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Huawei's Lawsuit Against Samsung Illustrates Key Issues in Smartphone Patent Conflicts

The patent infringement lawsuit highlights major similarities and differences with other recent smartphone legal disputes.

Ed Silverstein, Legaltech News

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Huawei Technologies' recent decision to sue Samsung Electronics over alleged patent infringement shows some similarities – but also some differences – from other recent smartphone legal battles.

One obvious difference is the kinds of patents involved in the litigation. It appears the claims in *Huawei v. Samsung* are related to utility patents, not to design patents, like those seen in some of the *Apple v. Samsung* litigation, Deirdre Fox, an attorney at Scharf Banks Marmor, said.

Based on an initial reading of public documents, the *Huawei v. Samsung* infringement claims appear to relate to 4G cellular communications technology and the LTE methods to achieve 4G-level transmission speeds, Jamal Edwards, who is also an attorney at Scharf Banks Marmor, said.

Moreover, Brian Love, co-director of the High Tech Law Institute at Santa Clara University School of Law, confirms the new lawsuit may have followed negotiations between the two companies over standards-essential patents.

Love says that if the case between Huawei and Samsung proceeds, it could provide guidance on what is a fair, reasonable and non-discriminatory (FRAND) royalty.

"There is very little precedent on what a reasonable and non-discriminatory price is," Love explained. Nor are many previous cases available that are related to standards-essential patents (SEP), he adds.

Fox agrees there is a need for more guidance on what is a reasonable, non-discriminatory royalty. "Guidance out of past cases has been sparse," he added.

Some of the precedents on SEP and FRAND that Fox noted include *Ericcson v. D-Link*, where the U.S. Court of Appeals for the Federal Circuit "identified important economic principles for determining a FRAND royalty for use of Standard Essential Patents." Also, in in *Microsoft Corp. v. Motorola,* Judge James L. Robart provides economic guideposts and a methodology for assessing

FRAND terms, according to Fox.

“There are still a lot of open issues and hardly any court determinations of actual FRAND royalty rates, and [as] a consequence, the areas where standard technology is involved are ripe for increased litigation,” Fox said.

Similarly, Edwards said that even though FRAND issues were raised in the *Samsung v. Apple*, *Microsoft v. InterDigital* and *Ericsson v. Apple* cases – “sadly, none of this litigation activity has produced a clear answer as to what constitutes a FRAND license; which is, in part, why we can expect to see continued, if not increased, patent litigation in areas where standardized technology is involved.”

But Huawei may still opt to settle as the case against Samsung proceeds.

“As the legal bills rack up, I think you will see a lot of pressure on the parties to settle,” Love said. “It may well settle quickly.”

Could the filing of the lawsuit even have been a strategy by one company to get the other one back to negotiating for licensing agreements?

“Would-be licensees will often disagree over what constitutes a reasonable licensing fee. If the parties can't agree on the terms of the FRAND license for a particular standards-essential patent, the frustrated would-be licensee must choose between not implementing the standard, which may cost it a significant market opportunity, or risking infringement of the patent, which inevitably means litigation,” Fox said. “Certainly filing suit is one way back to the negotiating table.”

“Most patent infringement suits are resolved by settlement, which typically includes a license of some sort, or covenant, not to sue,” Edwards said. He points out that PwC’s 2015 Patent Litigation Study Report says that patent litigation was down 13 percent compared to 2014.

“This suggest to me that more parties are reaching licensing arrangements in advance of litigation,” Edwards said. “But for those disputes that aren’t trending toward a license, the filing of a patent case—which typically costs multiples of millions of dollars to defend … can provide the necessary impetus to revisit a licensing discussion.”

There are other reasons why the parties in the new case may settle. Love noted that the cases are expensive to litigate, and that one must consider the *Apple v. Samsung* litigation, in which a large amount of the award was withdrawn on appeal. Not only are the cases expensive to litigate, but

It is also notable that litigation was filed not just in California – but also in China –involving Huawei and Samsung. Love points out it will be one of the bigger cases in history as far as utility patent litigation in China.

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