



THE 7TH ANNUAL IP DEALMAKERS FORUM

Event Summary

December 1-10, 2020 / VIRTUAL EVENT



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ABOUT

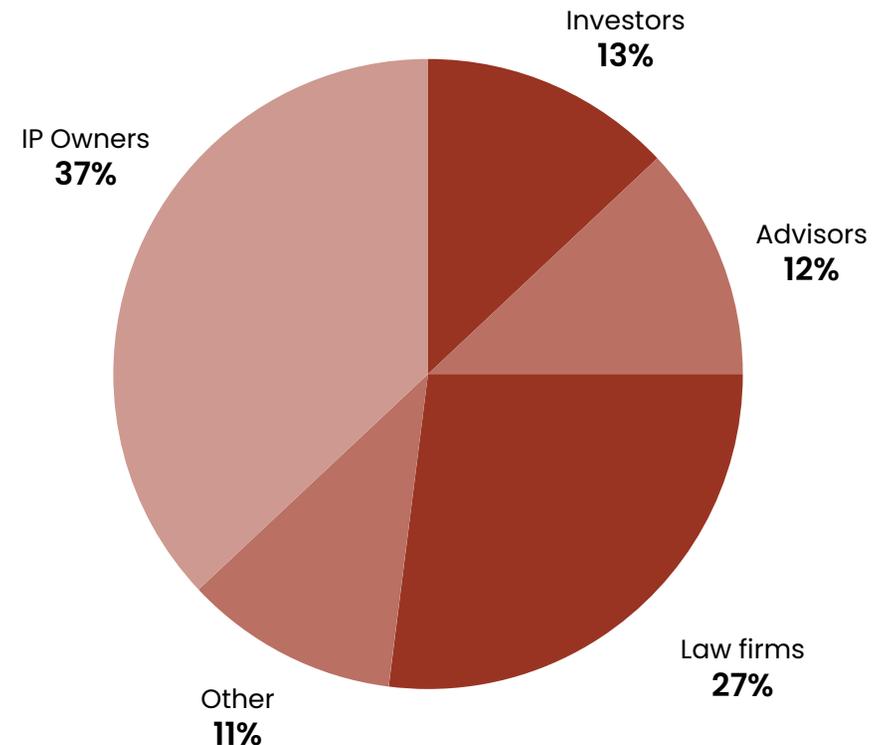
IP DEALMAKERS FORUM

Connecting Investors & IP

IP Dealmakers has earned its reputation as a must-attend event by bringing together an exclusive group of decision-makers at the forefront of the global IP market for discussion, debate, and dealmaking.

Event hallmarks include rigorously researched content, insightful panels, A-list speakers, 1-to-1 meetings, and a curated audience of decision-makers.

