The Evolution of Patent Laws

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Abstract

In the world of technology, creativity, and innovation the computer has been a stepping stone for mass production of products through its own self-formed from a patented invention. Patents have all but changed from its original laws in the sense of how one can complement an existing invention or be a competitive successor to a previous or current inventor's product. Because the shift of technology advances has allowed so many products by inventors the question of patent laws is under heavy scrutiny in terms of what boundaries can an inventor enter without it being considered infringement or instead just a newly created invention. Patents have been the topic in the world of technology between companies and distributors that have led to many lawsuits stemming from inventors over who gets credit for the invention. The never-ending lawsuits have left some companies barely in business to some companies being able to still compete with its competitor without loss of product or business practices. One factor that has arrived is the evolution of the law and how it is affecting patent creators.

The Evolution of Patent Law

In our technology-driven society driven by social media, streaming media, e-mail, and on the go messaging services, the need for communication remains a top priority in terms of business and personal needs. The cell phone has become an everyday device in the world we live in and only continues to make leaps beyond just its ability to make phone calls. While the device's capabilities are what makers considered ‘smartphones', the legal woes surrounding these innovative technologies have brought forth a new spin on how we distinguish the boundaries pertaining to patent laws. According to Burgunder, Lee B., 2010, “a patent is a protection to a product idea or design, effectively allotting a limited form of monopoly power to the owner.”

“But patents, like copyrights, may or may not be used, bought, and sold just like any other property. A patent holder can sell his patent to someone else in a better position to exploit that patent, through actual use or licensing to others. Patent owners argue that they are often up against major corporations that are using their patented technology without their permission (Pike, 2006).” There are three types of patents: utility, design, and plant. A Utility patent usually involves the invention of a type of machinery or computerized product. An example would be a cell phone device. The Design patent is a creation that adds to existing invention. An example of a design patent would be the protective cover or case that is used on cellular or tablet devices. And a plant patent is the creative invention through the growth of a product. An example would be an innovative creation of a different type of flower or plant that does not currently exist through cross-breeding. "There are actually numerous different kinds of inventions. Those new to the creative process can learn a lot by understanding that patent law is quite strict about how to

go about obtaining legal protection for a specific invention. Basically, the United States Patent and Trademark Office (USPTO) considers patents on inventions to be of three separate kinds: plant patents, design patents, and utility patents (Idea, 2016)."

Why Would One Get a Patent?

The reason behind one obtaining a patent is inventing and protecting an idea can be resourceful from an economical, mainly financial point of view. Obtaining a patent is as simple as filling out an application with the secretary of state while providing sufficient evidence of the invention and paying a fee for registration of the idea. According to Thorton, 1811, "Every inventor, before he presents his petition to the secretary of the state, signifying his desire of obtaining a patent, shall pay into the treasury of the United States thirty dollars, for which he will be furnished with duplicate receipts, one of which he shall deliver to the secretary of state, when he presents his petition; and the money thus paid shall be in full for the sundry services to be performed in the office of the secretary of state, consequent to such petition." The current fees have increased to thirty-five dollars to file a patent since this article was published in 1811. A patent gives an inventor a monopoly over his or her invention once it has been registered.

Patent vs. Copyright

To help protect inventor rights one has to determine if their idea or product will be categorized as a patent or copyright. Both have significant benefits to the owner and can be to the discretion of whoever owns either. According to Burgunder, Lee B., 2010, "A patent term begins when the application is filed and lasts for 20 years. With a copyright, the protection is in terms of creative expression with a term that can last over 100 years." The patent details can allow for competitive improvements as well as research to help research and better understand an

invention. Both can be used for economic rewards and exploited at the owner's discretion for monetary gain. The laws help protect the patent and copyright through registered paperwork, photos, illustrations and the physical item(s) itself over the course of its term of years covered under statutes. "Interestingly, the US National Science Board used patents—in addition to research articles—to measure academic research and development in their 2014 report (Sanberg, Gharib, Harker, Kaler, Marchase, Sands, Sarkar, 2014)."

There can be great accolades to pursuing and obtaining a patent but there are also drawbacks that can affect patent ownership. Monitoring and investing in legal protection for your patent can come with costly expenses. Many lawsuits stem because of new developments that cross the boundaries of a said invention that already exists. "The explosion of the smartphone market has triggered strong competition among mobile phone manufacturers. For such companies, a common strategy is often to sue their competitors as this can damage competitors' credit or extract license revenue out of the accused infringers (Kim & Song, 2013)." In an infringement case, the developer of the product who has violated the patent will be banned from producing the product and will be asked to pay for damages resulting from the infringement. This also applies to the cases involving a copyright claim.

