Smartphones become hot player in the game of ‘global patent wars’

In the current game of “global patent wars,” the most prominent player these past few months may well be the smartphone you carry in your pocket. Keeping an accurate scorecard could be a full-time job. Multiple lawsuits based on different technologies, different versions of the ever-changing smartphone, different forums and different countries require special wikis to keep track of even the major developments. Among the current players are Nokia, Apple, Microsoft, Samsung, HTC, Motorola and Google. These patent wars are deadly serious. At least at present, they are also uncomfortably unpredictable.

The patent thickets that companies created to protect their ability to leverage smartphone technology are now the weapons launched against rivals in an escalating global battle that is re-defining the communications marketplace. It will also shape the scope of patent protection afforded breakthrough technologies internationally. In this second battle, the losers may well be the patent owners themselves.

The present international patent system grants innovators a 20-year exclusive monopoly over their inventions in exchange for their public disclosure via the registration process. This disclosure gives rivals the ability to design around another’s invention. It also gives them the opportunity to make the business decision to use another’s patented invention and dispute the validity of the patent later. The increasing litigation directed to smartphone technology demonstrates the popularity of the second model, fueled by the inconsistent treatment of patents globally. Such inconsistencies can be economically devastating for the losing side.

Article 27 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) sets the international standards for patentability — “industrial application” (utility). These general standards, however, are interpreted under domestic law. Thus, technologies patented in one country are not guaranteed patent protection in others.

More problematic, infringement standards are also governed by domestic variations. One country’s infringing conduct may well qualify as acceptable in another. Of the diverse lawsuits involving smartphone technology filed around the globe, the Amendment of This and Australian courts have granted Apple’s requests for injunctions barring the sale of certain Samsung smartphones. By contrast, a British court rejected the request. Although the technologies in these cases are not always identical, the economic impact of these decisions, by limiting the loser from further marketing its smartphone, is identical — and potentially ruinous. In August, a California jury awarded Apple $1.3 billion damages in its patent suit against Samsung. Within a day, Samsung’s stocks plummeted 7.5 percent. Other technology companies connected with Samsung’s smartphones, including Google (Android) and HTC, saw similar declines. By contrast, Apple’s stocks rose 1.9 percent (or just about $13 billion).

Patent injunctions can also disrupt consumers’ lives. Concerned about the “harm that an injunction might cause to consumers who can no longer buy preferred products because their sales have been enjoined,” in June, Judge Richard A. Posner rejected Motorola’s request for injunctive relief against Apple’s infringement of the smartphone technology. He considered “harassment of a bitter rival” an unacceptable “danger.”

By contrast, Judge Lucy H. Koh in the same month in the Apple/ Samsung case granted the injunction because “the public interest favors enforcement of patent rights here.” Koh rejected Samsung’s claims of consumer and business disrup-