MONETIZACION DE PATENTES Y MERCADOS DE PATENTES

Enric Batalla

"**Lunes de Patentes**"

Centre de Patents (UB)

8 Octubre 2012

www.tynax.com

MONETIZACION DE PATENTES Y MERCADOS DE PATENTES

Cómo utilizan las empresas las carteras de patentes para ganar en posición competitiva, lideraje en el mercado y retorno para los "stake-holders": "Patent sellers", NPE's, FRAND's, "Patent Wars", etc.

MONETIZACION DE PATENTES Y MERCADOS DE PATENTES

- Las “patant wars” están de rabiosa actualidad en el sector de las “high-Tecl
- Patentes se están convirtiendo en serias fuentes de negocio.
- Estrategias basadas en las patentes se están coinvirtiendo muchas veces en la fuente principal de EBIDTA.
- **Pregunta 1: “*¿Cuál es la estrategia de litigios de patentes de su compañia?*”**
- **Pregunta 2: “*¿Cuál es la política de compra-venta de portafolios de su compañia?*”**
- La compra por parte de Google de de Motorola Mobile por $12,5bn es una gran transacción con el objeto final de hacerse con los estándares estándares de un sector, y ha consistido básicamente en la compra de las patentes (dicho por el propio Larry Page), guiado por la “patent strategy” de Google. (24.000 Patentes esenciales y no esenciales 4G/LTE a $520k/patente)

ECOSISTEMA SILICON VALLEY

- *"Silicon Valley is making an impressive recovery—impressive because our region was the last to succumb when an historic recession gripped our nation, and now it appears to be the first to emerge. The growth is led by a few key sectors which fueled the overall creation of more than 42,000 jobs over the past year, and this report chronicles those developments in careful detail. It also shows how our innovation engine—measured by 1) **venture capital**, 2) **patent registrations**, 3) new firm formation (**starups**) , and 4) **IPOs**—is clearly revving up again"*

Russell Hancock, Ph.D. (President & CEO - Joint Venture Silicon Valley) (SILICON VALLEY INDEX 2012)
https://www.dropbox.com/s/njfjb0vin5ji8ys/SV-2012index.pdf

ECOSISTEMA SILICON VALLEY

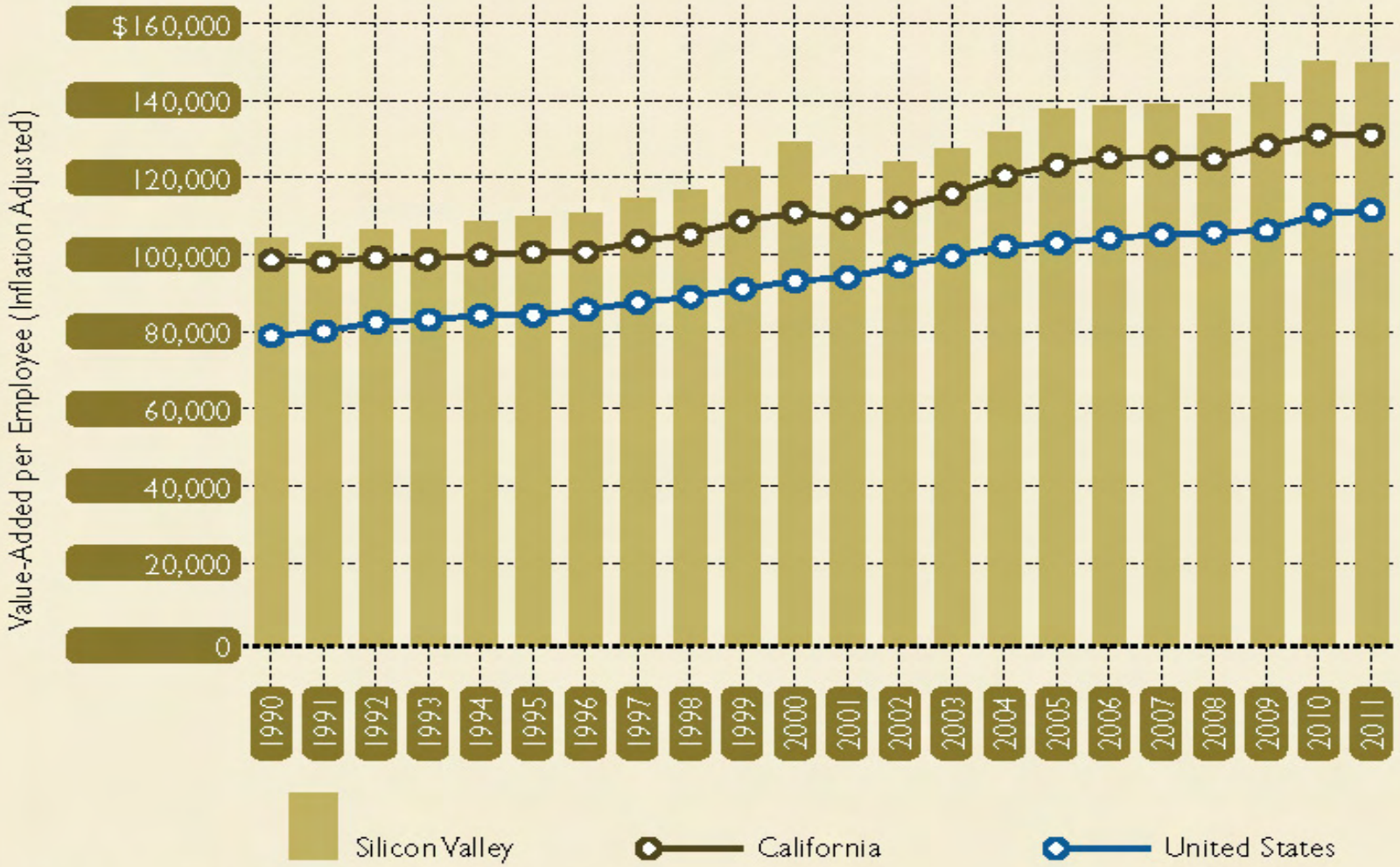
1. DODGE RIDGE (3H Desde SJ)
2. TAHOE LAKE (3.5)
3. ALPINE MEADOWS (3.5)


YouTube
PIXAR
San Mateo
92
Union City
Fremont
Newark
ALAMEI
EA
TYNA
84
880
arlos
Redwood City
N MATEO
101
IDEO
hp
Palo Alto
Menlo Park
xerox
Google
PayPal
mozilla
CORPORATION
Milpitas
Sun
ORACLE
280
Mountain View
APPLIED MATERIALS
LinkedIn
Los Altos Hills
Santa Clara University
YAHOO!
Sun
ORACLE
AMD
Santa Clara
intel
San Jose
Cupertino
85
Campbell
fry's ELECTRONICS
ebay
Adobe
CISCO
NASA
Microsoft
Monte Seren
49ERS EXPERIENCE
PHILIPS
Los Gatos
TYNA
THE TECHNOLOGY TRADING EXCHANGE

Value Added

Value Added per Employee

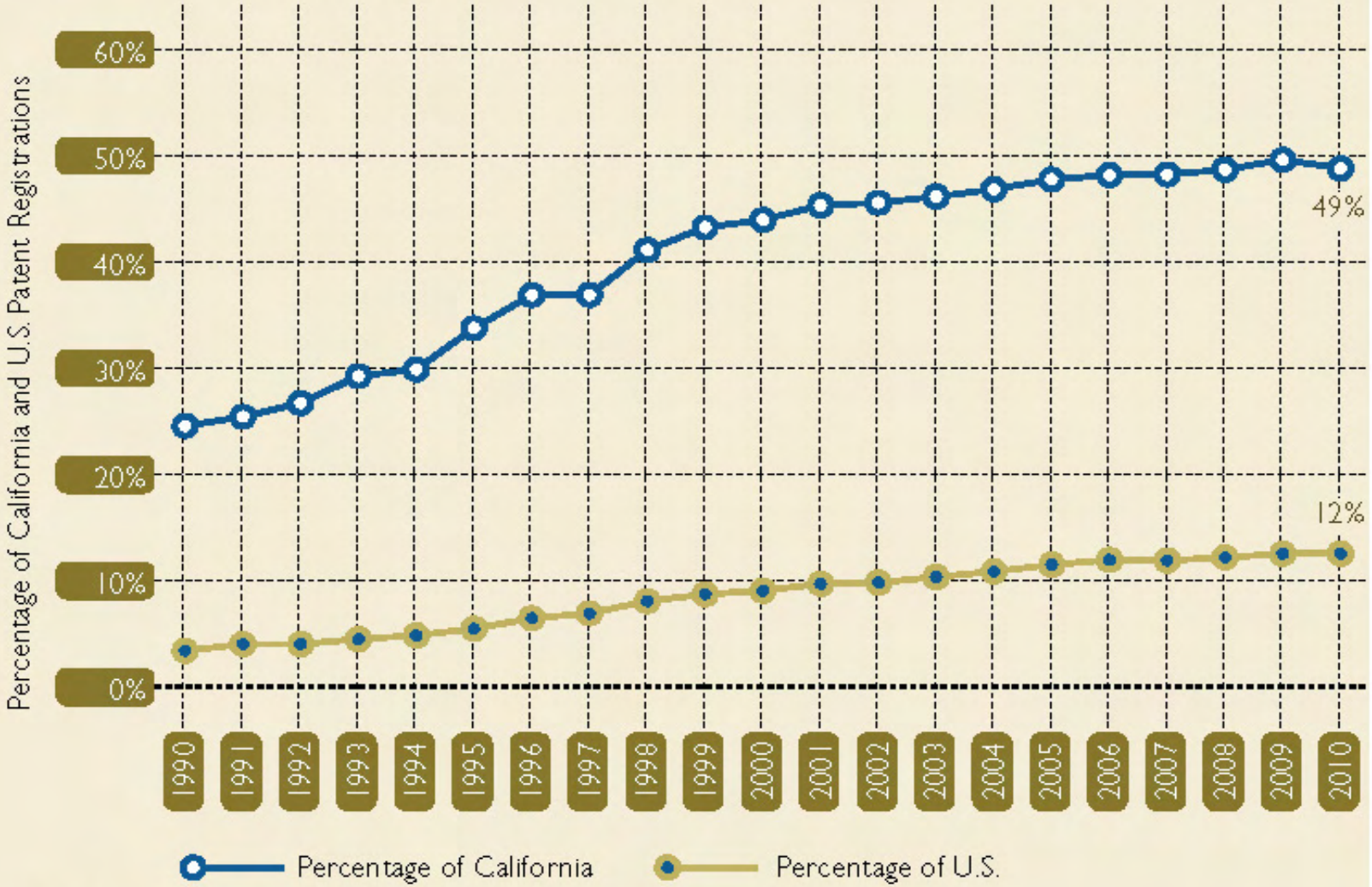
Santa Clara & San Mateo Counties, California and U.S.