How Technology Devices Affect Patent Laws

With creative concepts driving our economy, competition is at the forefront to companies trying to provide the first of any type of invention to consumers. The cellphone industry remains at the top of competitive inventions because the need for its services has grown for the mobile capability functions and features. "The smartphone and tablet industry is driven by the collection of intellectual property rights, which has led to unavoidable lawsuits related to patent, design

patent or trademark that span courts and several continents (Saardchom, 2014).” The way technology has affected patent laws increase because of the creative concepts one company invents but allow another company to produce or manufacture the invention within their company. In this type of situation, the patent can become a compromising subject for the assisting company to try and make an improvement or compete with the services of the product it is producing for the already patented invention owning company. “The hope is that granting creators of patentable inventions a monopoly on their "discoveries" will promote a paradigm in which people are encouraged to invent and develop without fear of having their ideas stolen (West, 2013).” The problem with ideas remains a focus within the cellphone industry as competitors cannot decide on what is considered a ‘discovery' as opposed to a violation of the patent laws.

When the question of originality for one’s own idea is the topic of a lawsuit proving who came up with the invention and whether or not that is considered a monopoly often makes a revision of the laws a questionable option. “Damage awards in patent infringement cases are governed by 35 U.S.C. § 284, which requires courts to award damages "adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer" in cases where infringement is found. Under this standard, district courts are given broad discretion to assess and compute damages (West, 2013).” The judgment ruling after infringement cases can make or break the company receiving the complaint.

Lawsuits over Patents

RESEARCH IN MOTION (BLACKBERRY) vs. MFORMATION

Several patent infringement lawsuits have emerged over technology devices involving top named companies. An example of the infringement claims costing a company would be the case involving Blackberry whose company called Research in Motion (RIM), was in charge of patenting their software. “Mformation claimed it disclosed details of the technology to RIM during licensing discussions. After discussing a license agreement, the BlackBerry maker modified its software to include the patented systems, Mformation said in its complaint (Rubin, 2012; 2015).” In this case, the infringement claim was said that Research in Motion violated an already licensed idea by MFormation, which does not allow reproduction or duplication of a software patent that would allow a company to maintain rights over ‘feature capabilities’ and not an actual device. Though these claims do not point directly to a patent law violation of an actual product there is still a hefty fine that would cost Blackberry a huge fine and damages to the company business. “In a statement, the company said it's considering an appeal of the verdict, which ruled that RIM's BlackBerry Enterprise software infringed on a patent held by New Jersey-based Mformation. The award is equal to $8 for each BlackBerry device using Mformation's patent in the U.S. (Rubin, 2012; 2015).”

The lawsuit was a mere $147 million dollars that would take about a year before any proceedings would be paid out. An appeal would eventually be filed by Research in Motion, to argue the lawsuit over infringement claims and to prevent any pending financial costs from being paid to MFormation. These filings and claims would eventually question how verdicts are not always distributed according to the patent law in an infringement lawsuit between two companies. In this situation, the Blackberry brand would fall out of the cellular phone competitive market race because of its lack of ability to overcome the ruling of damages to MFormation. “Section 284 of the patent statute addresses damages, both compensatory and

enhanced… Awarding compensatory patent infringement damages through litigation attempts to assess "the difference between the [patentee's] pecuniary condition after the infringement, and what his condition would have been if the infringement had not occurred (Rooklidge, 1957 & Federal Judicial Center, 2011)." Research in Motion was also involved a previous lawsuit in 2006 verdict resulted in a Blackberry shutdown order by the court. During this phase, there were years of appeals in place awaiting hearings from the court to keeping the company device production from losing business and customers. To remain in business the company decided to settle the suit. "The shutdown order stayed while RIM appealed the verdict. For 3 years, RIM appealed the court decision to the appellate and Supreme Courts without success… However, 2 weeks after a final court hearing on the shutdown order, RIM agreed to settle the lawsuit for more than $600 million. More importantly, RIM was assured the BlackBerry would remain available to consumers (Pike, 2006)."

APPLE vs. SAMSUNG

With so much innovation in technology the trend to enhance existing products continue to produce multiple patent lawsuits in the makers of cellular devices and capability features involving notable corporations in the battle of mobile devices created by Apple, Inc. (Apple) and Samsung Electronics (Samsung). Heavy lawsuits began back in 2011 and still continue with these hardware and software companies over patent infringement claims. "In this lawsuit, Apple alleged that Samsung infringed eight utility patents, seven design patents, and six trade dress rights. On the contrary, Samsung counterclaimed that Apple infringed five of Samsung's utility patents (Saardchom, 2014)." These two companies provide a different perspective on how infringement would and should affect patent law violations. In the Blackberry lawsuit, their violation for infringement damages was not negotiated to a lesser fine but in the Apple vs.

