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IN-DEPTH PATENT MONETIZATION COVERAGE

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WiLAN's Wireless Futures Technology unit files enforcement action in China against Sony Corp.

WiLAN Inc. (WILN), the patent licensing company run by CEO Jim Skippen, said its Wireless Futures Technology unit has filed an enforcement action in China against **Sony Corp**., the first enforcement action filed in China by a western licensing company in that jurisdiction.

Ottawa, Ontario-based WiLAN said the action was filed in the Intermediate People Court in Nanjing, China. The patent in question was acquired from Nokia Siemens Networks. The patent -- ZL 200 8800 22707.5 covers 3G PP and LTE technology. Sony's infringing product is the Sony Xperia Z5 product.

The patent is from the same family as one which Wireless Future Technology used to file an enforcement action action Sony in Germany over the summer.

"Smart strategy," said Don Merino, the head of **Merino IP Consulting** in Taipei, Taiwan. "China offers injunctions (final and preliminary) . Sony probably does a lot of manufacturing in China so an injunction would likely significantly disrupt their supply chain as well as any sales they have in China. Generally most consumer electronics are made in China."

Merino noted that "China is very fast typically 12 - 15 months for the infringement case. Judges in China are getting much better at adjudicating patent cases fairly and are very keen on taking them."

The Shanghai Intellectual Property Office "has been reluctant to overturn patents that are already examined and issued unless there is an obvious mistake - quite a difference than the U.S. "

He added that WiLAN appears to have "a strong portfolio and has closed plenty of licenses with big firms like Samsung and ZTE. I'm not surprised they have both German and Chinese patents and likely a lot of them."

"Filing in Germany and China makes sense as both seem to currently have the strongest patent systems in the world protecting innovation. The cases are typically fast and when you win you get an injunction. Cost of litigation is also much less expensive than in the U.S."

Officials for WiLAN declined to comment further.

Lisa Gephardt, a spokeswoman for Sony, declined comment.

Interest in China by western licensing companies has awakened in the wake of two recent infringement disputes involving western operating companies in China. **Qualcomm Inc. (QCOM)** has filed 18 enforcement actions against **Meizu Technology Co. Ltd**. seeking to force the Chinese company to accept licensing rates approved by China's National Development and Reform Council and paid by more than 100 other companies. **Apple Inc. (APPL)** is facing an injunction in an enforcement dispute filed by **Shenzhen Baili Marketing Services Co.** over a design patent allegedly infringed by the iPhone 6 and iPhone 6 Plus.

"This is a big deal," said Mark Gober, a senior director at **3LP Advisors** in the IP advisory firm's Silicon Valley office. "It wasn't long ago that China was an afterthought for patent enforcement. But recently the tides have turned. First there was the Apple injunction in China, then Samsung countersued Huawei in China, then Qualcomm sued Meizu repeatedly in China, and now you have a IP-savvy NPE proactively seeking out China as an enforcement venue. The appeal of enforcing in China is the potential ability to earn an injunction in an enormous market, even as an NPE.

Gober said patent market observers should watch this case closely. "If the tactic is successful for WiLAN, other NPEs (and capital) may start to flock towards China."

WiLAN and other western licensing companies see China as a potentially important jurisdiction for bringing enforcement actions, because of the availability of injunctions, which can help with negotiating with infringers who would face the inability to ship products produced in China.

In addition, the Chinese government has spent years upgrading and modernizing its intellectual property courts in order to foster the patent owner rights of its companies. In addition, Chinese IP court officials have urged western companies to use its system and even cited figures that show how well foreigners have done in China.

Other western licensing companies including **Marathon Patent Group (MARA),** the licensing company run by CEO Doug Croxall, also have expressed interest in bringing enforcement actions in China because of its respect for patent owner rights and the ability to get injunctions.

In other news, WiLAN posted a 20.7% decline in third quarter 2016 net income in the quarter driven by lower than expected revenue from licensing.

