Patent Assertion Entity Activities Workshop
Transcript, Part 2 of 4

December 10, 2012
10:30 AM (Morning Break) to 12:00 PM (Lunch)

NOTE: This transcript has not been completely proofed and is intended to be temporary. A final version will be posted soon.

SPEAKER 1: OK. Welcome back. And we're going to start with our first panel discussion. This is our Realities of Licensing and Litigation Practices. This panel will be moderated by Suzanne Drennon Munck from the FTC and Erica Mintzer from DOJ. Take it away, ladies.

ERICA MINTZER: Thanks, Francis. And thanks to all of our panelists for coming and for Professors Shapiro and Chen for that great morning. That's hardly anything for us to absorb right now.

I also do want to thank Suzanne. And it's just been great working with her. And I do want to point out some important facts about Suzanne. You may not know, she's a Costco member, and responsible for the coffee out there. And as our acting Assistant Attorney General, Haas once said is, a conference without coffee is a sad, sad thing. So I think everyone has Suzanne to thank for that.

And we are short one panelist today, I want to point out. Just because of the fog, John Desmarais was unable to come. There was some debate over how to divvy up his time. We thought that would be a fun little thing that we could have everybody fighting over. But instead, given the time that we're at, we're hopefully going to be able to compress our panel by about the 10 minutes that he was going to speak.

SUZANNE DRENNON MUNCK: Thank you, Erica. And it's just been wonderful working with Erica and Francis and everyone at the Justice Department. I think it's wonderful when we're looking at antitrust IP issues that we can bring the agencies together.

So with this panel, what we want to do is start out by looking at the realities of what's happening for some of the participants in this space. And the idea is right now we'll be asking questions really about these company-specific experiences. Later in the afternoon, when we're doing the efficiencies and harms panels, they'll sort of relate back up to these panels, and then also when we're looking at the antitrust issues on the last panel.

So really, we're very, very grateful for all of our panelists today. They've worked quite hard to prepare for this morning. And I'd like each of them to just give sort of a quick, two-minute introduction of their companies. And then Erica and I will each be asking them questions about their experiences in this space.

So we hope this will be quite informative, and I've been looking forward to this for quite a while. So I'm ready to get started. Thank you. Maybe we could just start on the end and sort of work our way down.

CYNTHIA BRIGHT: Hi. I'm Cynthia Bright. I'm leading the team that handles IP litigation for Hewlett-Packard. We have 325,000 employees worldwide, one of the largest portfolio of patents in the company, 85,000 employees in United States.

We make desktop computers, assembled in Indianapolis. We make servers in Houston. We have a wide variety of products, PCs, printers, also for enterprise space, help build all the products that go into data centers, things that run stock exchanges, health care systems. And I could go on, but I will stop there.

PETER DETKIN: And I'll take the rest of her time. My name is Peter Detkin. My background is I first started prosecuting patents in New York City a long time ago. I moved to Silicon Valley in the late '80s and was Wilson Sonsini's first patent lawyer, where I represented a lot of companies, both big and small.

I then move to Intel where I was first vice president in charge of licensing litigation, patents, and antitrust. I was there for the better part of a decade where I first met Carl Shapiro and launched him on his now brilliant career, analyzing this space. I had nothing to do with the natural gas stuff he also does.

And about 10 years ago, I joined with three others to found a company called Intellectual Ventures. Intellectual Ventures is a company that invests in invention. That's our basic motto. We've raise over $5 billion in a few separate funds.

And we invest in invention three ways. We buy, build, and partner. We buy inventions. We build

There are anecdotes that go both ways. We'll hear about small companies that have gone under because of assertions by patent assertion entities. And I could tell you stories about inventors that never would have gotten paid but for the existence of patent assertion entities.

Both are right. There are bad actors in this market. There are bad actors in every market. There are bad actors. There are ambulance chasers. There are people who commit securities fraud. Doesn't mean we should do away with the securities market.

What we need to do is focus on the flaws in the system that allow these bad actors to exist. Let's focus on the patents, not on the owners of the patents. And again, to echo what Carl said, we really need to focus on quality, which is something Dave Capos has been focusing laser-like the last few years. And let's hope it continues after he leaves.

We need to focus on remedies, and that's an area where, I think, discussions like this, and agencies such as the DOJ and FTC, have a role to play, as well as the courts. This is something that Judge Rader, of course, is focusing on significantly, and others.