2020 ATTENDEE PROFILE



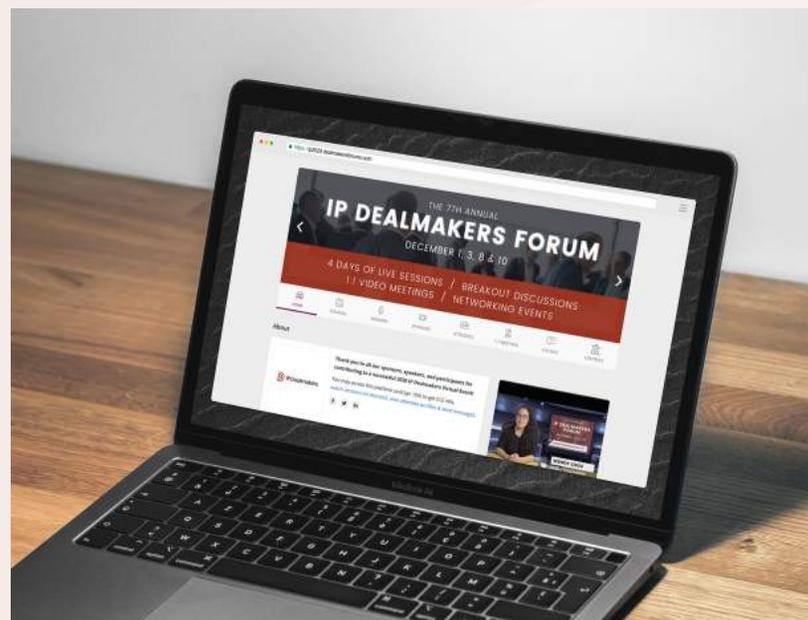
IP DEALMAKERS 2020

EVENT SUMMARY

The 7th Annual IP Dealmakers Forum brought together 220 leading decision-makers in the IP dealmaking community - from corporate IP owners, licensing company executives, inventors and entrepreneurs, to investors, law firm partners, strategic advisors and others who are influential in the space.

This year's fully virtual event was spread out over a two-week period (December 1-10), featured 43 "A-list" speakers, 22 interactive sessions and breakouts, two highly entertaining networking events, 215 one-to-one video meetings facilitated through an innovative technology platform, and many more held off-line.

The program kicked-off with a thought-provoking conversation with Professor Rayid Ghani of Carnegie Mellon University. Professor Ghani spoke on "AI Innovation in a Time of Uncertainty," a discussion about how machine learning and artificial intelligence could be used to support fairness and equitable outcomes in the current period of uncertainty. He touched on its use in connection with a broad range of social contexts



including the government's COVID response, vaccinations, application for social services, and in reducing recidivism rates for misdemeanors. The conversation provided a broader context for the Forum, especially in connection with today's transformative technologies.

The Forum then moved on to feature 8 interactive panel discussions that addressed the state of the IP market, deal trends, corporate IP strategy, legal and regulatory developments, IP litigation finance, and important technologies like 5G. These topics and important themes from the conference are further amplified in the key panel take-aways that follow.

Primer – What 15 Years of Data Tells Us About the IP Market

STATE OF THE IP MARKET: DEALS, TRENDS & OUTLOOK

Over the past 15 years, major trends in the IP deal space have been driven by NPE plaintiff litigation behavior.

From 2005–2011/2012 patent litigation involving utility patents doubled but has halved since. Disputes brought by operating company plaintiffs remained steady in the same period but have also slowed. NPE activity, on the other hand, quintupled from 2005 (1,000 defendants) to 2011 (about 5,000 defendants). Since 2011, however, there's been a general decline of patent litigation activity impacted by joinder reform, the US Supreme Court's Alice decision and heightened pleadings standards.

Much of NPE litigation activity has been amplified by the activity of IP Edge, the most active NPE plaintiff.

Since 2010, IP Edge has sued 3,000 defendants with 500 defendants in 2020 alone, accounting for 25% of all related

litigation activity last year. 70% of IP Edge cases involve a single plaintiff, are resolved within 180 days of the complaint, and are settled for an amount lower than the cost of an IPR challenge. If you exclude IP Edge and its affiliates, the downward NPE litigation trend is less volatile and more pronounced.

Despite lower overall litigation activity, economic dislocation may lead to increasing or unchanged risk.

Patent reforms have had a considerable impact on certain types of NPE litigation. There now exists a two-tier market with the bulk of cases (like the ones litigated by IP Edge) defined by a lower IP risk profile. Economic dislocation, however, generally leads to patent transfers from operating companies to NPEs and that is a leading indicator for an increase in patent litigation. In addition, increased interest in third party litigation finance also has increased risk for defendants. So even with the decline in NPE activity over the past few years, the risk to defendants may be increasing or unchanged.

NPEs continue to drive purchases of patents in the secondary market.

There's currently about \$36B in patents on the secondary market with approximately 1,000 deals hitting the market each year.

OUR PANEL 1 SPEAKERS

The "M" indicates the panel moderator
The "P" indicates the primer speaker



Kent Richardson
Richardson Oliver
Insights



Robert Heath
RPX



Marc Booth
Acacia



Leslie McKnew
Cisco



Jay Yonamine
Gene Pool
Technologies



“I inevitably meet the smartest people and have the most interesting discussions at Dealmakers events, all about the hottest topic around – realizing the value of IP.”

