

# Chicago Daily Law Bulletin®

Volume 157, No. 168

Friday, August 26, 2011

## Google's bid for Motorola means play for many patents

By Amanda Robert  
Law Bulletin staff writer

Patrick L. Patras, a partner at Hinshaw & Culbertson LLP, who focuses on patent litigation, became most interested in Google's \$12.5 billion bid for Motorola Mobility when he heard that patents played a leading role in the transaction.

"They had a conference call after they announced the deal and what was interesting to me in listening to it was the focus given to the patents, both by Google executives and analysts who asked questions about patents and how it would affect other aspects of their business," Patras said. "That's a little unusual, because I think Google really needed to shore up its patent strength."

Google announced this month that it would purchase Libertyville-based Motorola Mobility for not only its mobile devices and software, but its 17,000 patents and 7,500 pending patents.

Patras explained that Google recently became the target of several patent infringement cases, most likely due to its weak patent portfolio and inability to fend off attacks from competitors like Microsoft and Apple.

Google tried to acquire more patents, including 6,000 patents owned by Nortel, a bankrupt Canadian telecommunications equipment company, but failed. Those patents instead sold to a consortium of its competitors for \$4.5 billion.

But, Patras said, as Google acquires a portfolio with nearly three times that many patents, the company stands a fighting chance in the mobile device market.

"Like any new market space, there are a lot of competitors in there and things are going to

shake out and consolidate," he said. "There are going to be winners, and there are going to be losers, and the patent system may play a pivotal role in that."

Joseph M. Barich, a shareholder at McAndrews, Held & Malloy Ltd., agreed that with its purchase of Motorola Mobility, Google further establishes a strong bulwark in the mobile device market.

The company started moving in that direction when it released the Android operating system and provided it free to a number of cellphone manufacturers, including Motorola Mobility, he said.

"They're attacking the basic profitability equation of many established companies — large companies that have very significant patent portfolios," Barich said. "Virtually lacking any significant patent rights in this space, Google found itself at a significant disadvantage."

"The attempted acquisition of the Nortel patents by Google or the successful acquisition of the Motorola Mobility patents by Google fit directly with regard to what seems to be their long-term business goals."

As companies like Google start to focus more on ideas than on manufacturing, their intellectual property portfolios will become increasingly valuable, Barich said. For example, IBM earns billions of dollars in licensing revenue from the thousands of patents it issues each year, he said.

Steven G. Parmelee, a partner and patent lawyer at Fitch, Even, Tabin & Flannery, formerly served as the vice president and director of portfolio management at Motorola. From his perspective, Google chose Motorola Mobility because of the company's long-term plan for securing patents.

"For decades, they have done a very good job of always making sure that they're running a powerful patent acquisition machine and you couple that with a very robust eye on what might be coming next," Parmelee said. "I have to believe when you look at the thousands of patents that Google picked up here, there are some winners in the batch."

Parmelee contended that Motorola Mobility's work on the Android operating system also makes the company appealing. He said that since Android operates as an open-source platform that permits proprietary improvements, Motorola Mobility and other companies can add in innovations and secure their patents for those innovations.

"Motorola was an early supporter of Android and I suspect those two things go together," Parmelee said. "Google, in buying this portfolio, is getting a bunch of patents that pertain very much to improved functionality and user features that directly build on their Android stuff."

The pending patents also play a key role since Google could redirect what's being presented to the patent office and fit the inventions to its business vision, Parmelee added.

Once Google and Motorola Mobility close their deal, patent lawyers like Patras question whether Google will still face a tide of infringement cases.

"Maybe they will seek more acquisitions of patents, which you need to do no matter what because time marches on and technology changes," he said. "At the same time ... while these patents might allow them to stem the tide, they're still going to have problems and want to acquire more patents to deter others from filing lawsuits against them."