The company said third quarter profit fell to $657,000, or 1 cent a share, from $829,000, or 1 cent a share. The company's earnings before income tax depreciation and amortization also fell 22.5% to $9.3 million, or 8 cents, from $12 million, or 10 cents.

Revenue slid 22.4% to $16.6 million from $21.4 million.

The earnings and revenue figures came in below the average analysts estimates which were 9 cents a share in profit and $21.25 million in revenue.

Shares of WiLAN fell 4 cents to $1.37 in trading on Thursday, Nov. 3.. They've traded between 93 cents and $3.04 over the past year.

"During the quarter we made progress on both acquisitions and licensing although we did not close any licenses that boosted this quarter's revenues materially," Skippen said in a statement.

Skippen noted that WiLAN continues to be challenged to bring in licensing deals at values it considers reasonable and fair.

"We could have closed one or more larger license opportunities that were in discussions. This would have significantly boosted the quarter; however, in the long run we believed it was not in the best interests of WiLAN to do so because the amounts offered still did not reflect a fair value for the licenses. With significant cash on our balance sheet, we can afford to wait to finalize licenses only when we believe they are at a fair value. These are not lost license opportunities; we simply believe they have been pushed out into future quarters. In the meantime, we continue to carefully manage our expense level, which is reflected in our high EBITDA margin and bottom-line profitability."

In an earnings conference call with analysts, Skippen noted that WiLAN's results in the past two quarters reflect the fact that it is not immune from the variabilities that impacts every business in the patent licensing sector.

"While we will occasionally have slower quarters, we believe we must resist the temptation to take deals simply to bolster a quarter if the deal does not represent fair value to WiLAN. We actually expected we would have a stronger Q3 until almost the end of this quarter when final offers failed to meet our minimum thresholds."

He noted that "turning down offers that could make strong quarter is difficult for management. Because a significant portion of our compensation is tied to the stock price, so every employ feels that if the stock price is affected because of quarter that fails to meets expectations.

"However given our patent portfolio, our license pipeline and our financial resources we keep the faith that if we keep adding to our pipeline holding up for fair value that those efforts will be rewarded with long term growth and stronger markets."

WiLAN ended the quarter with cash and cash equivalents of $102.03 million.

Cost of revenue fell to $12.1 million from $16.7 million.

Operating expenses in the third quarter fell to $14.1 million from $19.3 million.

Marketing, general and administrative expenses rose to $1.9 million, or 11% of revenue, compared with $1.4 million, or 6.5% of revenue, in the same period last year.

Litigation expenses fell to $700,000 from $1.7 million. WiLAN said the decrease in litigation expense for the third quarter was primarily due to an increase in shared risk fee arrangements with external legal counsel in comparison to the same periods last year. The contingent-fee arrangements with external legal counsel are part of WiLAN's strategy to align incentives with its partners and to keep costs down.

Compensation and benefits rose to $1.79 million from $1.44 million. Patent maintenance, prosecution and amortization fell to $2.67 million from $3.02 million.

Cash operating expenses for the fourth quarter 2016 are expected to be in the range of $8.3 million to $10.8 million, of which $1.5 million to $3.1 million is expected to be litigation expense. These expenses exclude any contingent partner payments and contingent legal fees.

Dolby Laboratories files patent enforcement actions against Vivo, OPPO and producers in High Court of Delhi, India

Dolby Laboratories Inc. (DLB), the developer of audio, video, and voice technologies for entertainment and communications in mobile devices, at the cinema, at home, and at work, has filed patent infringement action in the High Court of Delhi, in New Delhi, India, against several Chinese handset makers including **Vivo** and **OPPO** and their Indian producers.

The enforcement actions were filed by Dolby International AB & ANR against **Universal Digital Connect Ltd. & ORS, Shreejee Tradelinks & ORS, Mitashi Edutainment Private Ltd., Das Telecom Private Ltd. & ORS** and **GDN Enterprises Private Ltd.**

OPPO and Vivo were named in the action filed against GDN Enterprises, according to a person familiar with the matter.