There's a lot of swirl around here. There's a lot of red herrings though in this industry. We're going to talk a little bit about those as well. Let's not follow the trails of the red herrings. Let's focus on what really needs to be fixed, namely patent quality and remedies.

SARAH GUICAHRD: I'm Sarah Guichard. I work for Research In Motion, maker of the BlackBerry. And the reason I came to work for RIM was because of NTP. Probably every time we talk about PAEs, RIM and NTP always come up. And it was after NTP or during NTP where RIM decided they really had to beef up their in house patent counsel staffing, because of the challenge and the continued challenge that we've seen to our business as a result.

PAUL MELIN: OK. Paul Melin from Nokia. Nokia was leading mobile phone company. And we're working on our comeback on smartphones. We also have joint venture, Nokia Siemens Networks, which is a very substantial vendor of infrastructure and equipment.

And Nokia is in a very uniquely balanced position in this debate, as we are both a frequent target of assertions. Nokia has been sued nearly 100 times since 2007. And most of those lawsuits have settled. We have only a handful of longstanding disputes.

And that's OK, because we take the view that this is just a sign of the patent system working as it was intended to. We respect third party IP. When we need to pay for licenses that we require when we integrate complex technologies, we do that.

And can something be done to improve the efficiency of the system? Absolutely. Of course.

In too many cases, we get the lawsuit, out of the blue, being the first contact. We would very much like to negotiate with these companies ahead of the time, before the lawsuits are filed. So if incentives can be changed to reduce that kind of behavior, that would be great.

In our belief, these suits are poison to ordinary business. The root cause of the problem is flaws in the patent system, as we've been discussing. And we believe the flaws are being exploited by

As you can see from the Core Wireless example, Mosaid is a licensing company. Our goal is to license our patents to companies who are not our competitors, and not to restrict access to those patents. We succeed and innovators succeed when the technology we license is valued and adopted by our licensees, and in turn, our licensees also succeed.

SUZANNE DRENNON MUNCK: Scott, I don't want to cut you off, but if you keep going I'm not going to have anything to ask you later on. Thank you.

MALLUN YEN: I'm Mallun Yen. And I'm with RPX. RPX was started about four years ago to help operating companies work together to more effectively reduce risk from NPEs or PAEs.

The core service we provide is called defensive patent aggregation. It's the combining of resources from a broad group of companies, in our case, more than 125, to buy patents before they fall into the hands of PAEs. So in short, it's proactively buying patents to head off the problem before it starts and before the high transaction costs of litigation kick in.

And since RPX can't buy all the risky patents out there in the open market, some patents do end up in the hands of PAEs and are then litigated. When that happens, we can often resolve the case collectively on behalf of our members far more efficiently than can be done on a defendant-by-defendant basis.

To date, we've spent over $500 million on rights to about 3,000 patents with nearly 300 litigation dismissals for our clients. These clients range from the largest public companies to small, privately held startups. Our success is the direct results of companies realizing that with respect to patents, one company alone simply can't make enough of a difference. It takes an industry working together to shift the uneven playing field and drive change, whether it's through legislative reform, case law evolution, or market-based solutions like RPX.

One key to our business model is aligned interest. We proactively identify and buy patents that could be a problem. Every member gets a license to every patent that we buy. And we do not assert our patents.

We also continuously monitor all NPE litigation activity, open market transactions, and also track all patents that are being marketed, sold, or assigned. As a result, as you've seen as a sliver of it today, we've amassed an unprecedented amount of data, which we openly share with our clients.

Earlier this year, we also launched a small insurance business that insures companies against

licensing and litigation for a broad range of market participants. And as a large operating company, I'd like to ask you broadly how PAE activity impacts HP.

CYNTHIA BRIGHT: Certainly. I'll go back and fill in some of our statistics. We currently have

SUZANNE DRENNON MUNCK: And one of the things we're trying to figure out today is right role for the agencies to play in this area.

CYNTHIA BRIGHT: I just wanted to focus on two other things, particularly the patent assertion entities going to the ITC and the issue of hold-up. If you do not make a product, and you go to the ITC-- which is the Trade Commission-- and ask them for an exclusion order, that makes no sense. You don't want an exclusion order. You only want a licensing deal.

So you're only looking for leverage and the threat that you'll exclude either 100% in the market if you're heavily focused on the United States, or 30% of the market, depending on what your worldwide reach is, from coming to the United States. It's an opportunity for someone to gain hold-up leverage, because whatever their patent focuses on, the entire product is excluded.