Data Source: Moody's Economy.com
Analysis: Collaborative Economics

Patent Registrations

Silicon Valley's Percentage of U.S. and California Patents



Data Source: U.S. Patent and Trademark Office

Analysis: Collaborative Economics

ECOSISTEMA SILICON VALLEY

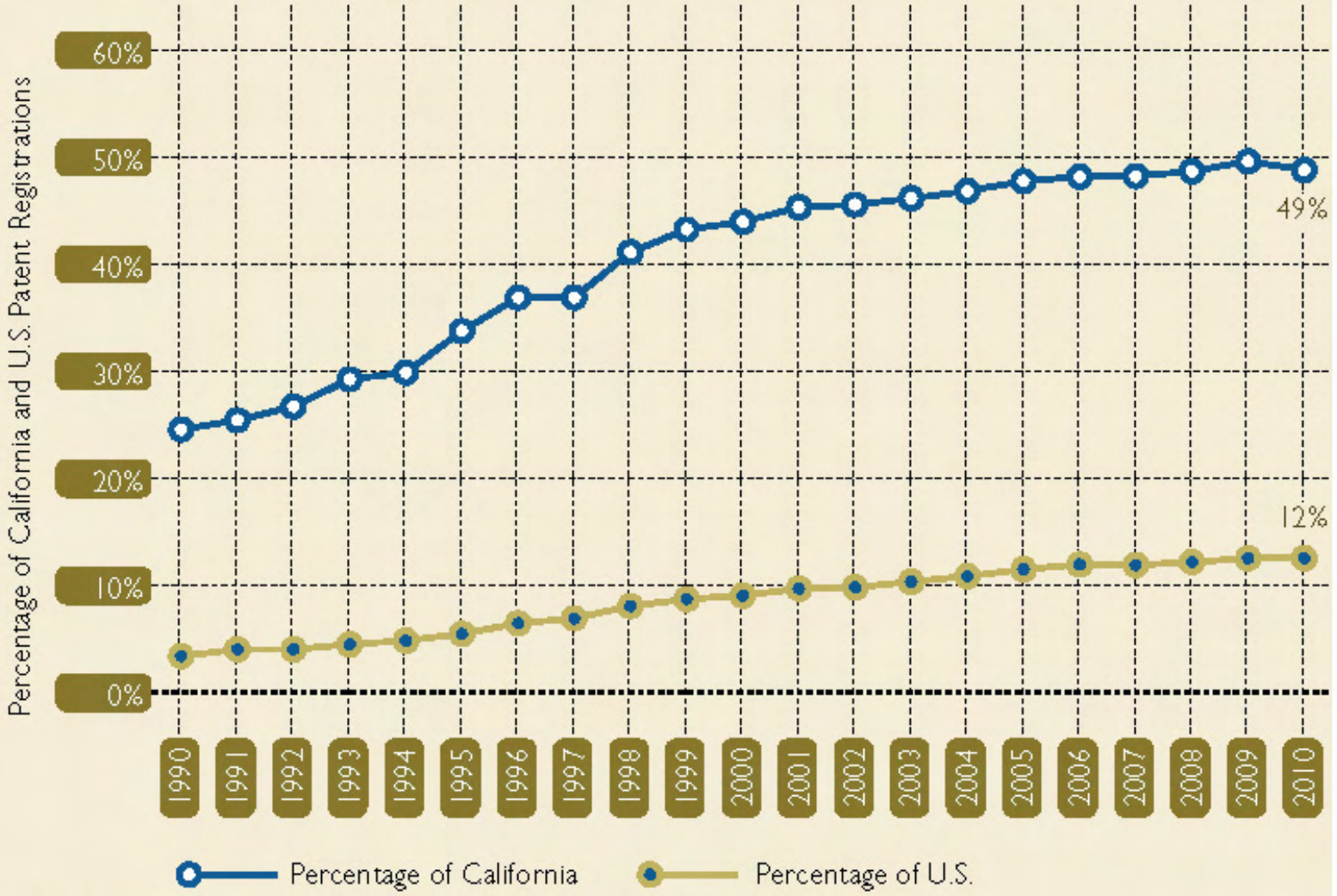
- **REALISMO**
  - OBJETIVOS NEGOCIO – ENTENDER PROPIO NEGOCIO
  - ANALISIS COMPETENCIA
  - PLANEAR FUTURO
- **STARTING UP – DEPORTE NACIONAL:**
  - AS – CFS – M&A – IPO
- **ENTREPRENEURSHIP – PASION POR EL RIESGO**
  - 11/12 FAIL RATE FIRST YEAR
  - SUCCES RATE 1% IPO AFTER 5 TRIALS
- **JUVENTUD – 30% Población tiene 25 – 44 AÑOS**
- **VC MASIVO Y AUMENTANDO: $5.7b**
  - 1.25 NYC – 1.54 LONDON – 152 SPAIN ($50m)
  - TICs : $3b - Cleantech: $1.7b – Med Dev + Biotech: $1b - GREENCAR
- **NETWORKING**
- **IMPLICACION UNIV: STANFORD, STA. CLARA, SVBS, SF UNIV, BERKELEY…**
- **CLIMA**
- **DIVERSIDAD**
- **APUESTA REGIONAL: SVJV, SV COMMUNITY FOUNDATION, RTC**

ECOSISTEMA SILICON VALLEY

PATENT SUB-ECOSYSTEM

Patent Registrations

Silicon Valley's Percentage of U.S. and California Patents



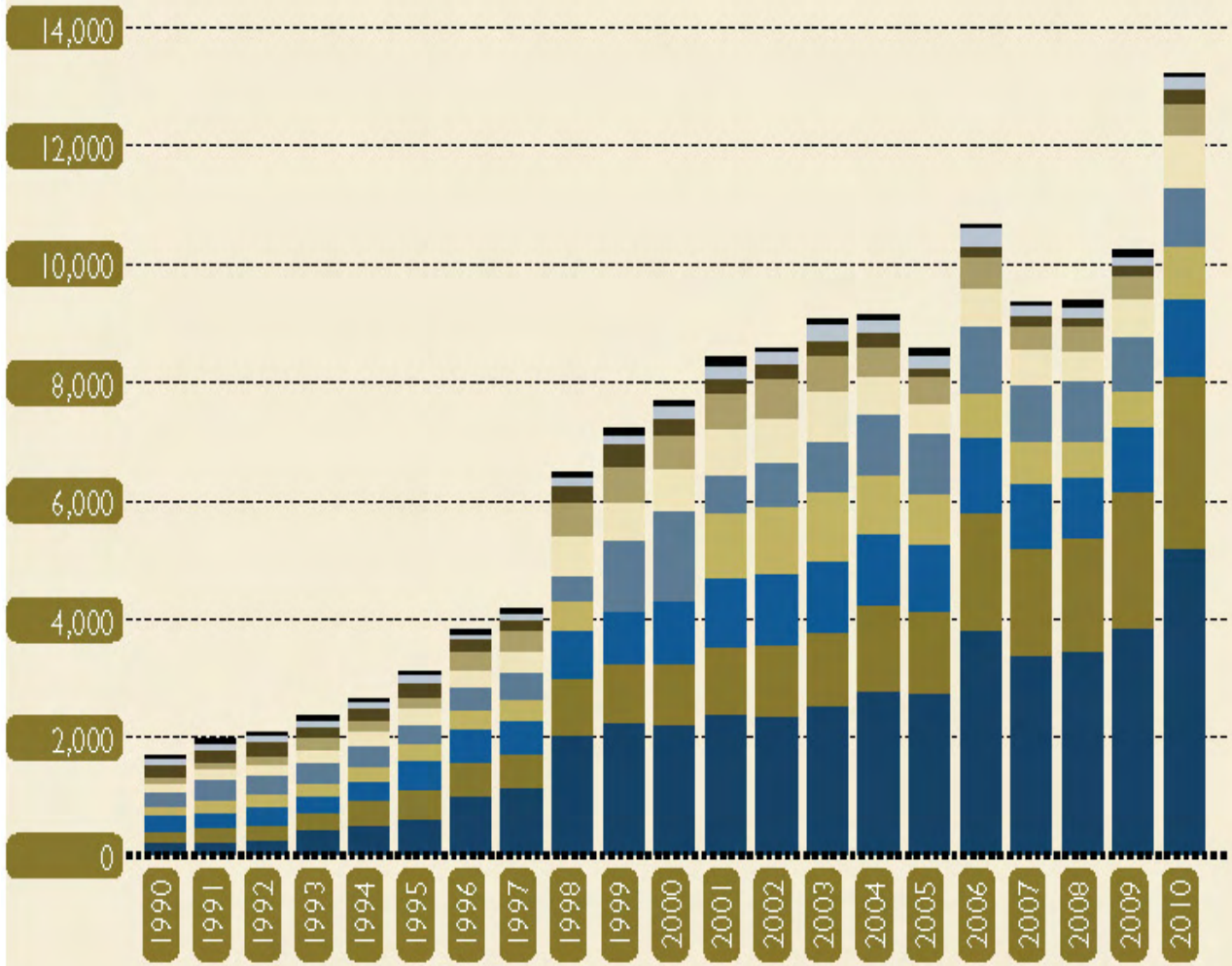
Data Source: U.S. Patent and Trademark Office

Analysis: Collaborative Economics

Patent Registrations

By Technology Area

Silicon Valley



Patents in computers, data processing & information storage **soar in 2010**

- Construction & Building Materials
- Manufacturing, Assembling, & Treating
- Other
- Chemical & Organic Compounds/Material
- Health
- Measuring, Testing & Precision Instruments
- Chemical Processing Technologies
- Electricity & Heating/Cooling
- Communications
- Computers, Data Processing & Information