Officials from Dolby declined to comment.

Officials from OPPO and Vivo didn't return an emailed request for comment.

The move comes as Dolby, run by CEO Kevin Yeaman, posted a 48.7% drop in fourth quarter profit because of higher costs of revenue and a comparison with last year's quarter which included $28 million in other income from the sale of a unit.

The San Francisco-based company said profit fell to $23.9 million, or 46 cents, from $46.6 million, or 46 cents.

Revenue was little changed at $233 million, compared wth $232.7 million a year ago. Licensing brought in $203.5 million, versus $203.3 million. Product revenue was little changed at $25 million. Services revenue was $4.42 million versus $4.36 million.

Cost of licensing rose to $8.48 million from $2.26 million. Cost of products fell to $17.7 million from $19.6 million. Cost of services revenue rose to $4 million from $3.47 million.

Operating expenses fell to $29.08 million from $36.14 million.

Dominion Harbor affiliate All-American Packaging enforces packaging patent against Mars, Mars Chocolate, Wrigley

All-American Packaging LLC, affiliated with a unit of **Dominion Harbor Group**, filed an enforcement action against **Mars Inc., Mars Chocolate North America LLC** and **Wrigley Manufacturing Co. LLC** for infringement of a patent related to perforated carton and product display systems for Bounty paper towels and Milk Way and Snickers candy bars.

The action was filed in U.S. District Court in the eastern District of Texas in Marshall, Texas. The patent in suit is U.S. Patent No. 6,405,921. The patent was acquired by All-American Packaging, which is owned by **Monument Patent Holdings LLC**, an affiliate of Dominion Harbor, just a few months ago. The '921 patent was originally assigned to **Kimberly-Clark Worldwide Inc.**

Plano, Texas-based All-American Packaging alleges that each of the defendants "has and continues to directly infringe one or more claims of the ’921 patent in this judicial district and elsewhere in Texas and the United States without the consent or authorization of All-American, by or through their making, having made, offering for sale, selling, importing, and/or using perforated transportation and display containers.”

The complaint contains a photograph of a perforated package of 3Musketeer bars, though the complaint notes other products that use the patented packaging technology include Bounty paper towels, Mars and Milky Way candy bars, M&M’s, Snickers candy bars, Twix candy bars, and Skittles and Starburst candies.

All-American Packaging is seeking a finding of direct infringement, willful infringement, a preliminary and permanent injunction, damages and attorney fees.

Brad Scheafe, the chief intellectual property officer of Dominion Harbor, said All-American Packaging has been doing due diligence on a number of potential infringers. Asked whether other infringement actions were planned and against whom, he declined to name specific targets.

"We have to believe its worthwhile for both parties to pursue a licensing arrangement," he said. "You will not see All-American Packaging suing 150 companies looking for nuisance settlements."

The company is represented by Patrick Conroy, a partner with **Bragalone Conroy PC** in Dallas.

Officials from Mars couldn't be reached immediately for comment.

Qualcomm fiscal 4th-Qtr profit increases 51% on new China licensing deals and chipset sales

Qualcomm Inc. (QCOM), the technology licensing company that agreed to acquire **NXP Semiconductors N.V.** for $38 billion, posted a 51% increase in fiscal fourth quarter 2016 net income, driven by new licensing agreements in China and strong chipset shipments.

The San Diego, California-based company, run by CEO Steve Mollenkopf, said its fiscal fourth quarter net income increased to $1.6 billion, or $1.07 a share, from $1.1 billion, or 67 cents, a year ago. Operating income increased 58% to $1.8 billion from $1.1 billion.

Non-GAAP operating income, which excludes the Qualcomm Strategic Initiatives segment and certain share-based compensation, acquisition-related items, tax items and other items, rose 35% to $2.2 billion, or $1.28 a share, from $1.6 billion, or 91 cents.

