

Qualcomm, Nokia lock horns over licensing

by Kathryn Balint

Finnish cell phone maker Nokia, in the last days of a licensing contract with San Diego's Qualcomm, said Thursday that it has paid the wireless giant \$20 million for the use of its patents in the second quarter - an amount it calls a "good-faith gesture" but one Qualcomm says is just a portion of what it had been paid.

Qualcomm responded by filing a demand for arbitration with the American Arbitration Association to force Nokia to pay far higher royalty fees - estimated to be more than \$125 million per quarter - that Nokia has been paying. Qualcomm said the contract calls for arbitration of disputes arising from the agreement.

The actions come just days before the mutual licensing agreement expires, in part, at midnight Monday. Qualcomm has said repeatedly it is doubtful that it and Nokia will reach an accord before then.

The 2001 agreement allows each company to use the other's patented technology and also requires Nokia to pay royalties on every cell phone it sells that uses Qualcomm patents.

The Qualcomm patents at issue are necessary for manufacturing advanced cell phones that not only transmit voice calls but also download music, surf the Internet and transmit photographs. Qualcomm's patents are a key part of complying with what is called the wideband CDMA standard for cell phones.

The terms of the agreement are confidential. Typically, Qualcomm charges a royalty of between 4.5 percent and 5 percent of the sales price of cell phones using its technology.

Qualcomm general counsel Lou Lupin said Nokia's \$20 million payment amounts to a fraction of what Nokia has been paying for use of Qualcomm's technology under the soon-to-expire agreement.

"It would be interesting to know where they came up with this particular number," Lupin said. "As far as we can tell, they just pulled it out of the air. Maybe it's the number they wish they could pay us in their wildest dreams."

Nokia spokesman Bill Plummer said the \$20 million fee covering three months is what the cell phone maker estimates Qualcomm's technology is worth.

He said that Qualcomm is obligated by the the European Telecommunications Standardization Institute to charge "fair and reasonable" royalty rates. The institute does not set actual rates.

"In the absence of an agreement, our estimation of the fair and reasonable compensation to Qualcomm related to the essential intellectual property rights that they own and which we would implement in a wideband CDMA handset is covered by that payment of \$20 million for the second quarter," Plummer said.

Financial analysts estimate that Nokia paid upward of \$500 million - or \$125 million per quarter - last year to Qualcomm for use of Qualcomm technology under their licensing agreement.

Qualcomm and Nokia have been negotiating for months, but the two have remained at an impasse. Nokia, the world's largest maker of cell phones, is asking for a lower royalty rate. Qualcomm, a wireless technology developer, refuses to reduce the rate.

Under the current agreement, Nokia has the right to unilaterally renew it at current rates before Dec. 31, 2008.

Qualcomm said Nokia's unilateral determination that the use of Qualcomm's patents is worth \$20 million for a three-month period is just as unlawful as a consumer walking into a store, taking a product and leaving a fraction of the purchase price on the counter.

"Leaving some money on the counter does not make the act any less unlawful," Qualcomm said in a news release.

Financial analyst Steven Re said the \$20 million payment is a Nokia strategy to avoid being hit with huge damages if it continues to use Qualcomm technology after the contract expiration - as it has said it will do - and then Qualcomm sues for patent infringement - as Qualcomm has said it will do.

"The partial royalty payment by Nokia to Qualcomm is, in my opinion, a continuation of Nokia's strategy to avoid treble damages in case of a ruling of 'willful infringement' - a good strategy on Nokia's part," said Re, president of Quality Growth Management in Rancho Santa Fe.

"Since Nokia has for years been using and paying for Qualcomm's patents, it will have a hard time alleging that it is not willfully infringing, thus making it liable for treble damages. So, Nokia is being pretty creative here."

Lupin, Qualcomm's general counsel, argues that the \$20 million payment would not reduce Nokia's liability if the company uses Qualcomm patents without paying the price in the contract.

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