Data Source: U.S. Patent and Trademark Office

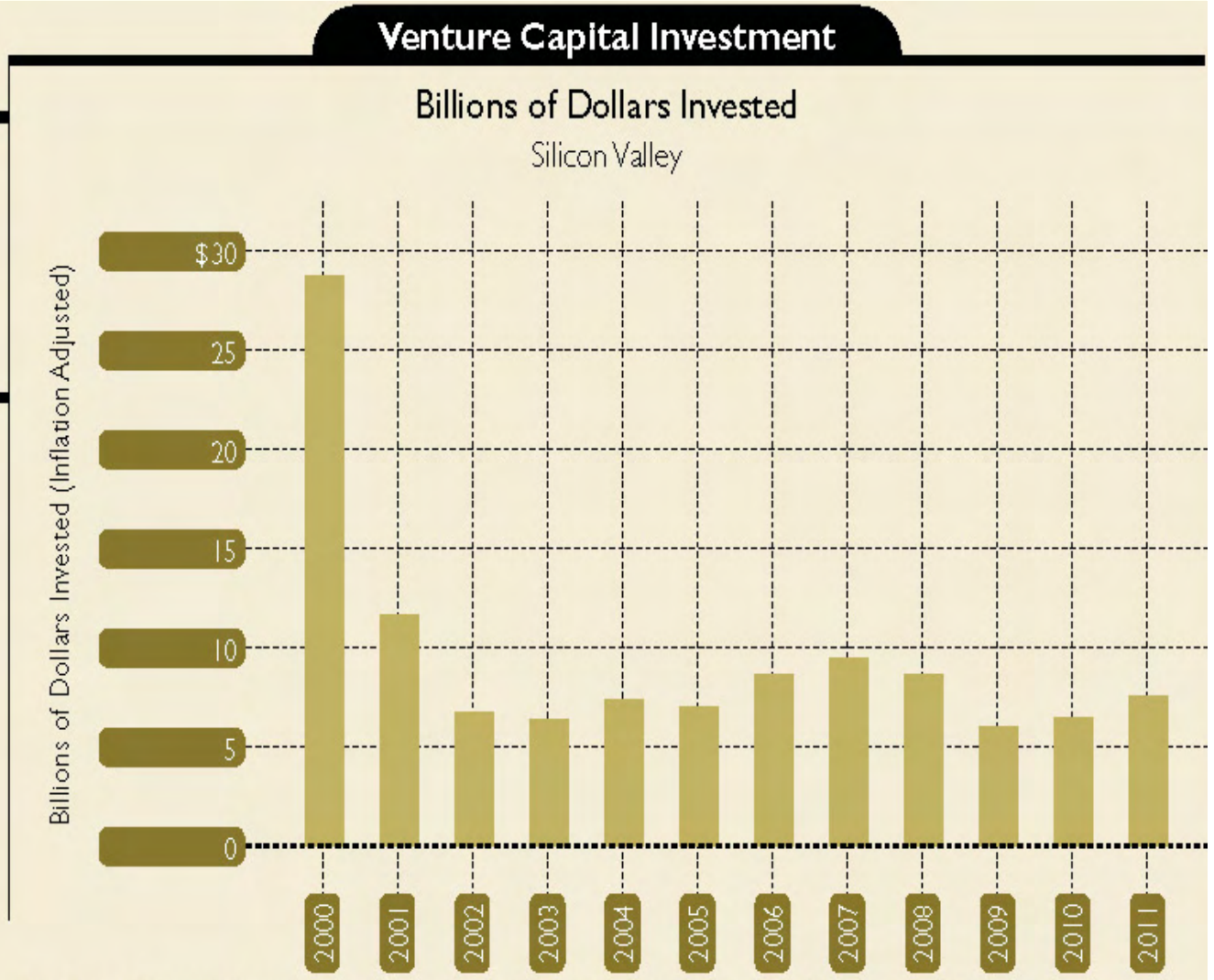
Analysis: Collaborative Economics

ECOSISTEMA SILICON VALLEY

Venture capital investment **grew** for the **second straight year**

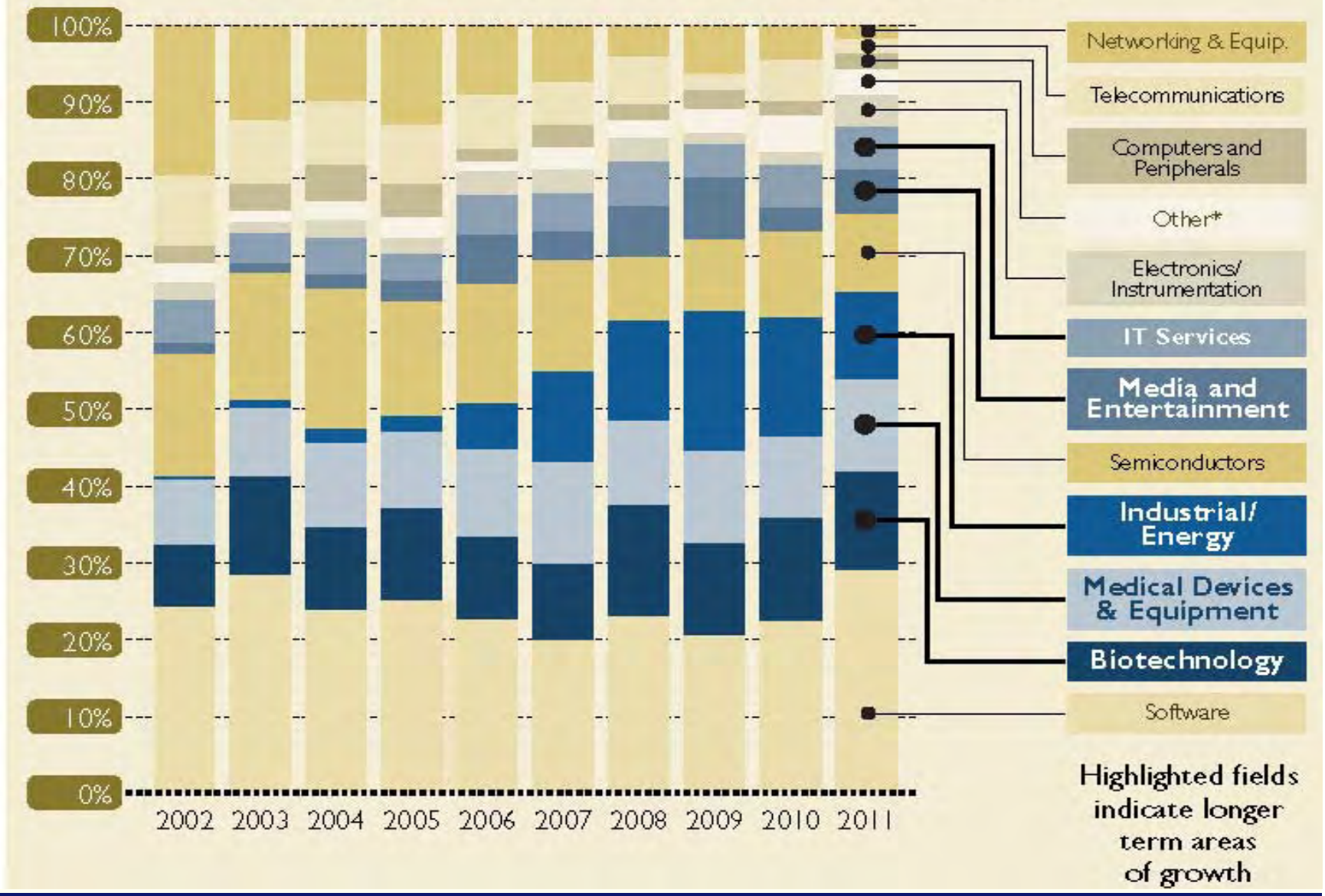
Silicon Valley Venture Capital Investment

	%CA	%U.S.
2001	**59%**	**24%**
2006	**61%**	**29%**
2011	**52%**	**27%**

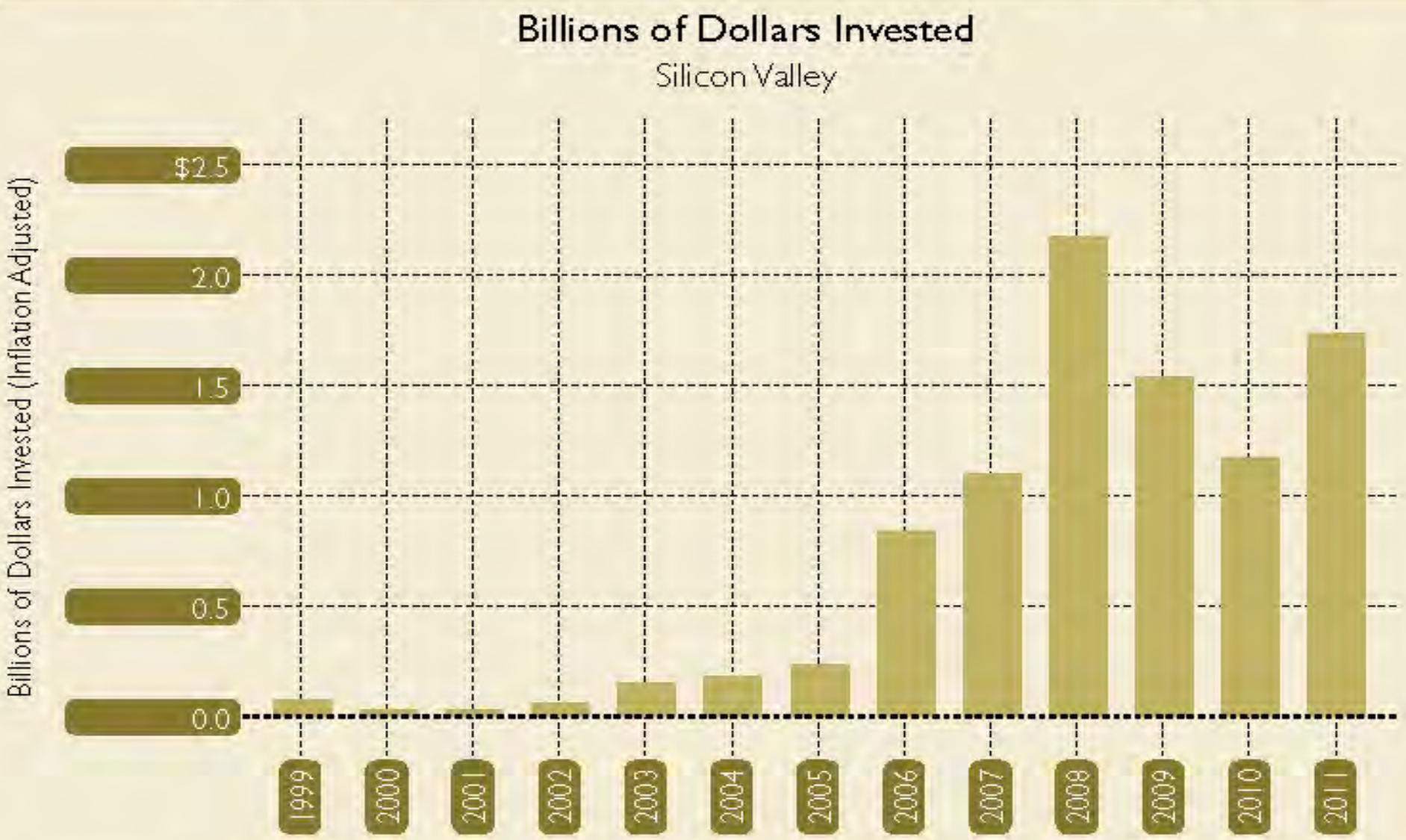


Data Source: PricewaterhouseCoopers/National Venture Capital Association MoneyTree™ Report, Data: Thomson Reuters
Analysis: Collaborative Economics

