

Dial L for lawyer

A nasty legal spat among tech giants pits Nokia against Apple.



Tension has been building behind the scenes for some time between two of the world's technology titans. That friction became public on Thursday October 22nd when Nokia, the world's biggest maker of mobile phones, lobbed a lawsuit at Apple, alleging that its American rival's iPhone infringes a number of Nokia's patents. Apple, in the words of one of the Finnish firm's executives, is "attempting to get a free ride on the back of Nokia's innovation".

On one hand, this is just another of a growing number of intellectual-property disputes in the mobile-phone and, indeed, the information-technology industry. Ever increasing complexity, the growing importance of software and the standardisation of manufacturing (most devices are made by the same bunch of companies in Taiwan and China) are all part of the reason. So too is the multiplication of "patent trolls", firms with the sole purpose of trying to extract money for patents which they have bought somewhere else. All this make intellectual property an ever hotter and thus more disputed commodity.

On the other hand, the legal fireworks between Nokia and Apple is a clash of two civilisations. When it comes to patents, the mobile-phone industry has mostly operated like a club. Players jointly develop new technical standards, say for the next generation of wireless networks, which include intellectual property from all sides. They then license or trade off their patents among each other or to newcomers under "fair and reasonable" conditions. Having grown up in the computer industry, where standards and sharing of intellectual property has much less of a tradition, Apple seems to refuse to play by these rules or, at least, does not want to pay as much as Nokia demands.

Nokia has apparently negotiated with Apple for quite some time. Its suit, which was filed in the state of Delaware, involves ten patents that cover everything from wireless-data transmission to speech coding and encryption technologies that it claims are "essential" to building a device that complies with standards used in modern wireless networks. Nokia argues that all of these patents have been infringed by Apple since the first iPhone was shipped in 2007.

Asked about the allegations, an Apple spokesman said the company does not comment on pending litigation. But in private its top brass must be livid. The scope of Nokia's legal challenge has certainly raised eyebrows among legal experts. "They've kind of declared war on the iPhone", says Scott Lindvall, a partner at Kaye Scholer, a law firm. He notes that it is rare to see a single lawsuit that involves so many patents covering a wide range of technologies. Nokia has also chosen a legal battleground that has a reputation for dealing with patent cases relatively swiftly. Mr Lindvall says that one Delaware intellectual-property case he was involved in came to trial in a year, whereas in other states similar litigation can drag on for much longer.

Why is Nokia spoiling for a fight now? Other handset sellers have licensed its technologies, so the firm can make a strong case that Apple should do so too. And if it wins, it stands to make a tidy sum of money: Gene Munster of Piper Jaffray, an investment bank, has estimated this could amount to \$6-12 for every iPhone sold. As some 30m iPhones have been purchased, the Finnish firm could pocket \$180m-360m. That would come in handy—the firm made a whopping loss in its most recent quarter.

Although Nokia denies this, the move is related to Apple's stellar performance in the smart-phone market, where it and other companies such as Canada's Research In Motion, which makes the BlackBerry, have eroded Nokia's lead. In the second quarter of 2009 the Finnish firm's share of the global smart-phone market fell from 47.4% to 45%, while Apple's soared from 2.8% to 13.3%, according to figures from Gartner, a research firm.

By entangling its rival in legal red tape, Nokia may be hoping to slow its progress. But Apple, which rang up a record quarterly profit this week, will not be deflected easily. The chances are that it will look for an excuse to counter-sue Nokia—a common tactic in intellectual property cases—or find some other legal ruse to confound its assailant. Fee-hungry lawyers will have their smart-phones on speed dial.

DIAL L for lawyer. **The Economist**, New York, Oct. 23rd 2009. Disponível em: <www.economist.com>. Acesso em: 26 out. 2009.

A utilização deste artigo é exclusiva para fins educacionais