But that abuse is also not limited to patent assertion entities. It can be abused by operating companies as well. It's particularly dangerous in the standard setting and context with standard-essential patents.

So I appreciate the FTC's leadership in the public comments it has made to the ITC on this matter. Unfortunately, I don't see the ITC reforming itself, although it could, and it should. It's an area where HP has made a lot of comments and will

different revenue stream than if they were to go after the manufacturer who has a competing product. So that's one area which is looking

you're not going to find out later that, oh well, actually, we had this affiliate, and it doesn't meet the definition of affiliate. And their patents are different, and you're actually infringing those.

You want to have transparency, so you can make effective decisions in the marketplace. You can allocate capital properly. And I think the lack of transparency is an impediment to that.

ERICA MINTZER: So you've identified some concerns and some problems that you see wit this system. And in your introductory remarks, you talked about using this as a forum for discussing possible solutions. What do you think could be done? And in particular, what recommendations do you have for the FTC and the DOJ?

NEAL RUBIN: Well, there are a lot of ways to attack the problem. And some of our speakers talked about it earlier today. I think that one potential solution here would be to have the FTC have a filing requirement when patent assertion entities make a material patent acquisition.

Now, we can debate about what's material and what's not material, and that would be healthy discussion. But allowing the FTC to inquire as to why is this entity selling this patent or this group of patents, and what is the PAE acquiring it for-- And let's assess what impact that's likely to have on the market on the front end.

It goes a little bit to the point the Professor Shapiro made about, well, let's follow the money. My point is not to say that this filing requirement is going to prohibit these transactions. It's just to say that more information is better than less. We've talked about some of the problems of not having very good information in this. And our sense is that if regulatory agencies can understand on the front end impact to competition of these kinds of larger patent transactions, it'd probably be in everyone's best interest.

ERICA MINTZER: And then to the system more generally, are there specific areas that you think are particularly open for exploitation that-- Are the courts addressing adequately some of these issues?

NEAL RUBIN: Well, I think the Federal Circuit and the courts are doing a great job at looking at the damages issue. Again, it was another one of the issues that was brought up this morning. Is a patent owner-- Again, when he or she is litigating, are they getting a value and are they getting damages that's really commensurate with the contribution that that patent makes in the marketplace above the next available alternative.

And if the answer that question is yes, then I think you discourage this kind of over investment in patents, and you discourage operating companies, maybe even successful operating companies, from seeking to divest their patents. If an operating company thinks that it can make more money selling and licensing its patents than it can actually practicing the patented invention, then that suggests that damage awards are high enough-- That would not be true if damage awards really gave value that's commensurate with the patented technology.

ERICA MINTZER: I saw you testify on the Hill this summer. You made a distinction between revenue-driven licensing activities and production-driven licensing activities. And we also heard

Professor Shapiro talk a little bit about the effects of ex-post licensing. Just wondering if you could explain what you see as the relevance and significance of those distinctions.

NEAL RUBIN: Sure. Whatever the remedy here I think needs to take into account the difference between ex-ante and ex-post. If ex-ante is helping to contribute to new products and new industries for professors, inventors, others to come to operating companies and saying we have this great invention, you should license it-- Obviously, companies like ours spend an enormous amount of money on inbound licensing. And that helps drive and see new businesses, new industries. It's pro-competitive. It's wonderful.

The flipside though is to wait in the wings on ex-post, and to say, I'm going to wait until the company has its first billion dollars of revenue, and then I'm going to bring a lawsuit. And to our mind, that's a tax on an existing product. These are two different things. And when we're seeking to give a remedy here, I think we have to take that distinction into account.

ERICA MINTZER: And then I would just ask if there's anything that you haven't address that you'd like to address. As I'm watching the clock closely.

NEAL RUBIN: I think there are lots of people on the panel who have important things to say. I'll be happy to defer to them. Thank you though, Erica.

ERICA MINTZER: Thanks. Now if we could turn to Peter Detkin. I've read with interest your blog on Friday. I don't know how many people got a chance to see it, where Peter was addressing some of these issues of transparency and recordation of patent ownership. I thought maybe if you could just talk a little bit about that and give everyone the benefit of--

PETER DETKIN: Sure. Thank you. Thank you for the opportunity to address that, because that's obviously a question on a lot of people's minds this morning. This is an example of what I mean by it's a red herring of an issue. Well, it's come up in a couple different contexts, most recently from a blog post from a crowd-funded effort that claimed, and I'm quoting here, almost quoting, that we use thousands of shell entities to hide our assets from our licensees and to file a bunch of lawsuits in anonymous names.