Venture Capital by Industry



Venture Capital Investment in Clean Technology

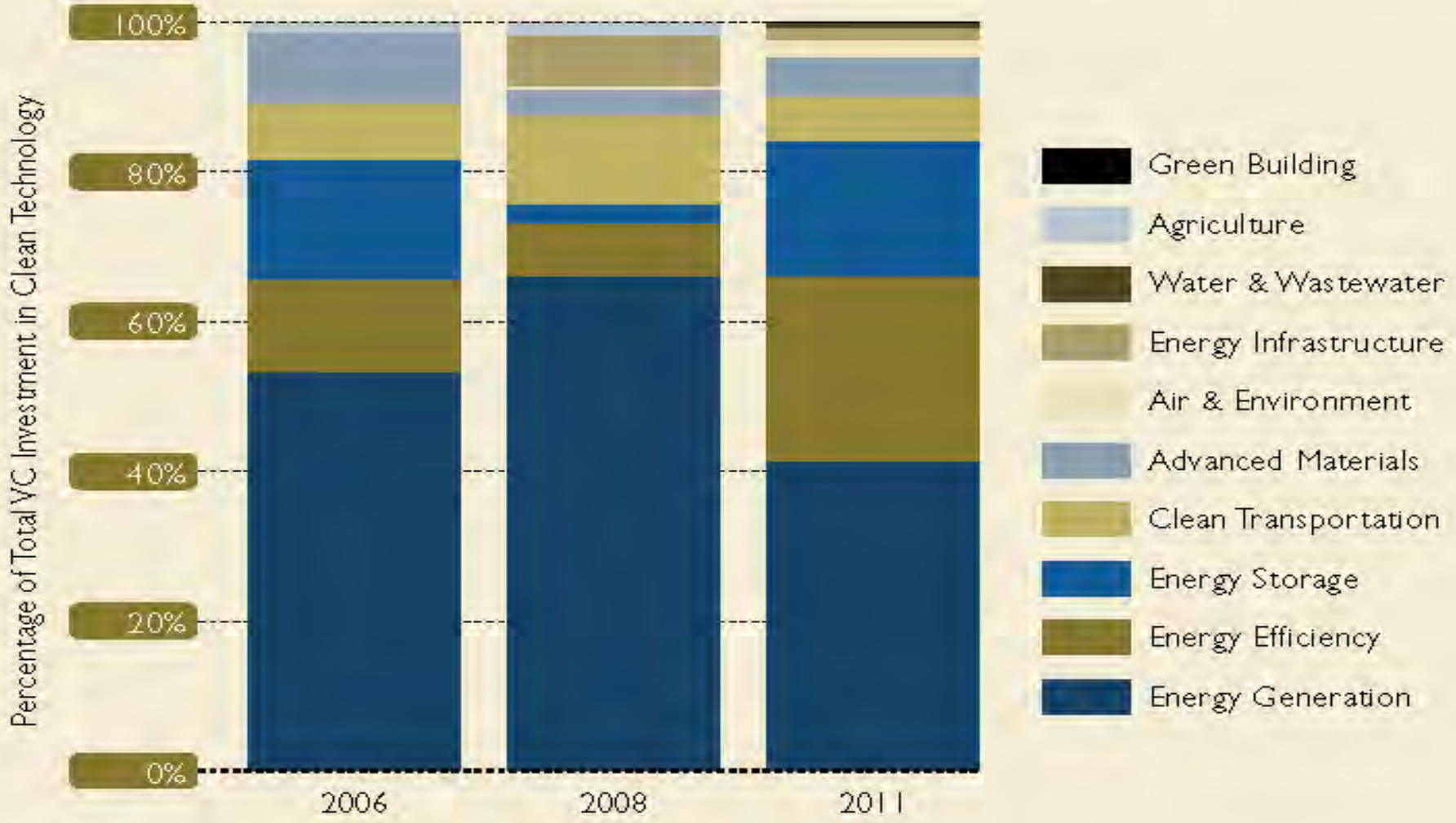


Data Source: Cleantech Group™, LLC (www.cleantech.com)
Analysis: Collaborative Economics

VC Investment in Clean Technology by Segment

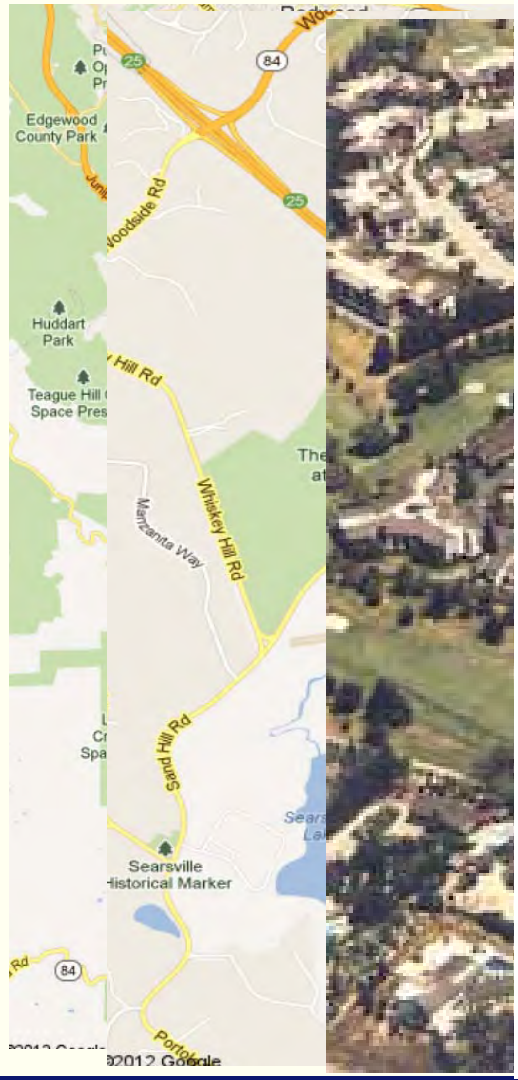
Percentage of Total VC Investment in Clean Technology

Silicon Valley



Data Source: Cleantech Group™, LLC (www.cleantech.com)

ECOSISTEMA SILICON VALLEY



Accel-KKR - 2500 Sand Hill Road

Morgenthaler - 2710 Sand Hill Road

U.S. Venture Partners - 2735 Sand Hill Road

Kleiner, Perkins, Caufield & Byers - 2750 Sand Hill Road

Silver Lake Partners - 2775 Sand Hill Road

Kohlberg Kravis Roberts - 2800 Sand Hill Road

Sofinnova Ventures - 2800 Sand Hill Road

New Enterprise Associates - 2855 Sand Hill Road

Andreessen Horowitz - 2875 Sand Hill Road

Charles River Ventures - 2882 Sand Hill Road

Draper Fisher Jurvetson - 2882 Sand Hill Road

Battery Ventures - 2884 Sand Hill Road

Mohr Davidow Ventures - 3000 Sand Hill Road

Redpoint Ventures - 3000 Sand Hill Road

Sequoia Capital - 3000 Sand Hill Road

Tenaya Capital - 3000 Sand Hill Road

Versant Ventures - 3000 Sand Hill Road

“VC in The Valley”

Interview with Tim Draper:

http://www.svbs.co/Public/Samples/Sample-Q-A-Video.mp4

USO DE LAS PATENTES

1. PATENT MONETIZACION

- "SELLER SIDE" – 10 TOP TECHNIQUES
- "BUYER SIDE" – WHO'S BUYING PATENTS

2. ASSERTIVE USE OF PATENTS (Patent Wars in the Cyberspace)

- THE NPE'S
- THE PATENT WARS
- FRANDS (may be Not-so -Assertive)
- THE APPLE vs. SAMSUNG (GOOGLE?)WAR

USO DE LAS PATENTES

http://www.youtube.com/watch?v=c9cnQcTC2JY&feature=player_detailpage

MONETIZACION DE PATENTES

Why Monetization is Not Easy

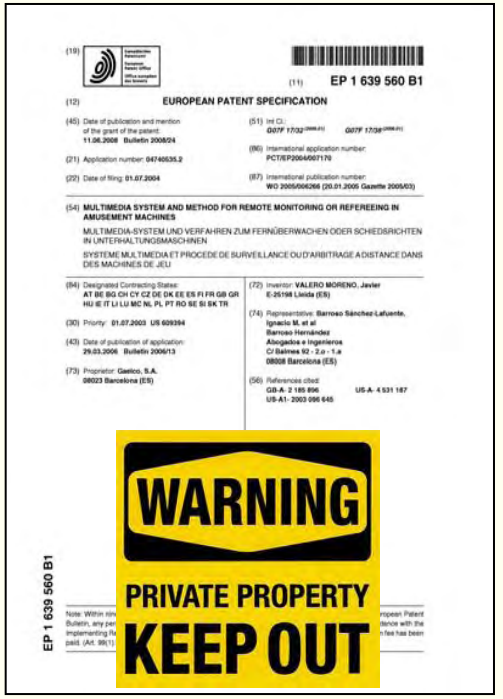
- Establishing channels to sell products is expensive & takes years.
- Selling licenses requires a sales team & effort.
- Infringement is often difficult to detect.
- Infringers are often difficult to find.
- Enforcing patents requires armies of lawyers & legal fees.

TEN TOP TECHNIQUES©

1. Sale of Products
2. Sale of Patents
3. Patent Sale with License Back
4. Selling Patents with“Revenue Share”
5. Selling Enforcement Right Only - SERO
6. “Friendly” Licensing
7. “Threatening” Licensing
8. “Semi-Theatening” Licensing
9. VC Investment with Strings
10. IP Back Loans - IPBL

¿QUÉ ES UNA PATENTE?

