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Qualcomm licensing chief says the patent pendulum is moving just in time for 5G

In part one of a two-part interview, Qualcomm's licensing head Alex Rogers explains what he's taken away from years of high-profile litigation, doing deals in China at a time of rising geopolitical tensions and running a multi-billion-dollar business during a global pandemic

Next month we'll be releasing our top 40 market makers listing: *IAM's* annual ranking of the leaders who shape the industry that we cover on a daily basis. It will come as a surprise to no one that [Alex Rogers](#), president of Qualcomm Technology Licensing (QTL), will once again feature in the list's upper echelons.

As the head of an operation that regularly brings in more than \$1 billion in revenues each quarter, there's no doubt that Rogers has one of the biggest jobs in corporate IP. In recent years, it has also been one of the most challenging roles. Qualcomm's licensing practices have been placed under close scrutiny in courtroom fights with Apple and the Federal Trade Commission, and in several regulatory investigations in Asia.

With the waters now appearing calmer and the rollout of 5G picking up pace, and facing the unique the challenge of running QTL during the covid-19 pandemic, Rogers sat down virtually with *IAM* to reflect on the last few years and the challenges and opportunities that await. What follows is part one of our interview. Part two will follow tomorrow.

What has it been like running QTL during this global pandemic?

You know, it has been really interesting. Nothing has slowed down. When you are talking about negotiations, we had to adapt to virtual negotiations as opposed to face-to-face and everybody who gets involved in negotiations, whether it is IP licensing or some other form of negotiation prefers face-to-face contact, but we have had to adapt to virtual negotiations, which has worked. But in terms of running the business, the QTL side just like the product side, we immediately transferred over to working remotely actually without a hitch. The company did a phenomenal job and nothing has slowed down. In fact, the workday was so long and so intense as soon as we transferred over that we actually had to build in mechanisms to slow it down a little bit or our people would burn out. And so, the transition was pretty seamless.

And the innovation pipeline, has it changed things at all for the company at that level?

In fact, the innovation pipeline has sped up. That is something that we obviously wouldn't slow down and, and what has happened is that our invention disclosure forms jumped when we went to remote working; and, we have essentially had at least a 30% increase in new innovation coming into the pipeline for consideration for patent prosecution, patent filings. And when you step back and you think about it, it is not all that surprising because when you eliminate all of the extra activities that take up an engineer's daily life, including commuting and significant travel and all of the other things that take up a lot of your day, it leaves them more time to sit down and put pen to paper and work on new innovations. And the engineers have found ways to collaborate, because a lot of innovation is collaborative among teams and so they have found ways to collaborate virtually to continue the pipeline. So, actually our innovation pipeline has increased, and it increased immediately once we started working from home.

Let's look at 5G because obviously that colours so much of what you are about now. How do you gauge your progress so far in putting deals in place in the 5G universe?

Well, I think the only way to describe it is that we have been very successful. When you look at the handset space, we have 5G agreements with virtually every major handset manufacturer in the world. And so since we launched our 5G programme at the end of 2017, we have been extraordinarily successful in signing up 5G agreements with all the major manufacturers and we have what are very good long-term 5G agreements in place. In addition, when you look at our overall set of agreements, because as you know we license not just in the handset space but essentially any cellular device, we have over a hundred 5G agreements in place. So it has been extraordinarily successful and that is not by accident. When you look at Qualcomm's position in driving and developing 5G technology, we have spent many, many years

researching and developing the fundamental technology. When you look at the key elements of 5G, release 15 and then 16 and 17, Qualcomm has really developed these key elements that enable what we think of as the advantages of 5G. We have a very, very strong portfolio associated with that. And we put a lot of thought and preparation and effort into moving forward with our 5G licensing programme and it has been quite successful.

How does it compare with previous G's, both from your experience, but also in the way that the standards have rolled out more generally?

The commercialisation of 5G technology has happened much more rapidly than the commercialisation of 4G technology. Across the world, you have had operators basically in every major market and companies from the device side to the infrastructure side as well as companies interested in unique deployments of cellular in the 5G space such as industrial IOT, very focused on taking up 5G quickly. Qualcomm has been involved in essentially every major launch of 5G across the world. We work with every infrastructure supplier. We work in well over 35 countries around the world and the development has happened very, very rapidly. Some countries are moving faster than others. If you look, you will see that China and the US I think are moving a little faster than Europe. Korea and Japan are moving quickly, but the rollout has been quick and successful, and I would include mobile millimeter wave as part of that. There had been some scepticism early on that mobile millimeter wave was not technically feasible, but not only is it technically feasible, it is commercially deployable and I think we're proving that in the US and elsewhere.