Let me see right here, right now, in front of the assembled masses here, the overflow room and all the ships at sea, we have never filed a lawsuit in any name other than Intellectual Ventures. Got it? We filed about six lawsuits-- I'm sorry. That sounded very defensive. Let me step back.

We filed about six lawsuits in our ten-year history, never sued a startup. Only one of those could even kind of be called a software related. It wasn't e-commerce or a method of doing business. It's on a complicated security product. But the factnbound licensi very de

A number of our licensees are here on the panel. A number of our investors are here on the panel. A lot of our licensees are here in the room.

Anybody have any doubt what they're getting when they're doing a license with us? OK, I see no hands. Let's move on.

Why do we do it? So let me answer the question. Why do we do it the way we do it? It's really actually not as interesting as you might think. The reason we have a lot of different acquisition entities is purely logistical. We have a number of different investors, both financial investors and strategic investors. Again, two are on the panel here. Nokia and Cisco are big investors with us.

But not all investors are investors in each IP group that we buy. And we have to carefully track who owns what. And we have to carefully track our revenue and expenses on an IP group by IP group basis.

The way to do that is to keep them each in a separate entity. So we have costs associated. We have accountants that keep track of it all. We have costs associated with it, and revenue associated with it, so we can track it on behalf of our investors.

We don't track this kind of data, which is why, I'm sorry, I don't have it for you. But a few years ago, we looked, and we determined that we paid well over $400 million to individual inventors.

But that doesn't count, for example-- A small start up that had two people in it, that would fall into our small company bucket. And we don't tract that. We do track in terms of deals. And my data sitting in my briefcase over there, I forgot to bring it up, but I did notice it pretty much tracked what Professor Chen showed in terms of where our deal flow is. But in terms of hard data, hard dollar figures, the best I can tell you is the money we pay all goes to inventive entities. And $400 million plus now goes to individuals.

SUZANNE DRENNON MUNCK: I thank you. And I'll just turn this back really fast. One of the things that we're looking for in the public comment is more empirical evidence, if possible, of the efficiencies and harms of PAE behavior.

ERICA MINTZER: I just want to make sure you get to make the points you wanted to make.

PETER DETKIN: OK. I wanted to make one last point, since I was on a roll The last criticism I've heard of the lack of transparency is that people looking to take a license don't know who to contact. That is, with all due respect, something an academic could only think of.

Anybody in this room ever tried to take a license but didn't know who to contact? OK. For the ships at sea, not a single hand went up. I've never heard of that behavior in the real world. I actually don't think it would be really hard to find out who it is.

In fact, according to that entity that was trying to raise money, it would cost about $80,000 to do a downtown analysis of our portfolio. Our portfolios is over 40,000 patents. So at an average cost of $2 per patent, I think people could figure it out if they really wanted to. But again, this is solution in search of a problem. I'll stop.

ERICA MINTZER: Thank you very much.

SUZANNE DRENNON MUNCK: Thank you very much. OK. So now we're going to shift gears just slightly and talk to Mary Stich. Mary, you're with Rackspace. And as we talked about, Rackspace is a smaller company. For example, you don't have independent IP counsel. And I'd like to ask you what the realities of PAE activity are for smaller companies, in particular if you have any sort of examples-- One of the things we've talk about privately is nuisance suits. So if you could address that as well.

MARY STICH: Yes. Thank you. I mentioned earlier that our fastest growing expense is defending PAE patent cases. We've been sued eight times in the last three years. All the cases are PAE cases. And for us as a smaller company, that's a lot. The trial budgets for each case are in the millions, as most of you know.

90% of our legal spend on defense cost in 2012 was on PAE cases. 90% of our legal spend on defense costs in 2012 was on PAE cases. Since 2000, we've seen a 500% increase on our legal spend on defense cases because of PAE cases. A 500% increase.

MARY STICH: Well, we have never litigated a nuisance case to trial. We've never gone to a Markman hearing. We've never gone that far, because the costs of defense is always much higher than our opportunity to settle.

SUZANNE DRENNON MUNCK: So Rackspace is also heavily involved with non-proprietary open source technology. And as sort of one of the open source representatives on the panel, I'd like to hear your opinions on how PAE activity impacts open source technology and innovation.

MARY STICH: As the open cloud company, we're especially concerned about the impact of PAE activity on open source innovation. At Rackspace, we collaborate with developers from dozens of other companies to create open source software to power cloud computing. This is the future of technology and the internet, in our view.