- The right to use; not right to exclude
- You DO NOT have the rights to use your own patented invention…
- … as elements of your patent may infringe other's patent/s
- So, when you buy Patent, you buy (nothing more and nothing less) the right to exclude others from practicing the claimed invention



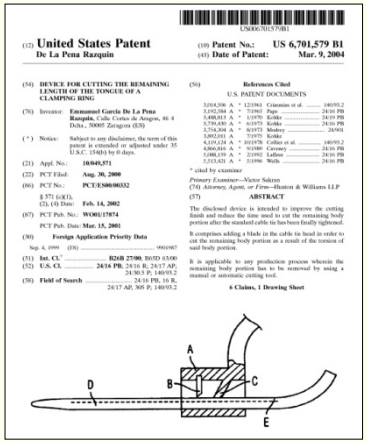
1. SALE OF PRODUCTS

- **“Our products are unique as they are backed by our patents”**
- Advantages:
  - Product differentiation
- Disadvantages:
  - Restricted by your sell channels
- Whats involved?
  - Establish complete product sales operation
- Good candidates
  - Large corp with sales channels
- Example
  - Apple's patents help it to differentiate it's iPhone products from the competition, and generate revenues from product sales

2. SALE OF PATENTS

- **“We’ll buy your patent outright”**

- Advantages:
  - Relatively quick & high returns
- Disadvantages:
  - Give up future potential
- Whats involved?
  - Listing, Marketing & Brokering



US006701579B1

(12) **United States Patent**
De La Pena Razquin

(10) **Patent No.: US 6,701,579 B1**
(45) **Date of Patent: Mar. 9, 2004**

(54) **DEVICE FOR CUTTING THE REMAINING LENGTH OF THE TONGUE OF A CLAMPING RING**

(76) Inventor: **Emmanuel Garcia De La Pena Razquin**, Calle Cortes de Aragon, 46 4 Dcha., 50005 Zaragoza (ES)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **10/049,571**

(22) PCT Filed: **Aug. 30, 2000**

(86) PCT No.: **PCT/ES00/00332**
§ 371 (c)(1),
(2), (4) Date: **Feb. 14, 2002**

(87) PCT Pub. No.: **WO01/17874**
PCT Pub. Date: **Mar. 15, 2001**

(30) **Foreign Application Priority Data**
Sep. 4, 1999 (ES) 9901987

(51) **Int. Cl.**[7] **B26B 27/00**; B65D 63/00
(52) **U.S. Cl.** ..... **24/16 PB**; 24/17 AP; 24/30.5 P; 140/93.2
(58) **Field of Search** ..... 24/16 PB, 16 R, 24/17 AP, 30R P; 140/93.2

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* cited by examiner

Primary Examiner—Victor Sakran
(74) *Attorney, Agent, or Firm*—Heaton & Williams LLP

(57) **ABSTRACT**

The disclosed device is intended to improve the cutting finish and reduce the time used to cut the remaining body portion after the standard cable tie has been finally tightened.

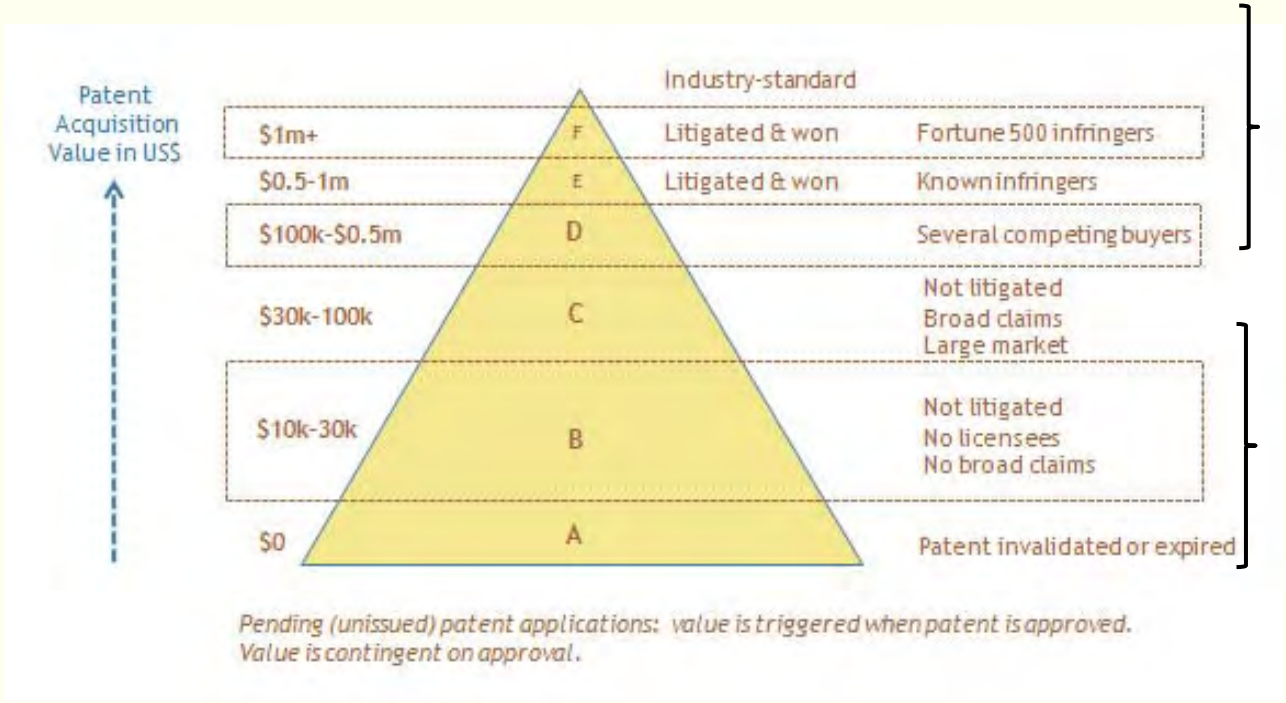
It comprises adding a blade in the cable tie head in order to cut the remaining body portion as a result of the torsion of said body portion.

It is applicable to any production process wherein the remaining body portion has to be removed by using a manual or automatic cutting tool.

6 Claims, 1 Drawing Sheet

- Good candidates
  - Patent holders lacking products or sales channels
  - R&D%PatentSale strategic focused entities
- Examples
  - 1. Nortel sold its 6,000 4G/LTE patents to Apple, Microsoft et al, "Rockstar" consortium - $4.5b ($750k/patent)
  - 2. Leunamme – sell of Patent ´579 ($300k)

WHAT PATENTS SELL FOR



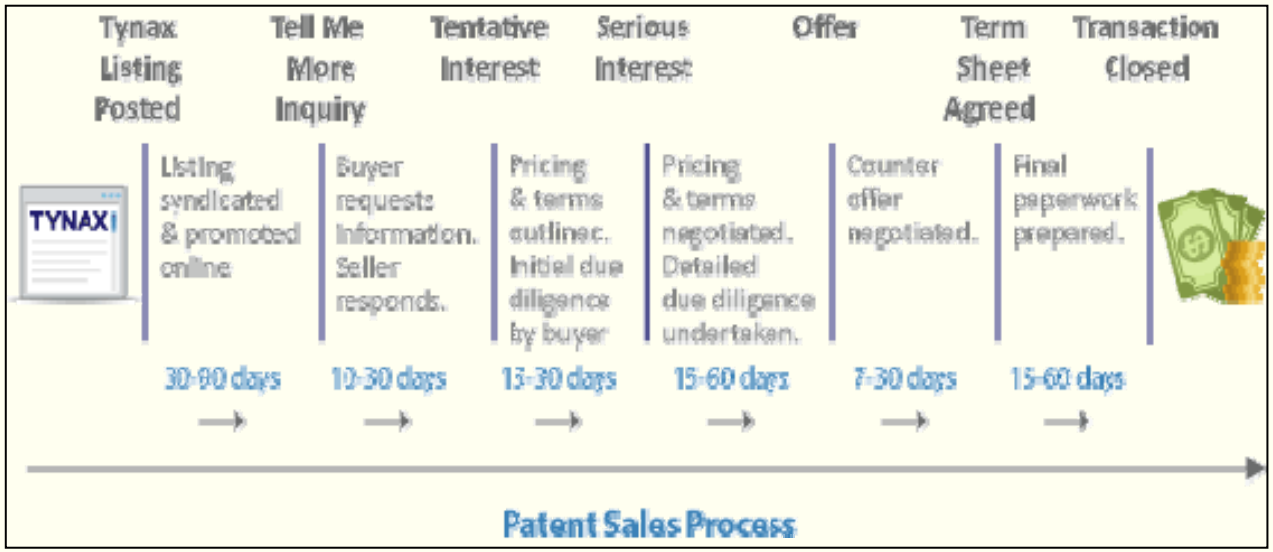
Diamonds and Jewel Crowns

Mid Value Patents

Stocking Suffers (Add just bulk)

http://www.tynax.com/transactions_patent_sale_guide.php

PATENT SALE PROCESS



http://www.tynax.com/transactions_patent_sale_guide.php

2. SALE OF PATENTS – MORE CASES

- **Request Inc. – Samsung – 1 patent (‘757)- $300k**

United States Patent
Carter et al.

Patent No.: US 7,577,757 B2
Date of Patent: *Aug. 18, 2009

(54) MULTIMEDIA SYNCHRONIZATION METHOD AND DEVICE

ABSTRACT

15 Claims, 6 Drawing Sheets

- Request Inc. – R&D&PS focused entity – Only 2 patents!!!
- Samsung to use ´757 used in 2012 patent war against Apple

2. SALE OF PATENTS – MORE CASES

- **Alvarion, Ltd. – Wi-Lan Inc.**
- **50 patents**
- **4G and Handsets**
- **Transaction Price: $19m**
- **$130k/patent**

- Alvarion is a practicing entity selling products (with and without license) and selling patents divested from non-core business (www.alvarion.com)
-
- Wi Lan ("*The business of IP*"®) is a NPE (PAE or Troll) "*suing everyone*" in the mobile and wifi sector. Alvarion portfolio will be asserted against Apple and RIM

2. SALE OF PATENTS – MORE CASES

- **Adaptix (TX) – Acacia Research Corporation (CA)**
- **230 patents**
- **4/LTE**
- **Transaction Price: $160m**
- **$700k/patent**

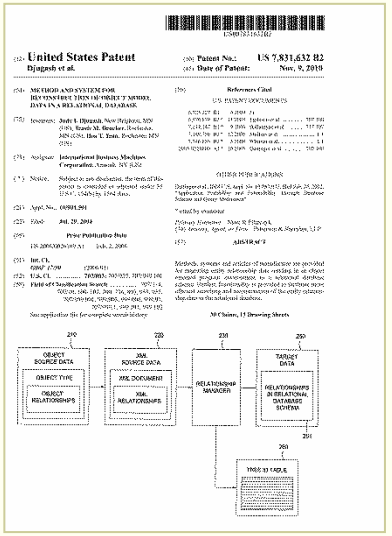
- Adaptix: www.adaptix.com Former manufacturer. Now filing and licensing patents.
- Acacia (www.acaciaresearch.com) is a Licensing NPE (non-PAE) Runs R+D.