—Stan Hanks, Aventurine Capital

Sales are about the same as last year and asking prices have dropped 8% after last year’s 56% increase. Software sales continue to dominate, and old deals continue to sell. NPEs are buying a larger share of deals and 67% of the purchases in the first half of 2020 were by NPEs. Unlike operating companies which cherry pick assets, NPEs repeatedly go back to sellers to buy more.

Litigation finance is playing a role in scenarios where there’s a “mismatch” in the valuation of assets.

Litigation finance is playing an increasing role in the IP litigation context funded by investors who are looking for high returns that are not highly correlated to the equity and fixed income markets. This quest for an expected rate of return, has led to scenarios where operating companies and NPE funded entities have significant differences of opinion on how a case is valued.

PATENTS VS PRODUCTS: A SHIFT IN CORPORATE IP STRATEGY & MONETIZATION

Corporate IP strategy ultimately depends on where the company sits in the corporate life cycle.

Earlier stage companies continue to remain focused on products and services with generally less of an appreciation for the value of patents, while later stage companies are looking at IP more holistically and trying to extract the greatest value from their assets. In the middle, there’s a focus on how to responsibly monetize the IP for shareholders and the board.

There’s been a shift from naked patent licensing to a broader view of IP and other value models.

Overall, there’s been a shift from patents being seen as a way of protecting products and product features to the patents being seen as the “products” themselves. In addition to a more comprehensive view of IP that not only focuses on patents, there’s also been movement away from basic patent licensing to more

OUR PANEL 2 SPEAKERS

The “M” indicates the panel moderator



Raymond Millien
Volvo Cars



Brett Alten
Hewlett Packard
Enterprise



Yann Dietrich
Atos



Courtney Quish
Fortress



Robert Wawrzyn
GE Healthcare

collaborative business models such as open source and participation in membership-based platforms.

Alliances and patent pools are increasingly important.

Collaborative approaches that drive efficiencies into the system, fairly value IP assets, and set reasonable and agreed upon costs for licenses have become increasingly attractive. These pools provide a way for companies to get something back from their IP investment while also offering value to their customers. The pools, however, can hurt companies' financing options since they impact the potential value and downside protection in terms of a default that lenders seek.

Patent litigation as a strategy is both costly and increasingly less effective.

Patent litigation is a real, but very expensive option. It's also getting harder and harder to enforce patents. Companies can

utilize privateering or litigation finance to minimize corporate investment in litigation, but it is often tied to issues around corporate identity and market perception.

IP assets can be utilized to drive value beyond traditional approaches.

There are a broad range of other ways that IP assets can generate value outside of the traditional patent context. Those ways include using it to deter IP aggression by building a portfolio; creating a related debt instrument; seeding start-ups and new ventures with a company's non-core IP; lowering the cost of related technology; technology transfer; and raising capital through the buying and selling of portfolios.

“Like every year, Dealmakers offers an efficient opportunity to intake the state of the IP marketplace, hear from similarly situation professionals from all aspects of IP deal-making, and rapidly meet one on one with many colleagues in a short period of time.”

—Aaron Waxler, Nagra



STRATEGIC APPROACHES TO IP MONETIZATION IN TECH TRANSFER

Tech transfer, especially in the university context, is not a monolithic exercise and has become diverse and sophisticated.

Universities are using tech transfer to help facilitate commercial adoption of their inventions and generate needed funds that fuel research investment. Originally, tech transfer deals were modeled after those in biotech, but are now far more customized to the economics of each market. In addition, universities have moved away from a single-minded approach around patenting and licensing to embracing various types of corporate partnerships and industry collaborations. They have also embraced techniques such as patent pooling (creating portfolios of related patents) to increase the value of their offering to corporates. In addition, the focus of tech transfer offices has also shifted away from licensing only to established companies toward a greater interest in start-ups and the nurturing of early-stage opportunities through internal funds and collaborations.

Tech transfer offices are doing a better job of evaluating opportunities.