Revenue rose 13% to $6.2 billion from $5.5 billion. Revenue from the licensing segment rose 6% to $1.89 billion from $1.79 billion, with earnings before taxes of $1.58 billion Revenue from the technology segment rose 14% to $4.12 billion from $3.63 billion, with earnings before taxes of $687 million.

The company was expected to earn Non-GAAP profit of $1.13 a share, according to the average analyst estimate. The company's revenue also exceeded the average analyst estimate of $5.84 billion.

Shares of Qualcomm fell $1.25, or 1.8%, to $67.09 today. They gained 26 cents in after hours trading. They've traded between $42.24 and $71.62 over the past year.

The company's cost of revenue rose to $2.54 billion from $2.25 billion. Research and development spending fell to $1.22 billion from $1.36 billion. Selling, general and administrative, which includes litigation costs, fell to $568 million from $595 million.

"Our fiscal fourth quarter EPS was above the high end of our expectations, reflecting new license agreements in China and strong chipset shipments," Mollenkopf said in a statement.

"We are forecasting continued growth of global 3G/4G device shipments in calendar year

2017, led by growing demand in emerging regions. We are well positioned to extend our mobile

technology leadership and footprint into attractive growth opportunities, accelerated by our recently announced agreement to acquire NXP."

The company noted it expected the NXP acquisition to be closed by the end of 2017 after various regulatory approvals.

Tessera third quarter profit declines larger than expected 26.7% on lower revenue, higher expenses

Tessera Technologies Inc. (TSRA), the technology licensing company that agreed to acquire DTS Inc. in September for $850 million, posted a large than expected 26.7% decline in third quarter profit because of lower revenue that came in just ahead of the company's forecast and higher expenses.

The San Jose, California-based company, run by CEO Thomas Lacey, said its third quarter net income fell to $23.8 million, or 48 cents a share, from $32.5 million, or 62 cents a share, a year ago. Non-GAAP net income for the third quarter also fell to $28.6 million, or 57 cents a share, from $34.8 million, or 65 cents a share. The company was expected to earn 51 cents a share, according to the average analyst estimate.

Shares of Tessera fell 50 cents, or 1.35% to $36.60 in trading. After the close, they gained $1.65, or 4.5%. They've traded between $26.21 and $39.49 over the past year.

Total revenue fell 7.4% to $62.4 million in the quarter from $67.4 million a year ago. The revenue figures came in just above the analyst estimate of $62.35 million.

Recurring revenue also fell 6% to $62.4 million from $66.4 million a year go. The company attributed the year-over-year decrease to the timing of payments pursuant to certain long-term customer contracts. The company reported no episodic revenue in the third quarter 2016, versus $1 million, a year ago.

"Our third quarter earnings exceeded our guidance range and reflects another strong quarter of financial performance," Lacey said in a statement. "We continue to see positive momentum in all aspects of the business."

Lacey added that Tessera currently anticipates that the acquisition of DTS will close in early December.

Tessera's operating expenses increased slightly to $27.8 million from $27.6 million a year ago. Research and development costs increased to $8.6 million from $8.55 million. Selling, general and administrative expenses increased to $12.49 million from $10.9 million. Amortization expenses increased $6.05 million from $5.19 million.

Litigation expenses fell to $580,000 from $2.94 million. The company noted that higher litigation expenses were held down by a $5 million insurance settlement.

In May, Tessera launched a multi-jurisdiction patent enforcement campaign against Broadcom Ltd. and eight of its distributors related to eight patents related to semiconductor circuitry and packaging.

The company said the proceedings are in the U.S. International Trade Commission, the U.S. District Court in Wilmington, Delaware, and courts in Germany and the Netherlands, alleging infringement of a total of eight patents.