2. SALE OF PATENTS
REAL PATENTS PRICES

Deal	$k per patent	Remarks
Nortel - Rockstar	750	Know How Incl.
Motorola - Google	520	Know How Incl.
Adaptix - Acacia	700	Know How Incl.
Request - Samsung	300	IP Only
Alvarion - WiLan	130	IP Only
Leunamme - Actuant	300	IP Only

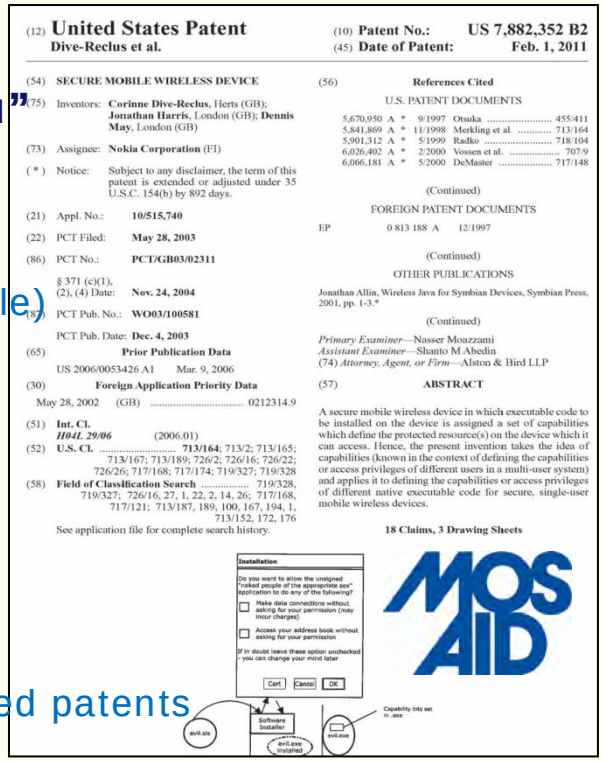
3. PATENT SALE WITH LICENSE BACK

- **“We buy your patents and give you a license to continue selling your products that use them”**
- Advantages:
  - Cash now without giving up product line
- Disadvantages:
  - May enable competitors
- Whats involved?
  - Listing, Marketing & Brokering the portfolio
- Good candidates
  - Product companies without army of lawyers
- Examples
  - 1. IBM sold 1024 patents to Facebook with a license back so that IBM could not be sued for infringing its own patents
  - 2. Gamesa



4. SELLING PATENT WITH REVENUE SHARE

- **"We'll buy your patents and share any subsequent licensing revenue with you"**
- Advantages:
  - Cash today & Cash tomorrow
  - Get into a selling channel (commercial muscle)
- Disadvantages:
  - Lower up-front payment
  - Can be complicated
- Whats involved?
  - Sale with revenue sharing agreement
- Good candidates
  - Operating companies divesting from infringed patents



(12) **United States Patent**
Dive-Reclus et al.

(10) **Patent No.: US 7,882,352 B2**
(45) **Date of Patent: Feb. 1, 2011**

(54) **SECURE MOBILE WIRELESS DEVICE**

(75) Inventors: **Corinne Dive-Reclus**, Herts (GB); **Jonathan Harris**, London (GB); **Dennis May**, London (GB)

(73) Assignee: **Nokia Corporation** (FI)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 892 days.

(21) Appl. No.: **10/515,740**

(22) PCT Filed: **May 28, 2003**

(86) PCT No.: **PCT/GB03/02311**

§ 371 (c)(1),
(2), (4) Date: **Nov. 24, 2004**

(87) PCT Pub. No.: **WO03/100581**

PCT Pub. Date: **Dec. 4, 2003**

(65) **Prior Publication Data**

US 2006/0053426 A1 Mar. 9, 2006

(30) **Foreign Application Priority Data**

May 28, 2002 (GB) 0212314.9

(51) **Int. Cl.**
H04L 29/06 (2006.01)

(52) **U.S. Cl.** **713/164**; 713/2; 713/165; 713/167; 713/189; 726/2; 726/16; 726/22; 726/26; 717/168; 717/174; 719/327; 719/328

(58) **Field of Classification Search** 719/328, 719/327; 726/16, 27, 1, 22, 2, 14, 26; 717/168, 717/121; 713/187, 189, 100, 167, 194, 1, 713/152, 172, 176

See application file for complete search history.

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(Continued)

Primary Examiner—Nasser Moazzami
Assistant Examiner—Shanto M Abedin
(74) *Attorney, Agent, or Firm*—Alston & Bird LLP

(57) **ABSTRACT**

A secure mobile wireless device in which executable code to be installed on the device is assigned a set of capabilities which define the protected resources(s) on the device which it can access. Hence, the present invention takes the idea of capabilities (known in the context of defining the capabilities or access privileges of different users in a multi-user system) and applies it to defining the capabilities or access privileges of different native executable code for secure, single-user mobile wireless devices.

18 Claims, 3 Drawing Sheets

- Example
  1. Nokia sold 2,000 (1,125 essential Core Wireless) patents to Mosaid with a back-end revenue share going back to Nokia and Microsoft. Mosaid will handle licensing and litigation.
  2. LLNL; SU

5. SELLING ENFORCEMENT RIGHT ONLY

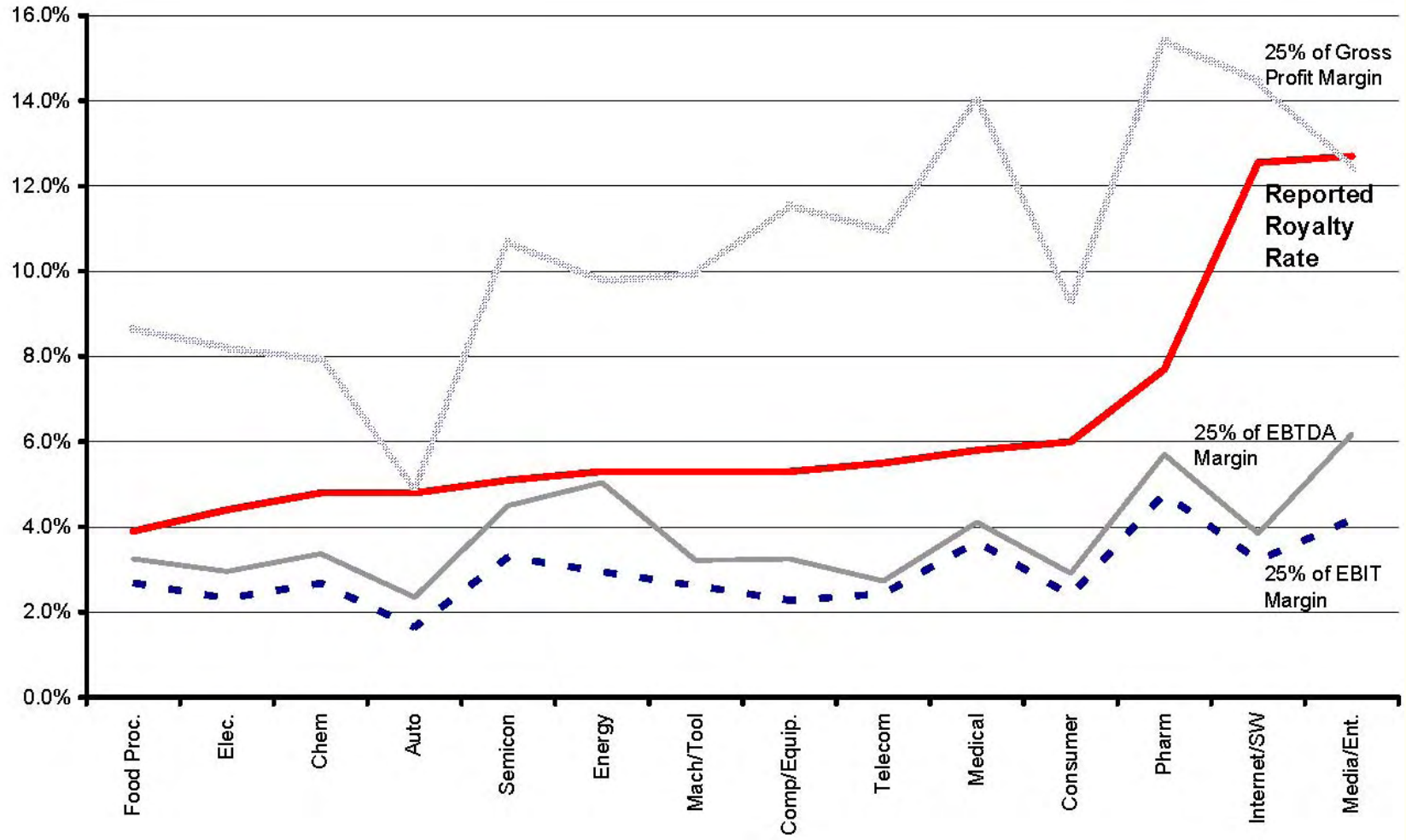
- **“We’ll enforce the patents for you. We pay the costs and split the proceeds with you”**
- Advantages:
  - Revenue withou selling
- Disadvantages:
  - May be joined in infringement suit
- Whats involved?
  - Exclusive license with right to enforce, right to join and identification
- Good candidates
  - Research Labs and universities
- Example Some patents, usually those funded with government finance o universities (CSIC, Livermore Labs) cannot be sold, only licensed. In this case an exclusive license, with rights to join the patent holder in the litigation gives the buyer all the rights they need

6. FRIENDLY LICENSING

- **“Would you like to license our patens”**
- Advantages:
  - Reputation as being nice
- Disadvantages:
  - Ineffective
  - May trigger declaratory judgement suits
- Whats involved?
  - Searching for licencees
- Good candidates
  - Corporate strategig licensing gruops
  - Academic OTL’s
- Examples
  - 1. Google licensed its search engine patented technology from Stanford OTL without Stanford threatening legal action
  - 2. CSIC, OTRIs universidades (UB), ESA, etc.

6. IP ROYALTY RATES

REPOTED ROYALTY RATES VS. RATES FROM THE 25% RULE

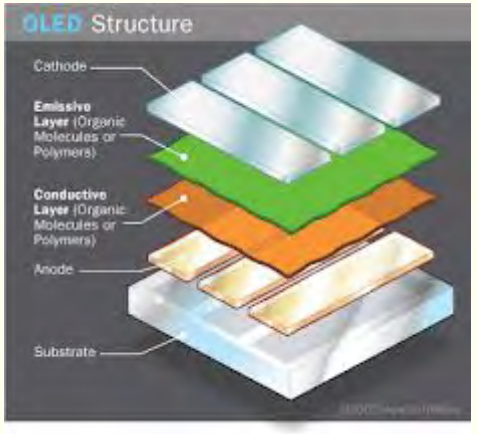


7. "THREATENING" LICENSING

- **"If you don't license we'll sue you for infringement"**
- Advantages:
  - Grabs attention
  - Can be effective
- Disadvantages:
  - Led by lawyers. Adversarial
  - Costly
- Whats involved?
  - Finding infringers. Filing lawsuits. Negotiating
- Good candidates
  - Corporations with huge legal teams
  - Those with little to loose
- Examples
  - 1 Patent Licensing companies like Acacia assert patents and extract royalties by threatening legal action.

