Apple, Google and Samsung ... is it peacetime in the patent wars?

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Amazon holds a patent for "taking photos against a white background." Credit: Nick Wheeler/Flickr, CC BY-NC-SA

Apple and Google agreed last week to abandon mutual litigation over smartphone software and hardware patents. Yesterday the Korea Times reported that it appears likely Apple and Samsung will also reach a similar agreement soon.

These latest developments in the long-running disputes between the tech giants about patents are a reminder that we should look at the specific issues behind these deals.

So why would three of the biggest tech companies want to drop their multi-million dollar – and sometimes billion dollar – lawsuits? Let's first get into the problems underlying patents themselves.

A patent gives the patent holder exclusive rights to commercially exploit a particular innovation. A key rationale for that right is the encouragement of innovation.

It is assumed that individuals and organisations will invest their skill, time and money – often on a very large scale – to develop something new. That something might be a life-saving pharmaceutical, computer hardware, software, a bread slicer or the hula hoop.

It's no surprise then that patents often involve litigation. The patent holder litigates against an entity, such as a competing business, that has allegedly infringed its exclusive rights. That litigation may involve millions or hundreds of millions of dollars in court costs (patent law involves expertise and doesn't come cheap) and result in billions of dollars of damages.

Patent war … what is it good for?

Patent holders may face litigation from competitors who assert that the patent is invalid, perhaps because the officials who allowed registration of the patent were asleep on the job. We're seeing criticism, for example, of Amazon's patent for taking photos against a white background, arguably a joke on the part of CEO Jeff Bezos.

Apple, like Microsoft, has been famously litigious in defending and contesting patents. That's unremarkable business practice, an echo of the disputes from the 1890s to 1920s in the car industry and the 1880s through 1930s in the chemicals industry.

It's a matter of CEO ego and competitive advantage, not war to the death. Competitors sometimes decide to stop feeding the lawyers and come to an agreement. Such an agreement might involve sharing of patents (cross-licencing), a sharing that potentially raises concerns regarding anti-competitive activity.

Apple v everyone, it seems

Apple has numerous patents regarding

smartphones and devices such as iPads.

Motorola, at one stage a dominant mobile phone company, also had a swag of patents. It sued Apple, alleging infringement of its patents and demanding billions in compensation.

Apple counter-sued, alleging infringement by Motorola. Things got complicated when Google acquired Motorola's mobile phone arm for US$12.5 billion.

Google wanted Motorola's patents; it offloaded Motorola's mobile phone manufacturing to Lenovo for U$2.9 billion. In the global information economy there's more money in owning knowledge than in owning machines, an insight increasingly recognised by business schools.

Apple and Samsung have concurrently been suing each other over patents, again relating to the software and hardware that makes smartphones and other devices so "smart" or usable.

There's been litigation in Australian courts – closely watched by lawyers, regulators and businesses in our regions, given that we serve as a sort of legal test market.

There has been similar litigation in Germany, the US and other jurisdictions. A US jury recently awarded Apple US$119m in damages for Samsung's infringement of a mere three software patents. And not only do the courts patiently sort things out – they must deal with appeals when one litigant isn't happy with the decision.

But wait – there's more

Intellectual property licensing company Rockstar is owned by Apple, Ericsson, Microsoft, RIM and Sony and holds patents acquired from Nortel. It's meanwhile busily suing Google and phone manufacturers over Android patents.

Just as in the past, patents are read as bases of national power and competitiveness. It is unsurprising that governments have started to get involved in the smartphone disputes.

The US for example has expressed unhappiness with South Korea, home of Samsung, and Taiwan. That pro-patent sabre rattling is directed at both those governments and at China, a jurisdiction that has excellent law on paper but very problematical implementation.

South Korea and Taiwan in return have complained about bullying.

Close to home

What does this mean for Australian small business and government?

One conclusion is that patent litigation is a fact of life (indeed, if you are a patent lawyer, it is a lucrative way of life). Australian start-ups need to know their way around the patent jungle and to have the skill (and resources) if they come into conflict with a giant such as Apple and Microsoft.

Last week's federal budget ignored meaningful support for innovation through support for Australian inventors (contrary to the idealists of the Audit Review, we don't live in in an ideal market and innovation capital pool is shallow).

More subtly, the dog-eat-dog approach to university funding weakens the law teaching that is an under-recognised foundation for successfully getting Australian innovators into global markets.

If we're thinking about smartphones and smart business, we need to think harder.