Much of the technology a university develops is “future forward,” so how do you know which patents have commercial value and should be subject to licensing? Tech transfer offices are finding ways to answer the question by considering market size and “time to market” factors as well as working collaboratively with inventors, corporates and external consultants to ask better questions up front and understand whether the technology is patentable and enforceable.

Litigation remains a tool to protect a patent but it carries unique considerations for universities to manage.

Litigation is a key component for a patent protection program, but universities often face significant issues around public perception of the institution they need to manage through a proactive communications program addressing why the litigation is taking place. Transparency is critical and it is key to leveraging the public educational opportunity that the litigation presents. If litigation funding is being utilized it’s important to be transparent about that, as well.



Russell Genet
Longford Capital



Stephanie Adamany
WARF



Fred Farina
Caltech



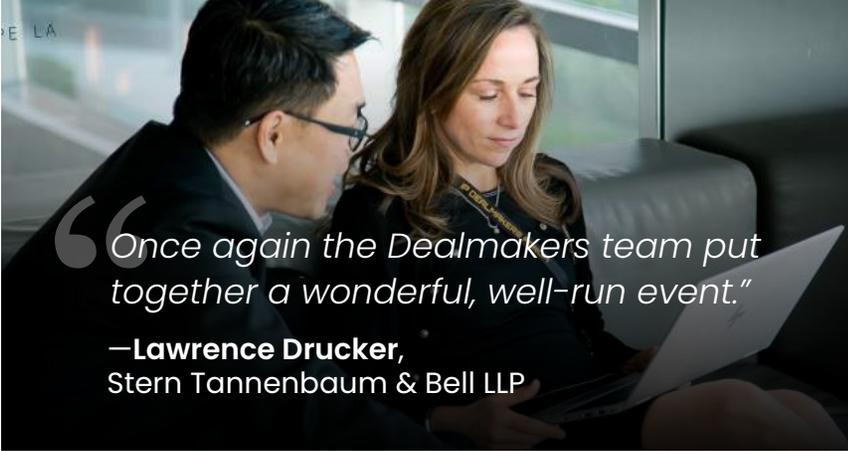
Seth Levy
Nixon Peabody



Sherylle Mills-Englander
UCSB

OUR PANEL 3 SPEAKERS

The “M” indicates the panel moderator



“Once again the Dealmakers team put together a wonderful, well-run event.”

—Lawrence Drucker,
Stern Tannenbaum & Bell LLP

KEY ELEMENTS OF A SUCCESSFUL MULTINATIONAL IP ENFORCEMENT STRATEGY

Getting an injunction is increasingly harder to get but still key to a successful multinational IP enforcement strategy.

Permanent injunctions are now few and far between in the high-tech and the standard-essential patent (SEP) contexts, but getting an injunction is still critically important to an effective enforcement strategy. Although the US Supreme Court’s eBay decision essentially ruled that an injunction could not be issued

simply based on a finding of patent infringement in the United States, corporates need to think globally when considering an IP enforcement strategy. They need to identify jurisdictions where it is best to file a claim and consider the jurisdiction’s substantive experience with Fair, Reasonable, and Non-Discriminatory (“FRAND”) licensing issues.

Antitrust defenses and counterclaims involving SEPs are getting an airing in Europe.

In the US, there’s not been a great deal of antitrust activity involving standard-essential patents (SEPs), and there’s been commentary out of the Department of Justice (“DOJ”) viewing FRAND disputes as a contractual matter. In Germany, however, there’s an active case involving Nokia and Daimler AG that’s been referred to the CJEU (Court of Justice of the European Union) that touches on the underlying tension between patent assertion and antitrust law. Although many commentators do not see a need for CJEU intervention in light of prior German cases that offer excellent guidance on the issue, the court’s ruling may significantly impact the licensing of SEPs in Europe. In the UK, the courts have taken a more disinterested approach than on continental Europe and, post-Brexit, the Nokia decision will be paid attention to but will not be binding.