Most of the innovation around computer systems and software now happens in the open source community. Open source projects allow large numbers of software developers to collaborate on ways to improve the internet and how businesses and governments work.

Open source is important to this discussion for several reasons. Open source development touches almost every company in America, large or small. Rackspace is best known for our development with OpenStack, a cloud computing system that we created open sourced, and now have spun off into its own foundation. This one open source project is creating value, providing jobs, and driving innovation at hundreds of companies, not just ours.

Today's largest and most important software projects are open source. Linux, Android, OpenStack, Hadoop, Git, are just a few of the projects that are enabling small and large enterprises to innovate, create, and grow.

Over the past 15, years open source has developed into a surprising font of innovation. For example, much of the big data driving investment right now came about because of an open source project called Hadoop. Many of the people that work on Hadoop or OpenStack or any other open source project are individual developers that do this work mostly in their spare time and for the love of the art. These developers have no legal team and no support structure. The mere existence of patent assertions in this area of technology has been sufficient to induce developers to pull projects, limit features, and redirect their efforts.

Good examples are the gif and jpeg patents. These were patents that purported to cover the uses of common image formats used extensively on the internet. At the time the patents were bring asserted and litigated, a number of open source projects modified their projects to pull out support of the formats. This was a pure loss to society. Consumers would have had the option of using the open source code for free. Instead, they got nothing. And there wasn't a patent holder or an innovator anywhere that was better off because of it.

SUZANNE DRENNON MUNCK: Thank you very much.

ERICA MINTZER: Sarah, if we could turn to you now. You mentioned that you were brought to RIM because of NTPs. And you have all of this to thank.

SARAH GUICAHRD: I do.

ERICA MINTZER: So you been in since day one. If you could maybe tell us a little bitnoR.81 -1.15 TD.000
We've seen increases in suits. We
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To my colleague's point about a right to infringe people's patents, RIM absolutely respects the right of third parties. One of things that we're seeing are a lot of these suits are stretches of what the actual invention was. One of our cases-- the lawyers used the concept of a chocolate chip cookie. And I kind of like that one, because I've got young children, and it's a way to explain it to them.

Did you invent the chocolate chip cookie, or do you have a new recipe where you added a new ingredient to the chocolate chip cookie? And I feel like a lot of the PAEs want the juries to

ERICA MINTZER: And you mentioned PAEs asserting one patent. Do you see a difference in strategies and how operating companies may react to a PAE based on the different sizes of the portfolios?

SARAH GUICAHRD: I do. I think with the serial litigation, if you know that there's going to be patent after patent after patent. But not every patent's created the same. There are patents that you take a license to, because that's what the patent is, and you know that that's what they invented, and you can feel good about it.

A lot of times, it's more like my colleague from Rackspace was saying that it's so expensive to litigate it, it's cheaper to pay them to settle it. And even if you don't think you infringe it, even if you think the patent is wildly invalid, the proof of that and the amount of time and effort and resources and distraction it's going to take greatly exceeds going down that path.

ERICA MINTZER: And are you seeing general pressures on operating companies internally to monetize their patents based on the marketplace that's developed?

SARAH GUICAHRD: I do. I think so. I mean, my colleague from Nokia has said that that's one of things that they do. And I do think that we see companies being pressured, being increasingly pressured, to say, well, if everyone else is doing it, why aren't you doing it? Your boards may be saying, if we're paying out all of this money in settlement costs, and all of this money in litigation costs, why aren't we getting the same return of value on our portfolio? Why aren't you taking advantage of these systems and efforts.

And being a patent attorney and having been in this industry and watching-- I mean, I can remember the first time back in 2000 when a firm came in and said, hey, there's this great court. It's called the ITC. It's a great place to do patent litigation. You should really look into it.

Watching all of these changes, I do think that companies are being-- If you're going to spend the money, you should be making the money. And we've spent all this money to develop patent portfolios, what are you doing about it?

We're in the same position as Cisco. The amount of money we spend defending ourselves against patent assertions way outpaces the amount of money we spend developing our patents internally.

ERICA MINTZER: Many more questions, but don't have time. Thank you very much. I appreciate it. Now Mallun, you're on. In your opening remarks, you were talking about PAEs and about RPX. So if you could just tell us. It sounds like you do see a difference between RPX and PAE, and what you believe those distinctions may be.

