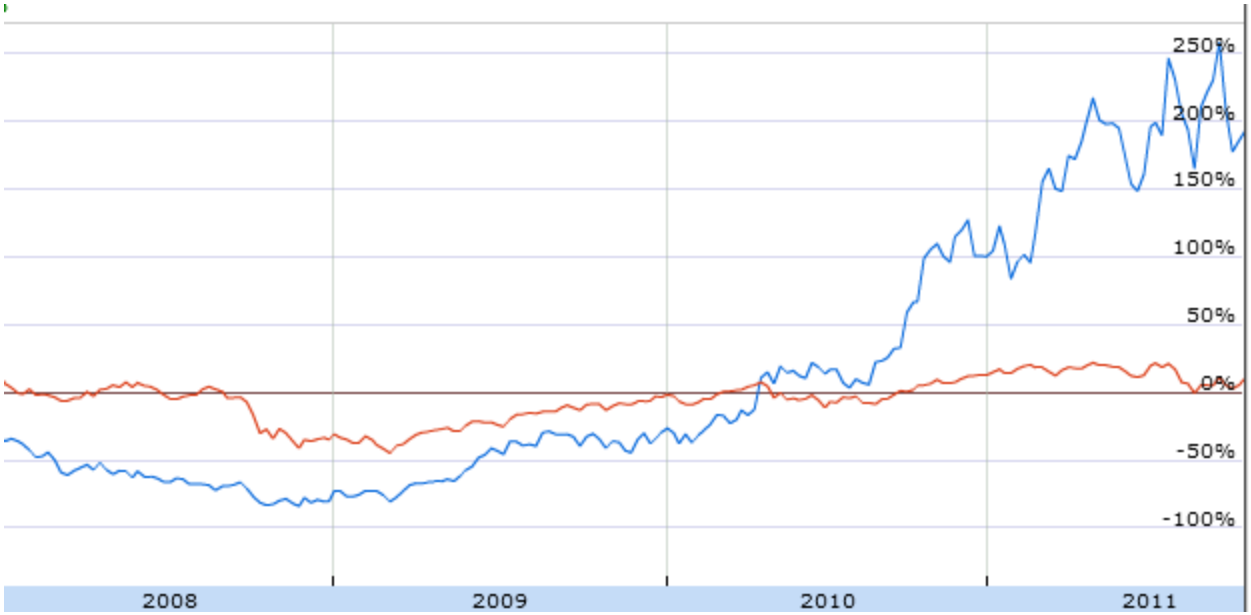
48 : number of employees of Acacia

300+

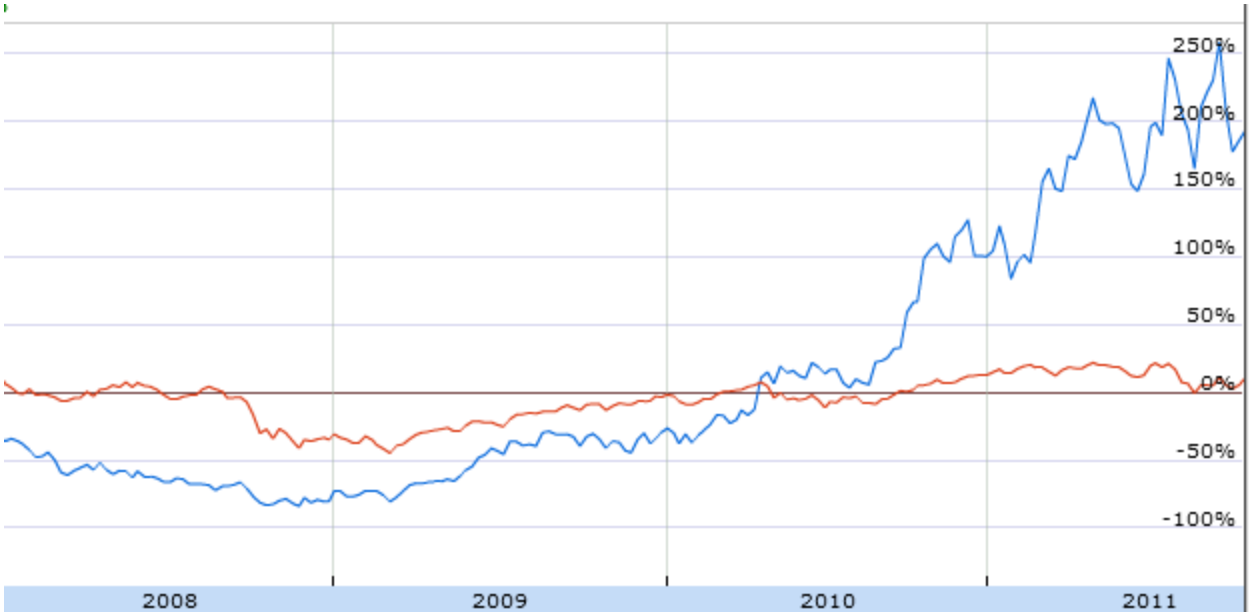
300+ : lawsuits brought by Acacia

“As a result of the common reluctance of patent infringers to negotiate and ultimately take a patent license for the use of third-party patented technologies without at least the threat of legal action, patent licensing and enforcement often begins with the filing of patent enforcement
litigation.”

ACTG 10-K (Dec 2010)



1000%



1000% Growth in ACTG 2008-Present ($3.50→$33)

Cost of Revenues and Net Income Attributable to Noncontrolling Interests (In thousands)

	2010
Cost of revenues:	
Inventor royalties	$ 25,292
Contingent legal fees	19,906
Litigation and licensing expenses - patents	13,891
Amortization of patents	6,931
Net income attributable to noncontrolling interests	(2,965)

38%
50%

Cost of Revenues and Net Income Attributable to Noncontrolling Interests (In thousands)

	2010
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Contingent legal fees	19,906
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Net income attributable to noncontrolling interests	(2,965)

38% - the share of revenue costs Acacia gives back to inventor
50% - the share of revenue costs Acacia spends on lawyers

10

18

10 : universities that are investors in Intellectual Ventures

18 : technology companies that are investors in Intellectual Ventures

Public Interest Perspective

$500B

$500B – the private and social cost attributed to trolling –

Bessen and Meurer 9/2011

?

?

?

?

? # of products and features that patent litigation has prevented from being developed

? # of products and features that proceeds from patent litigation has enabled

? # of companies that have had to change their business model or close up shop due to litigation

? # of companies that have been able to keep the lights on using revenue generated by patent litigation

1


patent pending
junk mail instant shredder
ICANHASCHEEZBURGER.COM