The ITC complaint involves three patents and seeks an exclusionary order. The complaint was field against Broadcom Ltd. Singapore, Broadcom Corp., Avago Technologies Ltd. Singapore, Avago Technologies U.S. Inc., Arista Networks Inc.; ARRIS International plc, ARRIS Group, ARRIS Technology, ARRIS Enterprises LLC, ARRIS Solutions, Pace Ltd. (formerly Pace plc), Pace Americas LLC, Pace USA LLC, ASUSTeK Computer Inc., ASUS Computer International, Comcast Cable Communications LLC, Comcast Cable Communications Management LLC, Comcast Business Communications LLC, HTC Corp., HTC America Inc.; NETGEAR Inc., Technicolor S.A., Technicolor USA Inc. and Technicolor Connected Home USA LLC.

Tessera filed an enforcement action in U.S. District Court in Wilmington, Delaware, against Broadcom and the others involving the same three patents in the ITC complaint. In addition, Tessera filed a second enforcement in the federal court in Wilmington, Delaware, against Broadcom and the others involving four other patents.

Tessera also filed enforcement actions involving a European patent in courts in Germany and the Netherlands.

RPX posts 3.8% increase in 3rd-Qtr profit as discovery and fee income offset subscription income declines

RPX Corp. (RPXC), the patent aggregator and provider of patent litigation loss control services run by CEO John Amster, said its third quarter 2016 net income increased 3.8% as revenue from discovery devices and fee income offset lower subscription revenue.

San Francisco, California-based RPX said net income increased to $8.1 million, or 16 cents a share, from $7.8 million, or 14 cents a share a year ago.

Non-GAAP net income for the third quarter, which excludes stock-based compensation, the amortization of acquired intangibles, fair value adjustments on deferred payment obligations, gains on extinguishment of deferred payment obligations, other-than-temporary impairments on short-term investments, and realized losses on exchange of short-term investments (in each case, net of tax), also increased 19.8% to $12.7 million, or 25 cents a share, from $10.6 million, or 19 cents a share.

The company said previously forecasted third quarter net income of $10 million to $11 million and operating income of $16 million to $17 million.

The company's nonGAAP profit was expected to be 23 cents, according to the average estimate of three analysts.

Revenue for the third quarter rose 29.7% to $88.5 million from $68.2 million in the prior year period. Subscription revenue including insurance fell 8.5% to $62.4 million from $68.2 million in the prior year period. Discovery services revenue from RPX's acquisition of Inventus Solutions came in at $18 million. RPX acquired Inventus in January, so there's no comparable with a year ago. Fee-related revenue came in at $8.1 million

The company previously forecasted total revenue of $87 million to $89 million in the third quarter, including subscription and discovery revenue of $81 million to $83 million and fee related revenue of $6 million. That compared with the $87.25 million revenue estimated by four analysts.

"Revenue in our patent risk and discovery businesses was in line with expectations," Amster said in a statement. "We had an active quarter of patent acquisitions, while carefully controlling our operating costs. As we integrate the two businesses, we continue to assess new opportunities to provide services that can enhance the operational efficiency of corporate legal departments."

Cost of revenue in the quarter rose 35% to $50.83 million from $37.64 million. Selling, general and administrative expenses also increased in the quarter by 25.7% to $23.6 million from $18.77 million.

RPX ended the quarter with 328 clients including insurance clients, which compared with 317 in the second quarter.

The company said its net patent spend was $34.8 million in the third quarter on 23 patent transactions

RPX ended the quarter with cash and cash equivalents of $182.7 million, compared with $199.1 million at June 30.

The company said it is forecasting total revenue of $82 million to $86 million in the fourth quarter, including subscription and discovery revenue of $81 million to $85 million and fee related revenue of $1 million.

It expects fourth quarter net income of $7 million to $10 million and operating income of $12 million to $15 million.

Shares of RPX fell 16 cents, or 1.6%, to $9.59 in trading on Thursday, Nov. 3.

Judge affirms $15M award Finjan Holdings won against Sophos

A U.S. District Court affirmed a $15 million jury award cybersecurity technology licensing company **Finjan Holdings Inc. (FNJN)** won against **Sophos Inc.** in a patent infringement dispute over five patents related to cybersecurity.