MALLUN YEN: Sure. So there's many reasons why we're not a PAE, but let me focus on just three, for the sake of time today. So per Colleen and per the FTC definition, a PAE is a company that asserts patents against existing products as a business model. RPX's entire business model is based on quite the opposite.

First, by definition, we're not an NPE because we never assert or litigate the patents that we bought. Second, our mission is to reduce our clients' costs and risks from PAEs. So clients don't join RPX to avoid being sued by us. They know we won't sue.

In fact, it's worth noting that a number of companies join RPX, even though we may not have a single patent in our portfolio that's applicable to them. It's the idea of proactively coming together, efficiently, with a number of other companies, to reduce the risk from patents.

So in fact, if a client determines that we're not clearing the risk and we're not reducing their costs, then we assume they're not going to renew their membership. So you can see, our interests are aligned. Our business model and our business is only successful, and we can only grow our business, if we help our clients be successful in reducing their costs and risks from NPEs.

And then third, PAEs don't have a relationship of trust with their licensees. One of the benefits of having aligned interests is that you can develop relationships of trust. We can be remarkably transparent, and we are.

Anyone can visit our website, calculate our rates. All of our patent assignments are recorded with the PTO in our own name. Every client gets a license to every patent that we own. We every client can choose to, if they want to, look at all of the patents that we're looking at acquiring. And we even have a client portal, where we put a lot of this information that Colleen has referenced and otherwise on a self-served basis. Anything that we can do in sharing all this market intelligence and information to help our clients in this battle, we do.

So the answer is, no, we're not a PAE. By definition, by mission, and by alignment of interests we're not a PAE.

ERICA MINTZER: And does RPX sell off some of its patents.

MALLUN YEN: So it does periodically sell off its patents. And in fact, our clients encourage and prefer that we actually do so periodically. So RPX is a for-profit company. And our duty is to our members. How can we maximize the amount of capital that we deploy to clear risk from patents for our members? But then we can actually recycle that capital and buy more risky patents and clear the risk from those.

But because we sell the patents subject to all the licenses that we've granted in the case of currently over 125 licenses, no matter what happens to the patent in the future, our clients are covered. So whether we hold a patent or whether we sell it, our clients are protected. Some people call this the catch-and-release model.

And one other point to make here is that when we sell off our patents, we always offer them first to our operating companies. And to date, we've sold nine portfolios. And eight of those portfolios have been bought by operating companies. And one of those portfolios was bought by a trust.

ERICA MINTZER: And how do you respond to some who may argue that this catch-and-release and release is just-- How do you distinguish that from assertion or threat of assertion?

MALLUN YEN: So like I said, we're a for-profit company. We're not a public service organization. The idea of defensive patent aggregation really only works if there's a network effect. If there's enough companies that join together to defend themselves, similar to what Colleen had talked about, although we never tell people not to settle. And if people thought that when we bought the patents they would never s

And then just one more point on this, because I feel so strongly about this. And by the way, this doesn't take into account the distraction from senior management, the hours of your engineers having to go to faraway jurisdictions or reading through these patents, or the diversion of resources from your own R&D budget, from your own filing of patents, et cetera. So this is just one little example. Thought I'd share.

ERICA MINTZER: And one last question. You mentioned that as part of your business, you monitor the marketplace and patent litigation. Could you just tell us a little bit about what you're seeing in terms of trends?

MALLUN YEN: Sure. So just a note on the data first. Because as everyone's talked about, there's a lack of transparency. It's also incredibly hard to get clean data in this area. And so we meticulously track every patent litigation, every PAE plaintiff, every company, every litigated patent, every portfolio put up for sale, every assignment. There's otherwise no marketplace or data source that you can go to to look this stuff up.

And then you need to clean this and analyze it. For instance, I don't know if you're aware, unless you clean this data, is that there's 2,424 ways that Samsung appears in the court docket when you take into account different corporate entities. And so when we talk about unique defendants, as some of the folks have talked about here, that is counted as just one. So it's incredibly challenging to clean the data. But because we're using this data every day in our business, we are meticulously cleaning it every day.

So just a few trends. First, no surprise here, PAEs remains a significant issue for many companies. So in 2011, we tracked a 1,509 PAE cases against 2,995 distinct companies in US District Court. So that's up from 453 cases against 933 distinct companies or unique companies in 2005. So a 221% percent increase in number of companies sued in the past six years.

