

Consortium Prevails Over Google for Nortel Patents

A consortium that includes leading smartphone makers Apple and Research In Motion prevailed over Google this week with a \$4.5 billion cash bid for about 6,000 patents and patent applications from bankrupt telecom-equipment maker Nortel Networks Corp.

The group offered about five times more than Google's initial bid of \$900 million. Phones running Google's Android system compete with Apple's iPhone and RIM's BlackBerry devices.

Nortel's patents cover many technologies, including data networking, semiconductors and wireless systems known as fourth generation, or 4G. Nortel said the portfolio "touches nearly every aspect of telecommunications and additional markets ... including Internet search and social networking."

David Berten, a partner at Global IP Law Group, which advised Nortel on the sale, said the patents resulted from about \$40 billion in investments over 15 years, through Nortel's own research and development and through acquisitions. He said the patents cover every aspect of telecommunications, including the handsets, the equipment used in cell towers and the connections from there to wired networks.

"Anytime you're plugged into data networks, there are patents that pop up," he said.

The sale comes as manufacturers of phones are suing one another over such common features as swiping gestures on touch screens. Such lawsuits help distract competitors and, through substantial royalty settlements, could allow patent holders to capitalize on their rivals' success in the market. Apple has sued Taiwan's HTC Corp., which makes Android phones. Microsoft has sued Motorola Mobility Inc. over Android phones, too.

Patent experts described the sales price as unprecedented, akin to what companies pay to buy complete businesses, not just the intellectual properties.

"What you are looking at is a list of the companies that are in this incredibly active battle for the mobile computing platform," said Ron Epstein, CEO of

Epicenter IP Group, a patent broker not involved in the Nortel auction. "Clearly patents are being deployed as an important strategy asset in winning that battle."

Having a patent could allow one smartphone to have distinguishing features over another, or it could raise the cost for a rival to make the product if it has to pay licensing fees, Epstein said.

In a statement Friday, Google General Counsel Kent Walker called the outcome "disappointing for anyone who believes that open innovation benefits users and promotes creativity and competition. We will keep working to reduce the current flood of patent litigation that hurts both innovators and consumers."

Google had said it wanted the patents to defend itself against lawsuits from other companies until Congress enacts broader changes to the patent system to help reduce such litigation. Google gives away its Android software for free, counting on its wider use to drive usage of other Google services, such as search and maps.

The winning consortium consists of:

— Apple Inc. of Cupertino, Calif., maker of the iPhone, iPad and other popular devices;



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— Research in Motion Ltd. of Waterloo, Canada, which makes the BlackBerry;

— Microsoft Corp. of Redmond, Wash., which is pushing phones running on its Windows operating system and operates the search engine Bing;

— EMC Corp. of Hopkinton, Mass., the world's biggest maker of data-storage computers;

— LM Ericsson AB of Stockholm, Sweden, which makes wireless equipment; and

— Sony Corp. of Tokyo, which makes a range of consumer-electronic devices and has a joint venture with Ericsson for mobile phones.

That Google wasn't part of the consortium suggests that "folks view Google as a very successful player they are very concerned about," Epstein said.

The patent auction, which was originally slated to take place June 20, had been postponed by one week as Nortel cited "the significant level of interest" in the sale of its patent portfolio.

A former tech highflier in the 1990s, Nortel at its zenith had more than 95,000 employees and a market capitalization of nearly \$300 billion. At one point in 2000, Nortel accounted for a third of the market value of the Toronto Stock Exchange. But it grew too quickly and overpaid for acquisitions. Nortel also ran into problems, including an investigation into its accounting practices, which led to shareholder lawsuits.

Nortel filed for bankruptcy protection in the U.S. and Canada in January 2009, hobbled by a sharp downturn in orders from phone companies and looming debt payments. The filing came one day before it was due to make a debt payment of \$107 million.

It has been selling its operations off one piece at a time since then.

Nortel Chief Strategy Officer George Riedel said "the size and dollar value for this transaction is unprecedented, as was the significant interest in the portfolio among major companies around the world."

Ericsson said it had contributed \$340 million to the bid. Ericsson had already purchased many of Nortel's other assets, including its wireless network business in 2009 for \$1.13 billion.

RIM said it contributed \$770 million. It was not

known how much each of the other companies paid, or how they will share or split the patents. EMC would only describe the amount as "not material" to its overall finances.

The deal is expected to be completed in the third quarter of this year and will need approval from U.S. and Canadian bankruptcy courts in a joint July 11 hearing.

AP writer Louise Nordstrom in Stockholm contributed to this report.



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