

Ask the IP Expert:

Did Broadcom act unethically concerning Bluetooth?

By Alfred W. Froehrich, Cohen Pontani Lieberman & Pavane LLP

Question: A recent article, covered the lawsuit brought by Washington Research Foundation (WRF) against consumer electronics firms that were using Cambridge Silicon Radio's Bluetooth chips. They are Matsushita and its Panasonic unit, Samsung, and Nokia. My questions are the same as author Guy Kewney's.

Because some six thousand companies belong to the Bluetooth SIG and share all IP for access to the standard, I think we can look past the ethical issue.

If what it did is not illegal, is Broadcom guilty of unethical practices?

Excerpts follow:

"The first mystery about the Bluetooth lawsuit between patent owner Washington Research Foundation and the above-named companies—who happen to be customers of Cambridge Silicon Radio [CSR]—is this: if WRF thinks CSR is breaking its patents, why is it not suing CSR?"

"And the second mystery: why on earth did Broadcom buy into WRF's license, if CSR thinks it is 'without merit'? Is Broadcom falling behind in the technology development world? Or is CSR behaving unethically?"

Expert response from Alfred W. Froehrich, Partner, Cohen Pontani Lieberman & Pavane, LLP:

Although the article referenced in your question has a cynical bent and insinuates abuse "of the appalling American patent system," Broadcom and Cambridge Silicon Radio (CSR) do not seem to be guilty of unethical practices.

Both Broadcom and CSR make and sell wireless chip sets that are used in wireless Bluetooth products. WRF owns patents covering RF technology. Only Broadcom has obtained a license from WRF on behalf of Broadcom and Broadcom's customers so that wireless products using Broadcom's chip sets can be imported, sold, and used in the United States without infringement of the WRF patents.

The mere decision to obtain or not obtain a license is not unethical. That decision is a business decision in which risks, costs, and potential advantages are weighed. Litigation is an expensive proposition, and the outcome is not certain. Furthermore, discovery rules in the United States require that parties to a litigation exchange various categories of information, such as technical information and business information, some of which might also become public.

For Broadcom, it made sense to obtain the license instead of being

subjected to the cost and exposure associated with litigation. Conversely, CSR decided that it was better to fight the WRF patents.

Because there is no evidence of collusion between any of the parties, there is no indication that the decisions of Broadcom or CSR are unethical. It is also not accurate to characterize Broadcom's actions as causing its customers to "roll over." Customers may legitimately seek to buy a product that does not have a threat of litigation hanging over it.

Your question also asks why WRF is suing CSR's customers and is not suing CSR directly. There could be several reasons for this. For example, CSR is a United Kingdom-based company and may not be directly infringing the WRF patents in the United States.

Under U.S. patent law, a U.S. patent is infringed when the patented invention is made, used, offered for sale, or sold within the United States or imported into the United States. Therefore, it is possible that CSR is not being directly sued because its activities are not in the United States and thus are not a direct infringement of



WSR's U.S. patents. However, CSR's customers are importing wireless products into the United States and would therefore be direct infringers. Incidentally, standards committees or groups that formulate industry standards, such as Bluetooth SIG, typically have disclosure

requirements that require all participants to disclose patents and patent applications that may be relevant to the work of the formulating committee. However, these requirements do not apply here, because the patent holder, WRF, was not a member of Bluetooth SIG.

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