Second, everyone is feeling the pain, as we've heard here. It's not just the biggest tech companies. It's a small company. The big tech companies are certainly feeling the brunt of it. Apple was sued in 48 times by PAEs last year, almost once a week,1n8d iiTJ-3774

And then the final point-- because I could go on and on, but I will save you the time-- is that to the marketplace for patents remains vibrant. As we've talked about here, are we just at the beginning? Is it going to trickle out? No. There's lots of activity. There's lots of patents.

So we see virtually every brokered patent transaction in the market. And we've tracked 3,213 brokered portfolios, multiple patents in the portfolios, since 2008. On average, we see about 70 such brokered portfolios for sale every month. And when they transact, we estimate that 50% to 60% of them transact to PAEs. And so, the market activity for the sheer number of portfolios has remained about constant, although the absolute number of patents within those portfolios has increased.

ERICA MINTZER: Thank you so much.

SUZANNE DRENNON MUNCK: So we're going to this panel by talking to Nokia and Mosaid. And one of the reasons why we wanted to do this was because Nokia, you have been a target of PAEs suits, and then you also decided to transfer your IP to a PAE. And so, honestly, I think we could do an entire panel with the two of you. So I do apologize the short amount of time. But I'd like to spend just a couple minutes now talking about your experiences as a target of PAE suits. If you could explain that to us, please.

PAUL MELIN: So as I mentioned earlier, we are a very frequently. We have been, according to some statistics, among the top 10 most sued companies in the US. And I have to say that I agree with a lot of the things that people who generally have had different points of view than we are representing here today have said about the inefficiencies in the system.

So we would very much welcome clarification in the standard for domestic industry in the ITC. For example, issues like working on fee shifting, erasing some of the barrier for filing lawsuits on questionable patents, in terms of the merits, as well as reducing the cost of discovery. And a lot of these things are being worked on by the respective authorities. And that's very good and welcome work.

SUZANNE DRENNON MUNCK: And you mentioned that you're one of the top 10 most sued in the United States. Has that trend changed over time, or has it been relatively consistent?

PAUL MELIN: Well, as I said, when we divest patents, we truly divest them. So we have absolutely no operational involvement or any level of control in these patents that have been sold. So we have a passive economic interest in those patents. It was not entirely paid up front, so we do have a delayed payment, partly, for the assets. And our role is equally passive. They just funded part of the transaction, from our point of view.

SUZANNE DRENNON MUNCK: And how does the delayed payment work?

PAUL MELIN: Well, maybe Mosaid can answer this better, because it has been published in their security reports. But I don't want to step over what has been said in public.

ERICA MINTZER: Just one question. We had mentioned litigation in the US, and Nokia being one of the top targets. I was just wondering if you're seeing different things across geographies. Is this patent assertion something that's mostly a US-centric issue?

PAUL MELIN: We do have a significant amount of patent litigation also in Europe, in Germany in particular, and in various countries such as China. But that in terms of the number of cases, in terms of the intensity of course, the US is unparalleled.

ERICA MINTZER: What about just the p8.221yoTw[Tw(you')]amst thhat at(1.70501 Tc.0649 Tw[218'5.86(')]ac

I think otherwise, what we're doing represents a transfer of the value from the people who created the market, created the technology to the people who are currently implementing or using the technology.

SUZANNE DRENNON MUNCK: And we asked this before. One of the things we're interested in collecting is some sort of evidence or experiences of inventors who may have made more money by working with a PAE than they would have been able to do by themselves. And I'm not sure that that's something that you have today, because we've talked about this. But if it's something that you're able to provide us going forward, that would be--

SCOTT BURT: I think in a sense the proof is in the pudding, because the people that we work with tend to be pretty large, sophisticated companies that have their own portfolios, very often their own licensing programs. And so they recognize the efficiencies. They wouldn't be coming to us if they didn't think we could do it maybe better, or at least as well.

SUZANNE DRENNON MUNCK: And before we turn to sort of the Nokia issues, I was wondering if there are other efficiencies you think we should be thinking about in the afternoon?

SCOTT BURT: No. I don't think so. I think I generally agree with Paul. I'm in the camp that thinks the patent market is generally working pretty well.

SUZANNE DRENNON MUNCK: And so I actually apologize. One more question I wanted to ask you before moving into Nokia. Does Mosaid publicize its real parties in interest?

SCOTT BURT: I'm sorry?

SUZANNE DRENNON MUNCK: Do you publicize the ownership of your intellectual property and real parties in interest? Because one of the questions that we're looking at is the transparency of PAEs.