OUR PANEL 4 SPEAKERS

The “M” indicates the panel moderator



Michael Renaud
Mintz



Alexandra Brodie
Gowling WLG



Eeva Hakoranta
InterDigital



Clemens Heusch
Nokia



Christine Yun Sauer
Robins Kaplan

High profile anti-suit injunctions involving SEPs are gaining traction in certain jurisdictions.

Anti-suit injunctions that are issued by a court in one jurisdiction to prohibit a litigant from initiating or continuing parallel litigation in another jurisdiction are becoming increasingly prevalent in China and India. This has also led rise to anti-anti injunction cases aiming to preserve matters to the status quo. In China, in particular, anti-suit injunctions have been used to favor Chinese companies and China may have passed up its chance to be a fair arbiter of intellectual property disputes involving SEPs. It remains to be seen, however, how the Chinese courts develop as more Chinese companies become holders of SEP patents.

Germany, the UK and Europe are key jurisdictions when enforcing global FRAND licensing rates.

The *Sisvel v. Haier* decision in Germany, as well as other European court rulings continue to provide clarity around how the courts

are willing to work with FRAND licenses and define expectations between the parties. In the UK courts, there's continued skepticism around "hold-up," an appreciation for the impact of "hold-up," and little interest in drawing NPE distinctions. Taken as a whole, Germany, the rest of the EU and the UK have become favored jurisdictions for enforcing global FRAND licensing rates.

The ITC is the best forum in the US to complement an international campaign.

In the US, the ITC remains the best forum to file an action in order to complement an international campaign. It's not impacted by the US Supreme Court's *eBay* for the time being and you can get an injunction with no affirmative showing required by the patent holder. In addition, you don't have to establish a FRAND rate to get relief. There are jurisdictional and other questions that can be raised about whether you can have a FRAND case in the ITC, but cases and other commentary support the conclusion that you can.

“Dealmakers have done it again! They've managed to encapsulate all the best parts of networking and learning in a format that is interesting, insightful, and most of all, effective! 100% would recommend, this event is truly one of a kind and curated to a select group of decision-makers at the forefront of global IP.”

—Zixuan Wang, Kommit Techno-Legal



LITIGATION FINANCE 2.0: A RAPIDLY EVOLVING LANDSCAPE

Finding the right litigation finance partner is more than just finding someone with money.

Since yields are historically low and investors are looking for opportunities, finding a funder with money to invest is the easy part. What's needed is a funder who can provide expertise, guidance and suggestions along the way; especially if things go sideways. Someone you can trust and who can provide you with a dispassionate, high level view of your case.

A good case for a funder involves both a strong underlying case, as well as realistic expectations.

The key remains having a fundamentally strong case, as well as realistic expectations for funding and expected resolution. Interests need to be aligned recognizing that they are not identical and risk sharing and risk taking by all the parties is critically important. Other key considerations that funders take into account include who the lawyers are who are involved, the venue, timing, as well as the tryer of fact.

It's important to be honest and thorough in the diligence process.

The diligence process is not that different than in any other one in the joint venture or private equity context. What's required is a reasonable damages model, comparables, expert opinions, as well as basic product and infringement information. It is best to be very thorough with the funders and give them all the information you have. Make your case but don't oversell.

The COVID crisis has impacted the IP litigation funding environment opening the door to greater acceptance and adoption.

There's been an increase in interest from companies and law firms who have traditionally self-invested due to uncertainties around their revenue, as well as to smooth out cash flows. There's also more interest in later stage involvement in cases after a period of self-investment. From a risk perspective, there's the potential for longer time frames until recovery as well as collection issues. The courts are a lot slower and time to resolution is longer and that is impacting pricing since the prospect of a looming trial is one of the primary drivers for settlement.

OUR PANEL 5 SPEAKERS

The "M" indicates the panel moderator



Abha Divine
Techquity



Aaric Eisenstein
PMC



David Kerstein
Validity



Anup Misra
Curiam Capital



Sarah Tsou
Omni Bridgeway

INVESTORS ROUNDTABLE: EARLY STAGE IP INVESTING STRATEGIES

Customers don't buy technology; they buy problems that are being solved today and in the future.

