Planning Ahead in Today’s IP Climate: Digital Transformation & IP Risk

Erich Andersen
Corporate Vice President & Chief IP Counsel

October 12, 2017
The Fourth Industrial Revolution

Manufacturing
Autonomous vehicles, robotics, 3D printing, new materials

Health
Genomic diagnostics, treatment, engineering

Financial Services
Crypto, Blockchain, disruptive business models
All powered by the **cloud**
Public + Private Clouds = Approaching Traditional Data Center Spend... +37% to $36B in 2016

IT Infrastructure Spend, Global, 2014-2016

Source: IDC Worldwide Quarterly Cloud IT Infrastructure Tracker, Gartner, CloudHealth estimates

http://www.gartner.com/newsroom/id/3142917

60% computing in the public cloud by 2025
Cloud-fueled Digital Transformation is driving innovation, touching every individual and industry.
Risks of Digital Transformation

- SECURITY
- DATA PRIVACY
- INTELLECTUAL PROPERTY
- DATA SOVEREIGNTY
- COMPLIANCE
Industrial revolution disruption led to IP disputes

Barbed Wire
Farmers in 1870s using new fencing sued by patent owner

Sewing Machines
Patent pool formed in 1856 to assert against end users

War of Currents
Edison in 1888 threatened Westinghouse customers of infringement on Edison's incandescent light and other electrical patents
As computing shifts to the cloud, new IP risks to innovation emerge.

The rise in cloud-based lawsuits...

Cloud patent cases +22%
OpCo +18%
NPEs +25%

Median payout for patent lawsuit** $7M

...a trend likely to continue as NPEs buy more cloud patents

Cloud patent re-assignments to NPEs +35%

Damage awards nearly 3X greater for Non-Practicing Entities (NPE)**

Sources:
*Microsoft internal research, Data from US only
Smart Risk Mitigation Strategy

Review suppliers terms of service
- Protection from 3rd party IP claims
- Covered Products and Services
- Limitation of Liability
- Open Source Software

Cloud Provider

Your own application in the cloud
- Secure your own innovations
- Secure technologies relevant for your competitors
- Deter and defend against patent lawsuits

Develop your patent portfolio

Obtain licenses to 3rd party IP
- Reduce your business risk
- Secure business flexibility
- Basic defense against NPEs
Enhancing Your Risk Mitigation Strategy: Microsoft Azure IP Advantage

- **Best-in-industry protection against IP risks**
- **Covers OSS incorporated by Microsoft in Azure services**
- **On by default for all Microsoft cloud customers**

**UNCAPPED INDEMNIFICATION**

- Deter and defend against patent lawsuits
- Select a patent from 10,000 Microsoft patents
- Available to all consuming Azure customers

**PATENT PICK**

- Peace of mind with future patent protection
- Receive a license if Microsoft sells any patents to a NPE in the future
- Available to all consuming Azure customers

**SPRINGING LICENSE**

1. Terms and conditions apply
2. Must (i) have an Azure usage of $1k/m over the past three months; (ii) have not filed a patent infringement lawsuit against another Azure customer for their Azure workloads in the last 2 years; and (iii) show evidence of a current patent litigation that occurred after Microsoft Azure Advantage launch
3. Must (i) have an Azure usage of $1k/m over the past three months
Key Takeaways

- Understand “Digital Transformation”
- Assess your cloud IP protection and business risks
- Identify a plan to protect your innovation in the cloud, taking into account public and private measures