SCOTT BURT: Yeah. Of course we do. One of the things we want everyone to know is what is in our portfolio, the size of the portfolio, but really the value of the portfolio. So with some exceptions, Core Wireless being a notable one, the patents that we own are held in the name of Mosaid. And so you can go to the USPTO website and do a search.

SUZANNE DRENNON MUNCK: Do you ever sell intellectual property that you own?

SCOTT BURT: Absolutely.

SUZANNE DRENNON MUNCK: And how do you decide to do that?

SCOTT BURT: Absolutely. It's not a large part of our business, but it is a consistent part of our business. We do it in two instances. One is where, perhaps, we have bought a larger portfolio that fits with our strategic interests, and there's part of that portfolio that doesn't quite fit. We may sell that off. Or we have a portfolio, for whatever reason, that is simply not something that we want to pursue.

And then the other reason is where people come to us and they say, we're looking for a portfolio. Maybe we're going into a new technology field where we don't have any patents, because we haven't been in this field before, but we need patents. And what do you have? And again, that goes to some of the transparency. They can find out what we've done in our portfolio.

SUZANNE DRENNON MUNCK: How often does that happen?

SCOTT BURT: Which one? You mean just general sale or--

SUZANNE DRENNON MUNCK: Both general sale and then companies coming to you asking for specific IP.

SCOTT BURT: I would be surprised if we didn't do at least one sales transaction of some size every month or two. Like I say, it's not a big part of our business, but it is a steady part.

SUZANNE DRENNON MUNCK: And do you have any limitations on the parties to whom you will assign intellectual property?

SCOTT BURT: No. Absolutely not.

SUZANNE DRENNON MUNCK: And why is that?

SCOTT BURT: We're trying to be efficient here in the marketplace. And we want the patents to be where people value them. And so we have no restrictions on what they do, nor would we want restrictions on what we do when we buy patents.

SUZANNE DRENNON MUNCK: And one of the points that Paul made was on the monetization of the Nokia IP. I was wondering if you could answer the question that I'd asked him, how the monetization worked and flowed?

SCOTT BURT: Well, from our perspective, it's pretty straightforward. Core Wireless, which is the entity that owns this portfolio, Mosaid essentially helps Core Wireless do that. We have a dedicated team that works very much on that portfolio.

And we, Core Wireless, and/or Mosaid, we put up all the upfront in that we've done. We do the claim charts. We go to the meetings. We meet with people. We fly to Asia. We do everything to monetize that, ideally, through license agreements.

And then whenever we get revenue, the split is essentially we keep a third. 2/3 goes back to Nokia. And then they do what they will with it.

SUZANNE DRENNON MUNCK: And you mentioned license agreements. How often are you able to achieve license agreements versus moving into litigation?

SCOTT BURT: Well, I think that's an important point here, because we are a licensing company. We're an IP management company, which means we take patents, we take patent applications.

We think we really improve upon whatever comes into our company. And we license it. That is our model. We're not a patent litigation company.

Now, that's not to say we don't litigate. But for us, litigation is what happens when you have a license negotiation that hasn't come to an agreement. And so very typically, that can be after years of license negotiations with the company.

SUZANNE DRENNON MUNCK: As I mentioned, I could talk to you all day. And I've got about 100 other questions. But we're also standing between these guys' lunch. So is there anything else that you think that the agency should be doing on this score, as sort of wrap-up point?

SCOTT BURT: Well, I just really appreciate the opportunity that you have these workshops and you have invited us to the panel. Because it is a complicated market out there. There's a lot of different people doing a lot of different things in this area. And I think the more we understand, the more we understand there aren't cartoon heroes and there aren't cartoon villains, that there's a lot of different people doing a lot of things, there's not a one-size-fits-all solution to this. And I think the most part, I think I really appreciate the opportunity just to educate everyone, including yourselves, about what's going on.

SUZANNE DRENNON MUNCK: Great. Well, I'd like to thank everyone on the panel.

ERICA MINTZER: I would like to thank everyone as well. I know time was short, so we do encourage everyone to please take advantage of the public comment period that we're going to have, it until March 10.

SUZANNE DRENNON MUNCK: We're holding it open longer than usual, because we absolutely want to hear from all of you. So we're running a little bit behind. Why don't we come back from lunch in an hour? So that'd put us at 1:25.

Now, the most important thing is that you don't lose your badge. Because we cannot be responsible for what happens to you if you lose your badge. Seriously. I'm not kidding. So hold onto those, and get something good to eat, and we'll see you in an hour. Thank you very much.