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Opinion

Everybody loses in the wireless patent wars

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In recent years, patent owners and product makers have become trapped in an endless cycle of demands, counter-demands, and unproductive litigation. Product makers accuse patent owners of "hold up", using the threat of lawsuits to demand extortionate royalties for their patent rights. Patent owners, meanwhile, say product makers are guilty of "hold out" for refusing to pay fair compensation for the patented wireless, audio and video features that give their products value as communication and entertainment devices.

Both sides have a point. Unlike in the real property business, in intellectual property licensing there is little or no independent appraisal of the assets (ie, patents), almost no transparency as to how prices are determined and few ground rules for what constitute fair negotiating practices between buyers and sellers.

This is especially true with regard to wireless patents,which are supposed to be licensed on fair, reasonable and non discriminatory terms. But what's fair or reasonable about the fact that a large number of 4G LTE cellular patents — more than 60,000, in fact — have been self-declared to meet the required elements of the technological standard, without any independent evaluation of them whatsoever? These patents have all been self-declared "standards essential" by companies seeking their own commercial advantage. In short, it is a wireless goldrush—with plenty of fool's gold posing as the real thing.

That is why I have decided to work with two former adversaries in the patent wars: Ira Blumberg, patent chief at smartphone maker Lenovo (and a critic of patent licensing abuses), and Boris Teksler, chief executive at licensing firm Conversant (and a former head of patent licensing strategy at Apple). We have developed a three-pronged plan for creating a more productive and less litigious patent licensing sector.

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Our first proposal is to whittle down that absurd mountain of self-declared 4G LTE patents to the fewer than 2,000 patent families that are truly essential to smartphone handset makers. Independent, neutral evaluators will then confirm each patent's relevance to the 4GLTE standard.

Second, royalty prices should be based not on the subjectively argued value of each individual patent examined in a vacuum, but on the objective value of the entire stack of 4G LTE patents in a phone. A recent court judgment valued that 4G LTE stack at roughly $20 for a smartphone with an average selling price of $324. But with greater price transparency from both sides, the market itself will probably set a rational price for the stack. Royalties can then be paid to patent owners roughly proportionate to each owner's percentage share of the total stack.

Third, we can ensure greater transparency by promoting collective licensing solutions such as patent pools that openly publish their pricing frameworks and offer consistent terms to all licensees. Given the "prisoner's dilemma" dynamics in patent licensing today, it is unrealistic to expect any one patent owner to unilaterally forgo potential business advantage by revealing its pricing strategies. But collective licensing approaches such as patent pools reduce the risks of transparency for everyone.

Industry reform proposals rarely find universal approval, and there may remain some companies who prefer to take advantage of the current dysfunctional system. But if enough players embrace this less litigious alternative, patent owners and product makers will be able to avoid a repeat of yesterday's costly smartphone wars in tomorrow's connected car, autonomous vehicle and internet-of-things industries.

This "peace plan" can help spark a realignment in the industry in which the conflict is no longer between product maker and patent owner, but between those who transact IP on a fair and transparent basis, and those who do not.

The writer is president of Via Licensing