Top 10 IP cases and happenings of 2012

By Kirk Teska

The biggest news in patent land last year was...

1. AIA
With some provisions taking effect this year and next, the passage of the American Invents Act was the top story of 2012.

2. Patent-eligible subject matter
The patent fight now involves three separate cases. In May, the Court of Appeals for the Federal Circuit directed the Federal Circuit to review that

3. Mobile device patent wars
Apple's patents for the “slide-to-unlock” and “end of list bounce back” features were successfully sued by Samsung in the United States (and won $1.05 billion). In other countries, Apple won some and Samsung won some. HTC, Google, Motorola, Nokia and other war

4. FRAND
The IP acronym of the year is FRAND: fair, reasonable and non-discriminatory. Sometimes, mandatory FRAND licensing terms apply when a given technology is part of an industry standard and members of the standards committee agree to license their patents according to a FRAND obligation.

5. Divided infringement
Since 2002, I've taught my law school students that patent method and process claims ought to reflect steps carried out by one party (and in one jurisdiction). That's because a competitor uses an intermediary or even the customer to complete even just one of the claimed steps of the patent, making the competitor can be problematic.

6. John Doe copyright infringement suits
The new scam in 2012 was the threat of outing a downloading of pornography unless the downloader paid up. The "John Doe" lawsuits work like this: The porn movie plaintiffs get your IP address when you downloaded the movie, but they cannot tie your IP address to you without a court order. So, they name you (or "John Doe") in a complaint and then subpoena your Internet service provider in court for your name. Your ISP then contacts you regarding the subpoena and now you are forced to reveal your name is tied to a pornography lawsuit in federal court.

7. Whack-a-troll
Many people have problems with patent trolls, but so far I've only dealt with entities that are high-tech companies. The AIA does help, at least a little, but the day before its passage trolls filed a record number of patent infringement lawsuits.

8. Goats on a roof
The funniest trademark case of 2012 is about the goats on the roof of a Wisconsin restaurant. Yes, Al Johnson’s “Swedish Restaurant & Butik” has a 50-foot roof with goats grazing on it, which are the subject of a federally registered trademark.

9. First sale doctrine
Some products like textbooks and watches are sold at a lower cost overseas. So enterprising people and companies buy the products in foreign countries, ship them here, and sell them to U.S. customers at a lower price. What happens when the products originate from the U.S., such tactics are largely legal. The copyright law “first sale” doctrine allows you to re-sell the books and other copyrighted products you purchase. What about the situation in which the products were manufactured in a foreign country? Does the first sale doctrine apply?

10. No SOPA
The year started with a successful Internet protest of Congress’ proposed “Stop Online Piracy Act” to the chagrin of the movie industry. Will our government representatives continue to listen to their constituents? Maybe the times are a changin’...