Samsung patent lawsuit the verdict for paid damages were reduced, yet the products involved did not affect any production or design halts. “The American jury ruled in favor of Apple and ordered Samsung to pay Apple an amount of US$ 1,049,343,540, which, if sustained, would represent the largest design patent infringement jury award of all time. Although this judgment was later appealed in the United States (US), the phenomenal damage award could be feverish and caused confusion to all related technology industries around the world (Saardchom, 2014).”

The lawsuit filed claimed that Apple was the sole inventor of the ‘curved rectangular’ cellphone though many competing companies had similar devices on the market Samsung was brought to court. “Tech giants such as Google, Facebook and Hewlett Packard Enterprise had urged the Supreme Court to take up Samsung's appeal of its patent loss to Apple over the copying of iPhone technology, warning that the outcome against Samsung "will lead to absurd results and have a devastating impact on companies" because of the implications of how patent law is applied to technology products such as smartphones (Mintz, 2016).” With implications of a losing lawsuit, Apple Inc. urged the courts to side with their ‘discovery’ of the technology design, which could change the whole perspective of the technology patent laws involving not only a device but an already documented and used shape.

“A federal appeals court on Monday struck down a key part of Apple's legal victory over Samsung on smartphone design, a move that could slash hundreds of millions from the nearly $1 billion jury verdict that found Samsung had copied aspects of the iconic iPhone (Peterson, 2015).” Technology leaders that are provided business solutions and partnerships with Samsung were relieved to hear the appealed verdict implying that it was not intellectual property and cannot be used as a trademark. “According to the Supreme Court, damages paid to Apple should be limited to the copied components and not the entire product -- a position backed by a large

portion of tech companies and other industries that weighed in on the case (ValueWalk, 2016).” Samsung presented the fact that rounded corners were open aspects of a cellphone that was available for any company to use, and that a trademark should not be allowed to one company to own.

A lawyer explained details within the case made statements from the lawsuit verdict that would conclude to not allow a monopoly for a ‘shape’ to one company. “But the reversal on the question of Apple's trademark claims about the overall look of the phone highlights the difficulties of protecting design features as intellectual property…Features like rounded corners, for instance, serve the function of making the phone easier to get into or out of a pocket, Farley said. "What this Court of Appeals really did was to go through all of those aspects and finally concluded the trade dressing was actually functional, so it would be anti-competitive to let one company monopolize them (Peterson, 2015).” The explanation of violations expressed in this case has been a back and forth battle over the ability to monopolize a particular patent to overtake one of the greatest industries in the world.

One unusual point of view from the Apple vs. Samsung case is that the two companies work together to form cellular and mobile phone devices. Another wonder is how a company like Research in Motion can lose their ability to produce devices after an infringement lawsuit, but companies like Apple and Samsung can violate each other’s patents and continue to do business as usual with only settlements being the benefactor. “Appeals for the Federal Circuit (the "Federal Circuit"), the appellate court with exclusive jurisdiction over patent appeals, has been faulted for its over-focus on fact-finding and lackluster interest in guiding the application of law to new fields of science (Rogowski, 2017).” The questions may go unanswered when the question of how can a company sue only to not enforce the violation as it pertains to the patent

laws. Samsung's challenge of the patent infringement would prove to be victorious in the argument of violation claims. "Samsung claimed victory over Apple in the Supreme Court Tuesday, where justices unanimously struck down a lower court ruling that experts warned could be devastating to patent protection and entice patent trolls (ValueWalk, 2016)."

Conclusion

The evolution of patent laws will continue to take on lawsuits and the difficult challenges ahead that in some cases get tweaked when trying to distinguish what is considered a violation and what one can be considered a violation of an inventor's idea. Many lawsuits stem from a company trying to collect patent ideas from one company through lawsuits only to take that patent and claim it as its own. Technology advances and innovation will continue to provide inconclusive areas pertaining to patent laws. The rulings between Apple and Samsung have not been implemented according to the patent laws because the two companies continue to generate lawsuits and do business together. Whether the laws are giving a fair verdict to other companies as they have with these two have yet to be seen. Modifying patent infringement will have many companies questioning the challenges that are being brought to court in hopes of receiving the same treatment and verdicts on patents as the cases involving Apple vs. Samsung.

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