

Time for a Truce: Lessons from the Lightbulb Litigation for the Smartphone Patent War

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My work-in-progress is an analysis and commentary on the brewing “patent war” in the smartphone industry, through the lens of a close historical parallel.

Like the IT sector as we know it today, the electrical industry was once a competitive field with many significant players. Then the patent litigation began. At its conclusion, Thomas Edison’s company dominated the lightbulb market, and innovation slowed markedly. The smartphone is today’s lightbulb, and many companies aspire to control it. If history repeats itself, one of today’s most dynamic industries will be transformed. Today the market features players such as Google, Microsoft, IBM, Apple, Motorola, Nokia, HTC, Samsung, and many others. Fifteen years from now, we should not be surprised if only one remains. This is exactly what happened in the early electrical industry.

This project builds on a previous work, *Illuminating Innovation*, which explored the case study of the lightbulb in great detail. I argued there that historical case studies hold particular promise for testing the hypothesis that patents promote technological innovation, and placing patent scholarship on a stronger empirical footing. I also illustrated that potential by using the lightbulb case study to test the theoretical model of patent racing proposed by Mark Lemley in *The Myth of the Lone Inventor*. The primary lesson of that work was that while the patent racing metaphor is very helpful for understanding the early dynamics of innovation under patent law, it misses important long-term dynamics. I proposed an alternative metaphor for innovative contests in the shadow of patent law: not a sprint, but a war, along the model of the board game *Risk!*

The present project applies that model to the emerging smartphone patent war, highlights the concerns this war presents for future innovation in the IT sector, and suggests measures to facilitate a truce before history repeats itself.