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# Expect more legal spats with low-cost 4G phones: Experts

Gulveen Aulakh, ET Bureau | Jan 23, 2015, 03:34 PM IST

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Vendors may look to circumvent expensive R&D investments and choose the more "economically viable" option of copying the technology

NEW DELHI: India's handset industry could see a spate of lawsuits around patent violations, as vendors launching low-cost 4G devices may look to cut expenses by resorting to copying rather than pay royalties to stay competitive in a fast growing market, say experts. Sweden's Ericsson and China's Huawei, which together hold a majority of patents related to fourth-generation communications technology, have warned potential offenders of litigation in case of patent violations.

Handset makers, on the other hand, accuse the patent holders of misusing their dominant position and forcing them to agree to what they claim are unfair terms on patent-related payments, clearly underlining the fault lines in the telecom industry.

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"In telecom, patent litigation is going to be huge all across the world and India is no exception," said Pavan Duggal, a leading cyber law expert and advocate. As device makers, running on tight margins, look to cut costs, the potential to copy designs and "the other element of not using the right licences, cannot be ruled out", Duggal said.

Vendors may also look to circumvent expensive R&D investments and choose the more "economically viable" option of copying the technology, and then face potential risk of patent litigation as part of business risks, he added.

The scenario is more relevant for entry-level 4G devices. These are typically more expensive to build than 3G, but handset vendors, under pressure to bring costs to 3G device levels, could take short cuts, said Kiranjeet Kaur, a Singapore-based senior analyst at International Data Corporation. "One way of bringing down overall costs is to bring down licensing costs, which is why there could be higher legal risks involved in the 4G ecosystem, compared to 3G."

A slew of 4G handsets are hitting the Indian market as manufactures seek to advantage in the market ahead of the launch of 4G data and voice services by telecom venture, Reliance Jio Infocomm, and expansion of offerings by the co Bharti Airtel.

Litigation around 4G devices has already started globally. Apple sued Ericsson in California early this month on grounds that royalty payments being sought by the Swedish company were exceptionally high and unfair. Ericsson went to the US Court in Texas against Apple, asking the legal framework to decide whether its fees were correct.

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In India, litigation on 4G is yet to happen, but Ericsson has sued China's Xiaomi and homegrown Micromax, accusing them of infringing on standard essential patents — patents on technologies that are essential to manufacture the products — mainly around existing 3G and EDGE technologies owned by the Swedish firm.

It wants the handset makers to pay royalty as per fair, reasonable and non-discriminatory terms. In an interim order in the case where Ericsson claimed Rs 100 crore from Micromax for patent infringement, a Delhi court asked India's No. 2 vendor to pay 1% of the selling price of each device until December 2015.

In a separate interim order on Xiaomi, the Delhi High Court has allowed it to sell devices, which were sought to be blocked by Ericsson, but only those that have Qualcomm chipsets. Qualcomm and Ericsson have cross-licensed patents.

"Certain global companies which own and possess Patents and Standard Essential Patent rights in the mobile phone handset sector were misusing their position and coercing Indian companies to agree to grossly unfair terms to continue running their business," the Indian Cellular Association that represents handset makers in India told the government, according to a document seen by ET.

An Ericsson spokesperson countered the claim, saying the company saw litigation as a last resort. "But sometimes you need to ask a third party for help to resolve a dispute and ensure that we uphold FRAND agreements," the executive said.

Industry executives who did not want to be named said Ericsson wanted royalty on the price of the entire handset while the actual cost should be limited to a component of the chipset of the mobile phone. They give the example of China which, in a landmark decision in a case involving Motorola and Huawei in 2013, said royalty for using essential patents in the country should not exceed 0.019% of the price of the device.

"So what happens in China will not just stay in China but also probably affect other vendors including in India," IDC's Kaur said.

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