

# Google-Motorola deal highlights patent arms race

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In this Jan. 6, 2011 file photo, a buyer tests Motorola's Droid Bionic 4G phone at the Consumer Electronics Show, in Las Vegas. When an Internet company plunks down \$12 billion to buy a cellphone maker for the sake of its intellectual property, it's another sign that for the high-tech industry, patents have become a mallet wielded by corporations to pummel their competitors. (AP Photo/Julie Jacobson, File)

(AP) -- When an Internet company plunks down \$12.5 billion to buy a struggling cellphone company for its collection of patents, it's another sign that, for the high-tech industry, patents have become a mallet wielded by corporations to pummel their competitors.

Google Inc. announced the deal to buy Motorola Mobility Holdings Inc. on Monday, specifically for its trove of 17,000 patents. [Google](#) needs them to shield companies like HTC Corp. and [Samsung Electronics](#) Co.

-who make phones based on Google's [Android](#) software- from lawsuits filed by [Microsoft Corp.](#) and Apple Inc.

"Google is not acquiring Motorola for the sake of its technology or its research," said James Bessen, a lecturer at Boston University and co-author of a book on the [patent](#) system. "Patents have become legal weapons - they're not representing ideas anymore."

The trend, decades in the making, raises questions that pending patent legislation in Washington only begins to answer.

Google's multi-billion bid to get its hands on Motorola's output of legal paperwork is the culmination of a "bubble" in the value of patents relating to smartphones that started last year, as Microsoft and Apple mounted their legal attack. Industry watchers say that bubble may deflate now that Google is set to gain the protection of Motorola's patents in a deal that's set to close late this year or early next.

But an underlying problem will keep growing: patent filings and lawsuits that distract companies and sap resources that are better spent on other things.

Engineers spend their time writing patents rather than inventing things, or reworking products just to avoid patent infringement. Customers put off purchases because of pending lawsuits, and independent software developers close up shop because they can't afford licensing fees.

"If you have to pay \$12.5 billion dollars to play, you can sense why maybe an individual who has a great idea would feel discouraged," said Julie Samuels, a patent lawyer with the Electronic Frontier Foundation, a technology-oriented civil liberties group. "It affects the whole economy."

It wasn't always this way. The U.S. software industry got its start with

nary a patent filed, and on the hardware side, patent suits were rare until the mid-1980s. That was when calculator and chip maker Texas Instruments Inc., on the brink of extinction, decided to see if it could make some money from its patent portfolio. It started filing patent lawsuits and demanding money from companies with infringing products. It saved the company.

IBM Corp. latched on to TI's lead in patent licensing in the mid-90s, when it was down on its luck. That coincided with courts broadening the types of patents allowed. Patents on software and "business methods," with vague, broad claims, were now accepted.

Since then, an arms race has slowly escalated in the industry. Companies found that the best defense against a patent suit from a rival was to have a patent portfolio to wield as a deterrent: "Sue me and I'll sue you back," is the message Google is sending by buying Motorola.

Motorola is already suing Apple over several patents, including one that purports to cover the act of sending address data between two phones. Another patent at issue covers the idea of concealing a phone's antenna in its outer case, which Apple arguably does with the iPhone 4.

It's a situation reminiscent of the nuclear standoff between the U.S. and the Soviet Union. But just as the threat of nuclear weapons didn't stop third-world guerillas during the Cold War or deter terrorists today, the patent arsenals are useless against "patent trolls" - companies that own patents but don't do actual research or development. Since they don't make anything themselves, they can't be the targets of patent suits, says Colleen Chien, assistant professor at the University of California, Berkeley.

"Mountains of patents have proven useless against the patent system's 'stateless actors,' non-practicing entities who are invulnerable to patent

counterclaims," Chien writes.

In one example, a company with a 1980s patent on a kiosk that made music audiotapes on the spot for customers in stores tried to levy license fees from tens of thousands of technology companies, claiming that the patent covered any downloading of media from the Internet. Microsoft was among the companies that settled.

Bessen puts the cost of dealing with "patent trolls" at half a trillion dollars in the last two decades. Yet patent trolls account for only one in six patent suits, by his estimate, so the patent system's burden on the economy is much higher.

Just as we worry about old Soviet nuclear weapons falling into the wrong hands, Chien says that the patent hoards accumulated by corporations as "defensive" measures are starting to end up with "non-practicing entities" who use them for lawsuits.

For example, memory chip-maker Micron Technology Inc. in 2009 sold 4,500 patents to a patent lawyer in 2009. Chien points out that the patents are worth more to "non-practicing entities," because they can sue without fear of retaliatory patent suits.

During the Cold War, there were arms limitation talks. Similarly, many of the big technology corporations want the patent bombs taken away, or at least limited. Google's lawyers are critical of the patent system, and it's clear the company would rather not have to strike deals like the one to buy Motorola. Cisco Systems Inc., the world's largest maker of networking gear, wants [patent infringement](#) damages to be based on the value of the component in question rather than the entire product.

Tech companies can expect little help from Washington. After a decade of wrangling, Congress is set to approve a patent reform bill when the

Senate reunites in December. It will be the largest legislative change to the [patent system](#) since 1952. Even so, experts say its effect on the high-tech industry will be marginal. It had sought more sweeping changes, but resistance from the pharmaceutical industry, which is much better served by the current system, has kept out the more radical proposals.

The legislation will make it marginally harder to get and hold onto patents, Chien said, but that's unlikely to cut down on the number of spurious patents, she believes.

And paradoxically, the bills could expand the glut of patents that's plaguing the industry, since one of its goals is to reduce the three-year backlog of patents pending at the Patent Office.

"It's going to take a long time for Congress to tackle patents again, and that's really a problem because this troll problem is going to continue to fester," Samuels said. "We all feel the effects."

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