Judge William Orrick, of the U.S. District Court in San Francisco, affirmed the verdict today. The verdict was handed down on Sept. 21 after a two-week long trial. The jury did not find that Sophos had willfully infringed which could have tripled the award.

The two sides will have 28 days to file post-judgement motions with the court. They also can file notices of appeal to the Court of Appeals for the Federal Circuit 30 days after the court's final ruling.

This was Finjan's second enforcement win this year and followed a $39.4 million award it won in an action against **Blue Coat Systems**. Blue Coat is appealing that award.

East Palo Alto, California-based Finjan filed the action against Sophos in March 2014.

"We are pleased that Judge Orrick issued the Judgment so quickly, which suggests to us that the issues tried were clear and the verdict noncontroversial," said Julie Mar-Spinola, Finjan's chief intellectual property officer. "This is our second district court victory in 15 months, wherein all of the asserted patents were found valid and all but one infringed. Significantly, two juries awarded Finjan a total of $65M in damages; confirming that our patent assets remain strong, enforceable, and highly valuable."

Shares of Finjan felll 4 cents or 2.4% to $1.63 in afternoon trading. They've traded between 81 cents and $2.35 over the past year.

Finjan has pending infringement lawsuits against **FireEye Inc., Symantec Corp., Palo Alto Networks., Blue Coat Systems**, and **ESET** and its affiliates relating to, collectively, more than 20 patents in the Finjan portfolio.

Representatives of Sophos and its counsel John Alcock, a partner with **DLA Piper LLP (US)** in San Diego, couldn't be reached for comment.

Spherix won't replace departing board members to reduce costs

Spherix Inc. (SPEX), the patent monetization company run by CEO Anthony Hayes, said two of its board members have stepped down and will not be replaced.

Bethesda, Maryland-based Jeffrey Ballabond and Howard E. Goldberg have stepped down from the board, effective immediately. The company said the resignations were amicable and reflected no disagreements with the company's principles or practices.

"The reduction in the size of our board will reduce costs and streamline our operations to increase shareholder value," Hayes said in a statement. The board "is now appropriately sized to match our current needs."

Under Hayes, Spherix has struggled to bring in any meaningful licensing revenue on its own. Earlier this year, the company announced a plan to jumpstart licensing revenue by partnering with Dean Becker's Equitable IP Holding Corp. to bring enforcement actions involving Spherix patents.

Equitable IP has so far filed at least 10 enforcement actions on behalf of Spherix. The actions are in the early stages and aren't expected to bring in money for years.

Former Dominion Harbor CFO Mowles forms new IP consulting firm Renvent Advisors

Conner Mowles, the former chief financial officer of **Dominion Harbor Group**, has formed **Renvent Advisors,** a new intellectual property consulting firm and is its managing member.

Renvent, which is a shortened version of return on invention, is based in Dallas and will specialize in advising on IP strategy, provide capital introductions and facilitate IP sales and commercialization partnerships.

Mowles said in an interview he will focus capital raising deals in the $2 million to $5 million range. Diligence for deals under $2 million is typically so intensive that it eats into return on investment, he said. Deals bigger than $5 million would require syndication, he added.

Renvent will have a short list of law firms, patent experts and capital providers, which Mowles said will enable him to provide management consulting advice to companies that don't have in house IP expertise.

Mowles was CFO of Dominion Harbor from November 2013 to May 2016. Prior to that, he was a senior investment analyst at IP Navigation Group from September 2012 to November 2013.

Upcoming conferences and events in the IP space

The IP Dealmakers Forum 2016 – November 17 & 18 – New York City — Now in its third year, the **IP Dealmaker Forum** has become one of the most anticipated IP event of the year. Developed by your peers and vetted by market participants, the IP Dealmakers Forum is designed to connect investors with intellectual property information and opportunities. Check out the agenda, incredible speaker line-up, and new dealmaker deep dive sessions. http://www.ipdealmakersforum.com/patentinvestor16/. Special Offer for The Patent Investor Readers: Use promo code "PatentInvestor_Offer16" for $100 off the registration price.

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