

# Patents and the Internet

A practitioner's view

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# The Internet is an interactive infrastructure for sharing contents

- ✓ Patents rights affect primarily the underlying HW
- ✓ Contents are covered essentially by copyright
- ✓ An overly simplified view?
- ✓ An extensive grey area lies in between, e.g. computer-implemented inventions and business methods

# Drafting and prosecuting Internet-related patents may be difficult

- ✓ quite specialized subject-matter
- ✓ disclosure of the invention may be complex and non-conventional (e.g. in image processing)
- ✓ inventors are very busy
- ✓ search and examination takes time and may be non-conclusive

# Litigating Internet-related patents may be even more difficult

- ✓ Litigation in several jurisdictions (e.g. several countries plus EP opposition). Phasing may be critical, with possible contradictory results.
- ✓ Very large interests. One blow may be a heavy blow.
- ✓ Skilled counsel (court/party) not easy to locate, especially in plural jurisdictions.
- ✓ Providing evidence is far from easy. Reverse engineering expensive and standard-based assumptions may be unconvincing.

# A world of its own

- ✓ Standardization is a basic need: “essential” patents (i.e. infringing because conformant: non verifiable by standardization bodies).
- ✓ Fair Reasonable And Non Discriminatory (FRAND) licensing should apply. What does it mean? Does it pre-empt injunctive relief?
- ✓ “Stacked” licenses. Chipset manufacturer is licensed: exhaustion of right/implicit license for user of chip?
- ✓ Alleged infringer may not be aware of structure/operation of alleged infringing product.

# The future?

- ✓ The UPC may solve certain issues:
  - consolidated litigation (but coordination with EPO essential)
  - technical skills concentrated (court/party)
  - technically qualified judges may lend a hand, e.g. in case management (collecting and evaluating evidence)

# Some (personal) reflections

- ✓ What deserves to be rewarded: instant ingenuity of individuals, intellectual work stimulated by research investments or marketing ability?
- ✓ The driving factor of the patent system is stimulating alternative (and better) solutions.
- ✓ IP should not become the chain across the Appian Way

Thank you  
from an old practitioner

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