8. "SEMI-THREATENING" LICENSING

- **"Would you like to license our patents? We do pan to enforce them"**
- Advantages:
  - Grabs attention
  - Can be effective
- Disadvantages:
  - Can confuse the licensee
  - Can gtrigger declaratory judgements
- Whats involved?
  - Identifiying infringers & carefully approaching them
- Good candidates
  - Patent holders with legal resources to pose threat
- Examples
  - Some patent holders do not initiate lawsuits at the start of the negotiation with the licensee--they start with friendly discussions, but always imply the threat. **ELECTRONICS INDUSTRY. MED DEV INDUSTRY**



9. VC INVESTMENT WITH STRINGS

- **"We'll invest in your company if we can partner with you to enforce your patents"**

- Advantages:
  - Preferential investment terms (to VC)
- Disadvantages:
  - May upset your competitors
- Whats involved?
  - Finding investor, negociating terma
- Good candidates
  - Startups with infringed patents
- Examples
  - Altitude Capital (NY) invested in Saxon Innovations (TX) litigated and sold the 180 patents
  - Palm: Jeff Hawkins launches after a .5k + .5k VC investment

Palm was sold to hp in 2010 in a $1.2b cash deal. Ubranded today. Shares rose up 26%

WHERE TO OBTAIN VC

http://www.unlockvc.com/restricted/investorform.aspx

10. IP BACKED LOANS

- **"We can use your patents as collateral / warrant for a loan / credit line"**
- Advantages:
  - Source of debt/capital/working capital
- Disadvantages:
  - Encumbers patents
  - Not for small companies
- Whats involved?
  - Finding lender. Valuation. Loan with security
- Good candidates
  - Companies with good credit ratings
  - Not for samll companies
- Examples
  - If we look at the Assignments database at the USPTO, we will see that many patents have security interests to banks. Mainly large companies raise finance that is supported with a security interest on the patents

10. IP BACKED LOANS

1. REQUEST - SAMSUNG:

http://assignments.uspto.gov/assignments/q?db=pat&pat=7136934

2. ALISTAIR – INTELLECTUAL VENTURES:

http://assignments.uspto.gov/assignments/q?db=pat&qt=pat&reel=&frame=&pat=7421470&pub=&asnr=&asnri=&asne=&asnei=&asns=

THE BUYER SIDE
WHO'S BUYING PATENTS

- On other side: THE BUYER SIDE
- The more the demand, the higher the patent prices (basic principle of Economics). So sellers want to incentivize buyer side
- Who's buying patents:

http://lms.svbs.co/course/view.php?id=31

ASsERTIVE USE OF PATENTS
THE PATENT WARS

- THE NPE'S
- THE PATENT WARS
- FRANDS
- THE APPLE vs. SAMSUNG (GOOGLE?)WAR

THE NPEs (NON-PRACTICING ENTITIES)

- **NPE: An organization that does not manufacture nor sells products, but holds patents and use them for different purposes**
- **NPE ≠ "Patent Troll"**
- **Classification:**

1. R+D based entities: OTRI, Companies focused on R+D (CCTC, ICFO, LLNL, ESA, CSIC, Bdigital, etc)
2. DPA - Defensive Patent Aggregators
3. LAE - Licensing Aggregation Entities ("*endo*" and "*exo*")
4. PAE – Patent Assertion Entities = TROLLS
5. OPA - Ofensive Patent Aggregators (of other NPEs)

THE NPEs (NON-PRACTICING ENTITIES)

DAE - Defensive Patent Aggregators (Operating Entities)

Qualcomm Technologies, Inc. (CA)

RPX (CA) – Socios pagan una cuota annual y RPX licencia los portafolios. “Our litigious company” – But they’re not

AST (Allied Security Trust) (NJ) - is a member-based patent holding company that helps protect members from patent infringement lawsuits by NPEs. Does not litigate. Sun, Motorola,,HP,Verizon, Cisco, Google Ericsson

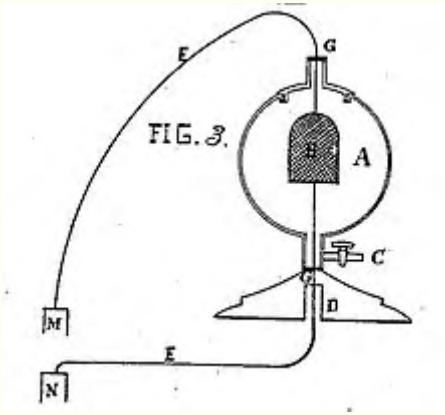
Round Rock Research (NY) – Researching and licensing: Apple, Sony, LG, Ericsson, HTC, RIM, Sharp, Oracle, …

LAE - Licensing Aggregation Entities

IV (Intellectual Ventures) (WA) – piles stocks of patents 1) from developers, 2) bought outside for a) minimizing threads from adversarial patents, b) sometimes for trolling

THE NPEs (NON-PRACTICING ENTITIES)

Thomas Edison, a defensive patent aggregator



Early Woodward light bulb patent patent 181,613, "Improvement in Electric Lights“
Purchased by Thomas Edison to preclude challenges

THE NPEs (NON-PRACTICING ENTITIES)

PAE – Patent Assertion Entities – Patent Trolls

Acacia (CA) – Muy agresivos: "Buys and asserts other's patents":
- Distressed companies – al acecho de startups
- Failed Corps. Controlled by VCs

Wi-Lan (CA)
Lodsys (TX) Acumula Apps y demanda a grandes fabricantes
Kelora – Ha demandado a Microsoft, eBay y Adobe "jointly"
Innovatio LLC
Project Paperles LLC
VS Techs – demandó a Twitter
Gooseberry – demandó "jointly" a Yahoo + 3-4 PYMES

THE PATENT WARS

lms.svbs.co/course – “Patent Wars”

FRANDs

FRAND = Fair, Reasonable And Non-Discriminatory

Fair, reasonable, and non-discriminatory terms (FRAND), are a licensing obligation that is often required by standard-setting organizations for members that participate in the standard-setting process. Standard-setting organizations are the industry groups that set common standards for a particular industry in order to ensure compatibility and interoperability of devices manufactured by different companies.

Members pool into a FRAND Licensing Group

Member themselves decides whether their patents are essential. Then accepts a FRAND license

FRANDs

Fair - licensing terms which are not anti-competitive and that would not be considered unlawful if imposed by a dominant firm in their relative market.

Examples of terms that would breach this commitment are:

- requiring licensees to buy licenses for products that they do not want in order to get a license for the products they do want (bundling),
- requiring licensees to license their own IP to the licensor for free (free grant backs) and including restrictive conditions on licensees' dealings with competitors (mandatory exclusivity)

FRANDs

Reasonable - refers to the licensing rates: the rate charged on licenses which would not result in an unreasonable aggregate rate if all licensees were charged a similar rate.

According to this view, aggregate rates that would significantly increase the cost to the industry and make the industry uncompetitive are **unreasonable**.

(A licensor which has several different licensing packages might be tempted to have both reasonable and unreasonable packages. However having a reasonable "bundled" rate does not excuse having unreasonable licensing rates for smaller unbundled packages. All licensing rates must be reasonable.)

FRANDs

Non-discriminatory - licensors treat each individual licensee in a similar manner. This does not mean that the rates and payment terms can't change dependent on the volume and creditworthiness of the licensee. However it does mean that the underlying licensing condition included in a licensing agreement must be **the same regardless of the licensee**.

This obligation is included in order to maintain a level playing field with respect to existing competitors and to ensure that potential new entrants are free to enter the market on the same basis.

The most controversial issue in RAND licensing is whether the "reasonable" license price should include the value contributed by the standard-setting organization's decision to adopt the standard. A technology is often more valuable after it has been widely adopted than when it is one alternative among many; there is a good argument that a license price that captures that additional value is not "reasonable" because it does not reflect the intrinsic value of the technology being licensed. On the other hand, the adoption of the standard may signal that the adopted technology is valuable, and the patent holder should be rewarded accordingly. That is particularly relevant when the value of the patent is not clearly known before the adoption of the standard. Some interpretations of "non-discriminatory" can include time-oriented licensing terms such as an "early bird" license offered by a licensor where terms of a RAND license are better for initial licensees or for licensees who sign a license within the first year of its availability.

THE APPLE vs. SAMSUNG (GOOGLE?) WAR

Apple files first. Apple Inc. sued Samsung Electronics Co. in April 2011, saying the Korean electronics maker "made a deliberate decision to copy Apple's iPhone and iPad…The intellectual property that Apple has asserted against Samsung goes to the heart of the extraordinary success of the iPhone and the iPad."

Apple's design, utility patents. Apple is claiming that Samsung infringed four industrial design patents, covering the look and feel of the devices, and three utility patents, which cover how the gadgets work. It's got a list of more than 20 Samsung devices that it says infringe on Apple's patents, including the popular Samsung's Galaxy S phones and Galaxy Tab tablets.

THE APPLE vs. SAMSUNG (GOOGLE?) WAR

Patent Numbers. Patents are referred to with the last three digits of the patent number. **Design patents**:
- 677 and 087, which cover iPhone designs;
- 889, which covers the design of the iPad; and
- 305, which covers the iPhone graphical user interface.

The **utility patents** all have to do with the multi-touch user interface technology built into Apple's iOS operating system:
- 381, which covers the 'bounce-back' functionality that users see when they move past the end of a photo or list;
-163, which covers the tap-to-zoom feature; and
- 915, which covers scrolling versus gesture motions.

When the iPhone was introduced in January 2007, Jobs made a point of saying they had "patented the hell out of it," applying for more than 200 patents for the device.

THE APPLE vs. SAMSUNG (GOOGLE?)WAR

Samsung's turn. Samsung, the world's largest maker of smartphones, countersued Apple in June 2011, saying that Apple infringes on several of its patents having to do with wireless communications technology and camera phones. "Apple seeks to stifle legitimate competition and limit consumer choice to maintain its historically exorbitant profits," Samsung wrote in its trial brief. "Apple, which sold its first iPhone nearly 20 years after Samsung started developing mobile phone technology, could not have sold a single iPhone without the benefit of Samsung's patented technology."

For the record, the case is Apple Inc. v. Samsung Electronics Co. Ltd., 11- cv-01846, U.S. District Court, Northern District of California (San Jose).

