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When patents attack Android

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I have worked in the tech sector for over two decades. Microsoft and Apple have always been at each other's throats, so when they get into bed together you have to start wondering what's going on. Here is what's happening:

Android is on fire. More than 550,000 Android devices are [activated every day](#), through a network of 39 manufacturers and 231 carriers. Android and other platforms are competing hard against each other, and that's yielding cool new devices and amazing mobile apps for consumers.

But Android's success has yielded something else: a hostile, organized campaign against Android by Microsoft, Oracle, Apple and other companies, waged through bogus patents.

They're doing this by banding together to acquire Novell's old patents (the "[CPTN](#)" group including Microsoft and Apple) and Nortel's old patents (the "[Rockstar](#)" group including Microsoft and Apple), to make sure Google didn't get them; [seeking](#) \$15 licensing fees for every Android device; [attempting](#) to make it more expensive for phone manufacturers to license Android (which we provide free of charge) than Windows Phone 7; and even [suing](#) Barnes & Noble, HTC, Motorola, and Samsung. Patents were meant to encourage innovation, but lately they are being used as a weapon to stop it.

A smartphone [might](#) involve as many as 250,000 (largely questionable) patent claims, and our competitors want to impose a "tax" for these dubious patents that makes Android devices more expensive for consumers. They want to make it harder for manufacturers to sell Android devices. Instead of competing by building new features or devices, they are [fighting through litigation](#).

This anti-competitive strategy is also escalating the cost of patents way beyond what they're really worth. The winning \$4.5 billion for Nortel's patent portfolio was nearly five times larger than the pre-auction estimate of \$1 billion. Fortunately, the law [frowns on](#) the accumulation of dubious patents for anti-competitive means — which means these deals are likely to draw regulatory scrutiny, and this patent bubble will pop.

We're not naive; technology is a tough and ever-changing industry and we work very hard to stay focused on our own business and make better products. But in this instance we thought it was important to speak out and make it clear that we're determined to preserve Android as a competitive choice for consumers, by stopping those who are trying to strangle it.

We're looking intensely at a number of ways to do that. We're encouraged that the Department of Justice [forced](#) the group I mentioned earlier to license the former Novell patents on fair terms, and that it's [looking into](#) whether Microsoft and Apple acquired the Nortel patents for anti-competitive means. We're also looking at other ways to reduce the anti-competitive threats against Android by strengthening our own patent portfolio. Unless we act, consumers could face rising costs for Android devices — and fewer choices for their next phone.

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It's not surprising that Microsoft would want to divert attention by pushing a false "gotcha!" while failing to address the substance of the issues we raised. If you think about it, it's obvious

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why we turned down Microsoft's offer. Microsoft's objective has been to keep from Google and Android device-makers any patents that might be used to defend against their attacks. A joint acquisition of the Novell patents that gave all parties a license would have eliminated any protection these patents could offer to Android against attacks from Microsoft and its bidding partners. Making sure that we would be unable to assert these patents to defend Android — and having us pay for the privilege — must have seemed like an ingenious strategy to them. We didn't fall for it.

Ultimately, the U.S. Department of Justice intervened, forcing Microsoft to sell the patents it bought and demanding that the winning group (Microsoft, Oracle, Apple, EMC) give a license to the open-source community, changes the DoJ said were "[necessary to protect competition and innovation in the open source software community](#)." This only reaffirms our point: Our competitors are waging a patent war on Android and working together to keep us from getting patents that would help balance the scales.

Posted by David Drummond, Senior Vice President and Chief Legal Officer

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