

IP Antitrust: 90 Days Of Disruption

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About Today's Talk

- Discussion of new cases and potential developments that may paint a new picture for IP Antitrust.
- This presentation and talk are not the opinions or comments of Fish & Richardson P.C., any client, or me.
- This presentation and talk are not legal advice.
- The presentation and talk are to promote discussion among practitioners **and not advocate any position.**

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(Mandatory Recap) Antitrust Laws vs. Patent Laws

- Patent laws give a patentee the right to exclude others from practicing the patented invention:
 - Not a right to do anything other than to enforce exclusion or permit uses.
 - This can result in a patent owner having the right to exclude competing products or services that are covered by its patent or collect royalties to permit use.
 - Generally, a patentee's legal monopoly does not define an economic market by its own terms.
- Antitrust laws protect competition:
 - They do not create an omnibus claim for competitors.
 - Only deal with injuries and damages that from harm to competition: e.g., artificially high prices.
 - Unfair competition, defamation, tortious interference and other business torts provide remedies for businesses harmed by bad business conduct that does not necessarily skew competition.

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The Past 90 Days

- *FTC v. Qualcomm*, petition for rehearing denied, **October 28, 2020**
- *U.S. v. Google*, N.D. Cal., filed **October 20, 2020** (DOJ and 11 states plaintiffs)
- Report U.S. House Judiciary Committee's Subcommittee on Antitrust, Commercial, and Administrative Law, "Investigation of Competition in Digital Markets", **October 6, 2020**
- Request by automakers to European Comm. To Investigate Avanci, pending,
- Request by German Antitrust regulator in German *Nokia v Daimler* case for CJEU reference refused, possible this **may come November 12, 2020** in a Dusseldorf case.
- DOJ **September 10, 2020** update to IEEE 2015 Business review letter
- *Continental v. Avanci*, ND Tex dismissal of component supplier lawsuit against SEP Pool, **September 10, 2020**

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Recent Key Decisions

- *Unwired Planet v. Huawei*, UK Supreme Court,
- *Sisvel v. Haier*, KZR 36/17, German Federal Court of Justice
- *FTC v. Qualcomm*, 969 F.3d 974 (9th Cir. Aug. 11, 2020), rehearing en banc denied
- *Huawei v. Conversant*, (2019) Zui Gao Fa Zhi Min Zhong No.732, 733, 734 No. 1, China Supreme Court, Conversant enjoined from enforcing German injunction against Huawei and royalty rate higher than Chinese court had set, 8/28/2020

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Watch List 9/30/2020

- *HTC v. Ericsson*, 19-40566 (5th Circuit), **argued, pending decision**
- *Intel v. Fortress*, Motion to Dismiss, 3:19-cv-07651-EMC (N.D. Cal.), **original complaint dismissed, amended complaint filed, motion to dismiss amended complaint pending, 12/17/2020 hearing date**
- *In Re: Humira (Adalimumab)*, Motion to Dismiss, 1:19-cv-01873 (E.D. Ill.), **dismissed, appeal pending**
- *Continental v. Avanci*, Motion to Dismiss, 3:19-cv-02933-M (ND. Tex.), **dismissed 9/10/2020, appeal pending**
- *Lenovo v. InterDigital*, Motion to Dismiss, 1:20-cv-00493-LPS (D. Del.), DOJ filed SOI, **pending**
- *Impax v. FTC*, 19-60394, (5th Circuit), **argued, pending decision**

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First appeared as part of the conference materials for the
25th Annual Advanced Patent Law Institute session

"Antitrust 2020: Changing Politics, Technology and Problems Have Caused Upheaval! A Real-Time Presentation of Disruption in Antitrust and Competition Law"