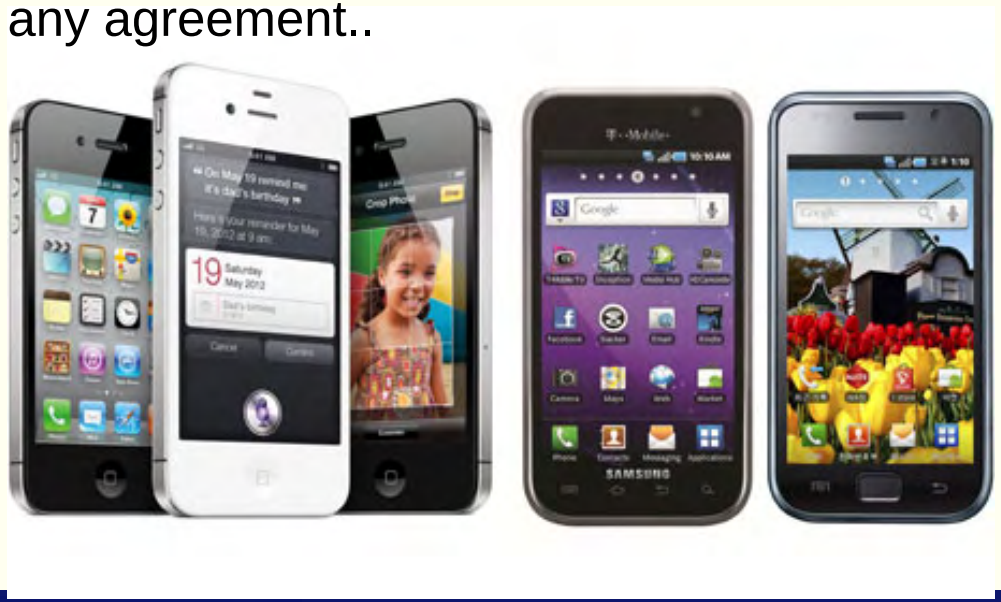
THE APPLE vs. SAMSUNG (GOOGLE?) WAR

Samsung patents. At issue are 941 and 516, which both have to do with mobile communications; 460, which covers the use of email in a camera phone; 892, which has to do with bookmarking a photo in the image gallery of a camera phone; and 711, which covers multi-tasking on a mobile device and allowing users to listen to music in the background.

Strange bedfellows. Samsung and Apple are competitors but they also have a very important business relationship. Apple is one of its biggest customer for phone components and Samsung is one of Apple's biggest suppliers.

THE APPLE vs. SAMSUNG (GOOGLE?) WAR

Failed talks. The lawsuit happened after meetings between the two companies starting around Aug. 2010 led nowhere. Over the past several months, Apple CEO Tim Cook has met with top Samsung executives to try to reach a settlement. The two sides were asked, by the judge in this trial, to talk once more by phone before the jury delivers its verdict. A Samsung lawyer said Aug. 20 that the CEOs had spoken but did not come to any agreement..



THE APPLE vs. SAMSUNG (GOOGLE?) WAR

The Judge. U.S. District Court Judge Lucy H. Koh, a former IP attorney who was appointed in 2010 by President Barack Obama, is presiding over the trial, which is being heard in the U.S. District Court in the uninspiring Robert Peckham Federal Building and Courthouse in downtown San Jose, California. Koh was born in in 1968 in Washington, D.C. and got her undergraduate and law degrees from Harvard. She is a stickler on time, keeping meticulous track of how each side used the 25 hours of trial time they were each allotted after spending 90-minutes on opening remarks. Did not allow Apple to present a 75 page briefing covering more than 20 potential rebuttal witnesses.

THE APPLE vs. SAMSUNG (GOOGLE?) WAR

Damages and FRAND. Apple was seeking $2.525 billion in damages. Samsung said it may be owed at least $400 million in royalty fees. Apple said Samsung asked, before the trial, for 2.4 percent of every iPhone and iPad sold to cover infringement of its patents. Apple said that even if it had to pay a royalty on some of Samsung's patents, the 2.4 percent rate is too high given that the technology Samsung claims it owns is in an Intel chip that Apple buys for $6 to $10 each. At most, Apple says Samsung would be entitled to 0.0049 for each chip based on FRAND patent licensing terms (with FRAND referring to Fair, Reasonable and Non-Discriminatory). Apple says Samsung hasn't asked any other users of the baseband chip, including Intel, to pay up.

THE APPLE vs. SAMSUNG (GOOGLE?)WAR

Copycat? Confusion? Apple ws working to prove that Samsung's products are "strikingly similar" to the iPhone and iPad and that Samsung's designs are not the result of natural evolution in the design process but rather a deliberate attempt to copy Apple. "*The initial skepticism that met Apple's announcement of the iPhone and iPad, followed by the extraordinary commercial success of these products, is evidence that the designs are not obvious*," says Apple. Samsung says that Apple has to prove that consumers are confused and are being deceived into buying Samsung products because they think they are iPhones and iPads.

Amazing evidences and anecdotes:
- "*this proto does not resemble iPhone enough. It has to have a closer look to it",* was written on an internal Samsung fax.
- Judge strong words for Samsung after release to press of evidences
- Judge Koh wondered if Apple attorneys were "smoking crack"

THE APPLE vs. SAMSUNG (GOOGLE?) WAR

Apple marketing. Apple spent more than $1 billion to market the iPhone and iPad between 2007, when the iPhone was released, until the end of 2011.

Icons. Samsung icon designer Jeeyuen Wang testified that she did not copy Apple's icon designs when she was creating the palette for Samsung's Galaxy phones. In a 2011 Samsung document, called "Samsung mobile icon design for 2011," the company questions whether Samsung's icons are "loved by users." Wang says that the designs she chose were obvious. Apple's icon expert, Susan Kare, who designed the Macintosh icons for Apple, said there were many design choices Samsung could have made and that the look and feel of the iPhone's screen graphics was not inevitable.

THE APPLE vs. SAMSUNG (GOOGLE?) WAR

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THE APPLE vs. SAMSUNG (GOOGLE?) WAR

Prior Art. Samsung says that Apple didn't even come up with some of the multi-touch user inventions in its devices, citing LaunchTile and TableCloth, programs that ran on a touchscreen-based system built around a table and projector from Mitsubishi Electric Research Laboratories called the DiamondTouch. Samsung also brought up (a lot) the Fidler tablet, a mockup of a tablet (a prototype was never built) created by Roger Fidler in 1994 to showcase his vision for the future of newspapers.

Payouts. Expert witnesses for each side have said they are paid anywhere from $250 to $1,000 an hour for their work on the case.

THE APPLE vs. SAMSUNG (GOOGLE?)WAR

The Veredict. The jury found Samsung guilty of willfully violating all three of the utility patents: No. 381, 915, and 163. Really, touchscreens wouldn't be touchscreens as we know and love them without the tech patented in these three:

-Patent 381 covers smartphone's ability to drag documents, rotate by twisting, and zoom in by pitching, court documents show. It also covers the bounce that happens when you scroll too far in a document.

- Patent 915 covers how we scroll through documents using one finger.
- Patent 163covers the tap-to-zoom functionality found in Google Maps and other map apps.

THE APPLE vs. SAMSUNG (GOOGLE?)WAR

There were also two design patents Samsung willfully violated (No. 667 and 305) and one unwillfully (No. 087), according to the verdict. Patents 667 and 089 cover the exterior of the iPhone. Somehow, Apple was able to patent and successfully defend a claim to phone that are rectangular with rounded edges and rounded backs. That's essentially the look of iPhones before the iPhone 4. The last patents the simple way icons are square-gridded out on an iPhone screen.

Damages: $1,05m (13% EBIDTA)
Injunction: 8 Samsung products banned:
Galaxy S 4G, Galaxy S2 (AT&T), Galaxy S2 Skyrocket, Galaxy S2 (T-Mobile), Galaxy S2 Epic 4G, Galaxy S Showcase, Droid Charge and Galaxy Prevail. Apple earlier was granted an injunction banning Samsung's Galaxy Tab 10.1 tablet.
Apple shares 1.5% up
Google shares 2% down

THE APPLE vs. SAMSUNG (GOOGLE?) WAR

Samsung Counterattack - its answer to the first complaint as well as infringement counterclaims over eight patents.
Two of those patents are FRAND-pledged patents that Samsung declared essential to ETSI standards. Five of the patents (including the two FRAND patents) were originally applied for by Samsung, while three others were acquired (one from Hitachi, one from a group of three inventors).

Also, Samsung's complaint states for two of the patents that Apple was shown "detailed explanation[s]" of infringement (presumably that means **claim charts**) in October 2010.

One of those two patents was previously asserted against Apple but then withdrawn from the first California litigation between these companies.

THE APPLE vs. SAMSUNG (GOOGLE?) WAR

Samsung–patents (with information for the products accused of infringement of each patent, as well as information on FRAND commitments):

U.S. Patent No. 7,756,087 on a "method and apparatus for performing non-scheduled transmission in a mobile communication system for supporting an enhanced uplink data channel"
accused products: iPhone 4, iPhone 4S, iPad 2, and New iPad
FRAND - declaration of standard-essentiality to ETSI in May 2006
presentation of claim charts to Apple in October 2010

U.S. Patent No. 7,551,596 on a "method and apparatus for signaling control information of uplink packet data service in mobile communication system"
accused products: iPhone 4, iPhone 4S, iPad 2, and New iPad
FRAND - declaration of standard-essentiality to ETSI in May 2010

U.S. Patent No. 7,672,470 on an "audio/video device having a volume control function for an external audio reproduction unit by using volume control buttons of a remote controller and volume control method therefor"
accused products: all iPhones, all iPads, and all iPod touches

THE APPLE vs. SAMSUNG (GOOGLE?) WAR

U.S. Patent No. 7,577,757 on a "multimedia synchronization method and device"
accused products and services: all iPhones, all iPads, all iPods, all Apple computers, Apple TV, iCloud, and iTunes
acquired from ReQuest in September 2011

U.S. Patent No. 7,232,058 on a "data displaying apparatus and method"
accused products: all iPads

U.S. Patent No. 6,292,179 on a "software keyboard system using trace of stylus on a touch screen and method for recognizing key code using the same"
accused products: all iPhones, all iPads, and iPod touches

dropped from Samsung's counterclaims in the first California litigation in July 2011 (to be precise, Samsung converted a separate countersuit into counterclaims, and in that process left a couple of patents behind)
presentation of claim charts to Apple in October 2010

U.S. Patent No. 6,226,449 on an "apparatus for recording and reproducing digital image and speech"
accused products: all iPhones, all iPads, iPod touches, and Apple computers
acquired from Hitachi in August 2011

U.S. Patent No. 5,579,239 on a "remote video transmission system"
accused products: all iPhones, and all 3G iPads with cameras
acquired from a group of three inventors in October 2011

THE APPLE vs. SAMSUNG (GOOGLE?) WAR

More

1. Google-HTC patent purchase agreement under pressure in Delaware:
Google-HTC rent-a-patent agreement that had only one purpose: to give HTC some temporary ammunition to use against Apple.

2. Apple has claimed $707m more as final damages.

3. Oracle v Google.
Oracle lost to Google in asserting Java API patents atgainst Google. In spite of the last minute Office Action, the juror found that the Android did not infringe on patents.

Still pending the copyright case.

THE APPLE vs. SAMSUNG (GOOGLE?) WAR

WHO IS WHO?:

MONETIZACION DE PATENTES Y MERCADOS DE PATENTES

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