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Industry Spotlight: Technology Patents

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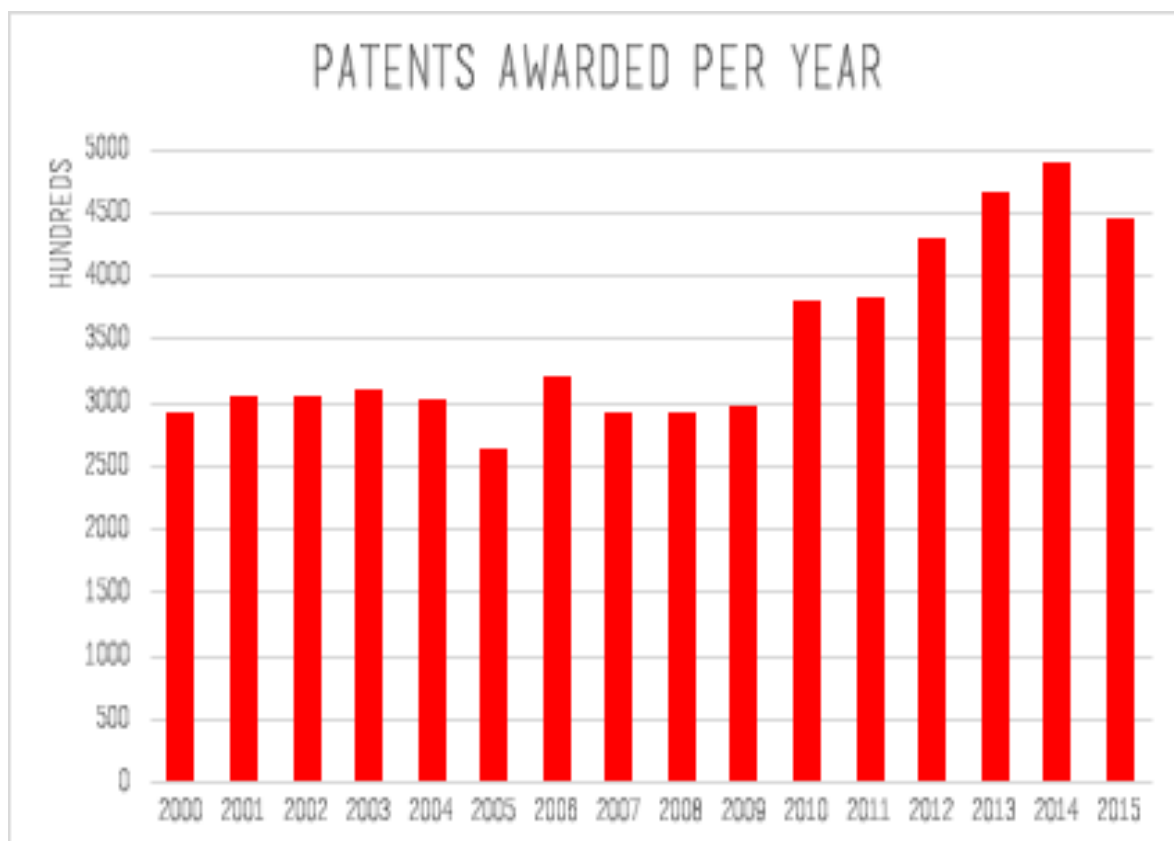
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TECHNOLOGY PATENT SPOTLIGHT



IN SEPTEMBER 2013, MICROSOFT WAS AWARDED 14.52 MILLION IN DAMAGES FROM MOTOROLA OVER FRAND RATES.

THE PATENT TECHNOLOGY PROCESS



DATA FROM USPTO.GOV AND MICROSOFT CORP. V. MOTOROLA INC.

● Co\$ts and Benefits of Technology Patents ●

By Shelby Anderson

The smartphone you use to scroll through Instagram, answer an email, and order a new shirt contains hundreds of patents. The sleek device requires sophisticated technology that presents complicated patent law issues. The costs and benefits of technology patents are discussed below in the context of industry expectations and the broader implications for society.

INDUSTRY

Technology patents serve two purposes: (1) to protect competition in the marketplace and (2) to promote collaborative innovation amongst rival firms. Innovations force technology firms to stand on one another's shoulders. Apple may patent a set of wireless headphones, but those headphones could require Google's latest Bluetooth technology.

Society benefits from this collaboration as jobs are created to produce and design the headphones, consumers receive a new product, and store sales increase. Society can also be harmed by competition. If Google doesn't receive a monetary reward from the patent-use, the company isn't incentivized to innovate. As a result, technology patents are monitored and protected by international standards-setting groups.¹

Technology firms elect to participate in "pools" supported by international groups. Pool participants lend and use other participants' patents for a fee lower than market value. The cost of collaborative use of technology patents is governed under the law by the application of fair, reasonable, and non-discriminatory rates (FRAND).

FRAND RATES

Two issues arise in determining FRAND rates: (1) the power of patent-holders and (2) the potential of "royalty stacking." A patent holder has substantial power over the patent user because the technology is necessary to the patent user. The patent holder is incentivized to charge a larger



fee for patent use, a phenomenon known as a "hold-up."²

Devices containing multiple patents are often vulnerable to this threat. "Royalty stacking" refers to numerous patent-holders charging exorbitant fees for their patents, forcing large costs to the patent user, and rendering the value of the innovation less than the cost. Firms must be vigilant to avoid hold ups and royalty stacking.³

Standard-setting organizations, such as the Institute of Electrical Electronics Engineers and the International Telecommunication Union, incorporate use-rights for technology firms into their standards. The organizations are then responsible for applying those standards.⁴

CONCLUSION

Technology patents are designed not only to protect the creator, but also to benefit the public. Consequently, litigation concerning technology patents creates costs, as well as hopefully bringing long-range benefits to society. Firms are encouraged to continue innovating, benefiting society as they go.

Notes

¹ Allensworth, Rebecca Haw. "Casting a FRAND Shadow: The Importance of Legally Defining 'Fair and Reasonable' and How *Microsoft v. Motorola* Missed the Mark." *Texas Intellectual Property Law General* 22, no. 3 (June 2014): 235-52.

² Brief of American Intellectual Property Law Association as *Amicus Curae* in Support of Neither Party, no. 14-35393 (September 2014).

³ Allensworth, "Casting a FRAND Shadow: The Importance of Legally Defining 'Fair and Reasonable' and How *Microsoft v. Motorola* Missed the Mark."

⁴ Gates, Sean and Nathan Sabri. "What Is a RAND Licensing Rate? The Ninth Circuit Weighs In." *The Licensing Journal*, (Oct. 2015): 1-5.