When investing in early-stage opportunities it's best to evaluate the companies in terms of the real-world problems they are solving and whether their underlying technology is patentable and has an identified customer set. Can they be a real-world business partner in a large global market and continuously innovate? In addition, it's important to look at what the incumbents will be doing since they often rely on start-ups to fuel innovation and develop what's needed. From an IP perspective, the goal is to protect the innovation early and build strong portfolios around their core technologies.

Protected IP offers early stage companies leverage with larger players.

Having good technology aligned with a proven market need



and protected by a good portfolio appropriately positions early stage companies to move to the next stage in the investment cycle. It also provides them with leverage when dealing with larger tech players who may be interested in acquiring them.

In the M&A context, IP rarely matters until it matters a lot.

Typical M&A IP due diligence is still very much a check the box exercise. Most investments are strictly about operational cashflow. But in CEO driven, strategic acquisitions, IP matters a great deal and strong portfolios can get early stage companies a seat at the table especially if the patents help the acquirer protect their markets.

OUR PANEL 6 SPEAKERS

The "M" indicates the panel moderator



Matt Moyers
Weild & Co



Stan Hanks
Aventurine



Jackie Hutter
The Hutter Group



Malcolm T. Meeks
Valotoire Ventures

TOP LEGAL & REGULATORY DEVELOPMENTS IMPACTING IP DEALMAKING

President Biden is a well-known quantity as it relates to IP.

President Biden was very close to the IP enforcement efforts of the Obama administration and has great familiarity with IP issues around copyrights and in the media space. Coming from California, Vice President Harris is also no stranger to the issues faced by IP intensive companies. Although President Biden will inherit our current international posture, he is well known with an established track record and has great relationships with global leaders. It is expected that he will do more to align with our allies on issues involving China, etc. From an IP enforcement perspective, the past administration's willingness to use trade and enforcement tools like multi-lateral tariffs also provides President Biden with leverage and flexibility moving forward.

In Congress, IP will be a focus as its value to our post-COVID recovery is front and center.

There's been a great deal of activity out of the Senate Judiciary Committee regarding Section 101 reform but there's still a long road ahead and there remains some uncertainty on patent eligibility and related issues. The dial is set toward acknowledging the importance of IP in the post COVID world. Priority will be placed on US industries that touch on governmental priorities such as COVID vaccines and climate change.

In 2020, the PTAB set forth a six factor test around discretionary denials involving overlapping District Court and PTAB proceedings.

In the PTAB's Apple v. Fintiv decision, the PTAB set forth a six factor "holistic" test for balancing considerations of system efficiency, fairness, and patent quality when a patent owner raises an argument for discretionary denial due to the advanced state of a parallel proceeding. One of the factors cited is the trial date and it matters a great deal because of variances in practices between the districts. Does the trial date come before the inter partes review? Following the decision, a case brought by major tech companies in the Northern District of California is now

OUR PANEL 7 SPEAKERS

The "M" indicates the panel moderator
The "P" indicates the primer speaker



Ian Lopez
Bloomberg Law



Chris Israel
ACG



Scott Boalick
PTAB



Fred Fabricant
Fabricant LLP



Christopher Larus
Robins Kaplan



Monica Magnusson
Ericsson

challenging certain of the factors based on that they are contrary to the policy and text of the America Invents Act (AIA) and therefore exceeds the Director's authority.

2021 will bring notable decisions around what is copyrightable in software and whether PTAB judges were properly appointed potentially impacting more than a hundred cases.

In 2021, we expect an important decision in the Google v. Oracle case before the US Supreme Court. The dispute centers on the use of parts of the Java programming language's application programming interfaces (APIs), which are owned by Oracle and used within early versions of the Android operating system by Google. In its decision, the court may lean to a fairly

expansive view of IP rights holders, and that may have an impact on monetization.

