

Smart Phone Litigation and Standard Essential Patents

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Abstract

The recent sensationalizing of litigation in the smart phone industry has fostered several concerns, in particular those relating directly to the so-called standard essential patents (SEPs). It has been argued that the smart phone industry has seen a dramatic rise in litigation, driven by SEPs whose owners can cause potential “patent hold-up” of downstream manufacturing firms implementing the standards via the threat of seeking an injunction in courts for their patent rights. Yet, no clear evidence has been offered by the literature regarding any systematic effects of these so-called SEPs on litigation, disputes, or market outcomes. This study explores novel empirical evidence by creating and examining a unique data-set on recent litigation in the smart phone industry, to inform the debate on the smart phone wars by understanding how they relate to SEPs and other relevant industry factors. We find that the litigation in the smart phone industry is primarily driven by patents that are not related to the standards, i.e., on implementation or design specific features of mobile devices. Moreover, litigation outcomes are driven by patent quality rather than the type of patents (SEPs or not). Finally, the recent explosion in smart phone litigation may be explained by a disruption in the mobile wireless ecosystem due to new and large industry entrants, and that this litigation trend may be on a decline. These findings suggest that in the realm of smart phone wars, the focus specifically on SEPs needs to be revisited, the litigation outcomes are based on the quality of litigated patents, and that recent litigation activity in this industry may be explained by industry dynamics rather than related to patents. Concerns about SEPs and smart phone litigation need to be examined empirically prior to proposing policy measures.

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