In addition, in 2021 we'll see whether the US Supreme Court grants certiorari in an appeal stemming from Arthrex v. Smith & Nephew; a federal court case that found that the appointment of Administrative Patent Judges ("APJs") violated the Appointments Clause of the Constitution. Since Arthrex was decided in 2019, more than 100 other PTAB decisions have been vacated and more are expected. Rather than begin new hearings for each of the remanded cases now, the PTAB is instead electing to wait and see whether the Supreme Court takes up the issue.

“IP Dealmakers 2020 was a tremendous event not to be missed. With panels covering the impact and nuances of university tech transfer to the current and future regulatory settings affecting IP, both the topics and speakers were poignant. An amazing pivot by the IP Dealmakers team to put on an amazing, engaging virtual event that came off as though they had been doing virtual conferences for years... Looking forward to IP Dealmakers 2021 in any format.

—**Erik Johnson**, Spectra Licensing Group, LLC



INDUSTRY SPOTLIGHT: IoT, 5G, AND CONNECTED CARS

5G infrastructure deployment slowly moves forward while the availability of 5G enabled devices is moving at a fast pace.

In the US, 5G looks more like 3G in terms of infrastructure deployment with a current focus on urban areas by most providers. This is due to not having enough millimeter wave radios to deploy at a faster rate. 5G, however, is accelerating globally at a relatively fast pace with 95 operators commercially deploying it on a global level and another 300 working on it. On the device side, 200 million 5G devices were shipped in 2020 with 500 million projected for 2021. It is estimated that there will be 1 billion 5G connected devices in place by 2023 - two years ahead of the pace of 4G adoption.

Automakers are acquiring 5G componentry but the promise of 5G is still several years away.

Immediate cases for the application of 5G involve the need for immediate connectivity, low latency, and very good reliability

such as in gaming, telemedicine, entertainment, and connected car contexts. Automakers are currently embracing 5G components but not because they need 5G at the moment - the applications are not yet there - but because when they build automobiles they need to plan 15 years out and they need the components for future relevance. 5G will serve as the successor to 4G when it comes to fleet control, navigation, communications, etc., and its features are probably 4-5 years away. In terms of car-to-car communication, 5G will have to compete with Volkswagen's WLANp and it's probable that it will be the winner in that battle. In non-tradition use cases, there is still a commitment to 5G but it will still take some time for full maturation

In terms of devices, 5G is not a discrete technology and licensing is taking place around market norms.

5G is bringing to devices a significantly enhanced user experience but is ultimately built on previous 3G and 4G technology and is heavily reliant on what's been done before. Licensing is already taking place using established market norms around pricing that has essentially been standardized (about 10% of the price of the device). In the mobile industry, 95% of all units sold are handled by the top 7 players so licensing is highly efficient and programs well established.



James Wodarski
Mintz



Carl Bilicska
IP Value



Jon Han
Qualcomm



Kenneth Korea
Samsung
Electronics



Matthias Schneider
Audi AG

OUR **PANEL 8** SPEAKERS
The "M" indicates the panel moderator

Non-traditional use cases will require creativity and new approaches considering the complexity of 5G licensing.

There's no secret about the complexity of 5G licensing - a vast proliferation of billions of devices, innovators across market segments, implementers and users. No doubt, new licensing models will need to emerge for IoT and automobiles. Each industry's use case will need to be unique considering the specific patents and innovations involved. For example, patent pools in the auto industry (Avanci) have been effective in the 4G context but involve around 40 licensors and three big players. As 5G expands to a larger number of players, these types of pools may be less effective.

Carriers and customers are driving open-source solutions.

On the infrastructure side, there's a push to turn the hardware into a vendor neutral component of the network and allow

standardized interfaces and software designs to work on general processing platforms . There are currently many open-source projects taking place and many companies feel compelled to participate. The dominant licensing vehicle is an Apache 2.0 copyleft license that offers royalty free licensing into the patents. But there are other areas that can be licensed and patents need to be created that cover different use cases. Also, companies can pursue other approaches such as early life cycle licensing and not wait for mature products to hit the market. There can be a mutual benefit for innovators and SEP owners to work with start-ups and other companies to negotiate licenses at a lower royalty point.



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