You came into the role and quite quickly the company was in the headlines for slightly the wrong reasons. What have you taken from that period?

We faced a lot of challenges and I stepped into the role before becoming part of QTL in the regulatory matter we had in China and did a lot working with the regulators there. That then translated into stepping into the role more formally in 2016 and then permanently towards the end of 2016. The company was facing a lot of challenges and it was roughly six years of just laser focus on working our way through them. I probably spent as much time as anybody else on the planet sitting down in rooms with competition authorities and trying to explain to them our business and the pro-competitive effects of our business and to reach resolutions where resolutions could be reached.

If there is anybody else on the planet that spent more time, I would like to meet them, we would probably have good stories to tell. This sounds a little bit odd, but between that and the litigation, I actually enjoyed it. It was a really good challenge and there was a lot of work to be done and we had a path that we saw to work our way through this and we did.

The Ninth Circuit Decision in the FTC case came out as well as could possibly be expected. The litigation turned out well, key negotiations turned out well and we were able to resolve some of the regulatory matters, but not others.

The Korea Fair Trade Commission (KFTC) matter is still on appeal, but overall I think we did a tremendous job in working through those challenges and frankly I was just happy to be part of that effort. I enjoyed it.

Did it help that your background is as a litigator?

Yeah, it did. I mean, that is why I was involved to begin with and I think it did help. Look, it's not like I have any tremendous skill sets. As you may know I'm not an engineer and prior to taking over QTL, I wasn't a licensing lawyer. I was just a litigator and litigators are adaptable and so I adapted.

You and others have spoken in the past about the eastward drift of the wireless market and you have been very successful in putting deals in place in China. What have you learnt from doing business there?

One of the things that Qualcomm has learned in doing business in China is you have to have a strong presence in China. You have to have a very credible presence in China, and we do both companywide but also within QTL. For example, our current QTL general manager in China - Dr Kun Qian - has been in the country for a long time and has worked with the product business. Really understanding your licensees and your customers is very, very important. One of the things that we know, I'm not sure that we had to learn it, is that relationships really matter in China.

You have many, many companies that are extraordinarily entrepreneurial and very, very focused and competent and not just from the product side, but also from the licensing side. It is important to them that you understand what is important to them strategically and that, and that there is a give and take in the relationship so that both parties can move forward successfully. We care a lot about that aspect of the relationship. For us, it's not just a transactional matter. We want to see our licensees succeed, not just in China, but elsewhere and so enabling our licensees is a big part of what QTL does. And we do a lot around that.

The other thing that is important is you have to be credible from a technology perspective and from an IP perspective. We are obviously technologically very deep and people understand that our portfolio is very significant. and so that foundation always has to be there, and relationships count for a lot and we pay a lot of attention to mutually beneficial strategic outcomes.

The geopolitical climate between the US and China has changed in the last three years. You are obviously a global business, but you are also a US headquartered business so have you noticed a change in tone at all when doing business in the country?

Well, everybody knows that the context is there. But, you know, people in business want to keep doing business. You want to keep moving

forward and so there is a certain amount that you have to pay attention to, but, at a certain point, you have to remain focused on business and on moving things forward. That's particularly true with where we are in the technology transition. We have licensees and customers that are very, very focused on ensuring that they continue to move forward in their markets. The context is there, but at a certain level, you just have to focus on driving the technology forward and driving the business forward.

You spoke a few years ago at an [event in DC](#) and talked about one view that you had heard in China which was that the US had been shooting itself in the foot when it came to protection of IP rights and the stewardship of the US patent system. Do you think that is still the case?

It would be interesting to take a look at that talk from a few years ago and then take a look at things as they have evolved now. I think the pendulum has swung a little bit. One of the reasons I gave that talk is because I was obviously concerned. I was concerned that when you look at the type of innovation that we engage in and the type of intellectual property that we care about and the incentives to continue to drive that innovation and maintain some value associated with that intellectual property, that was being eroded, that was being undermined. When you look back in history both in the US and Europe and elsewhere, it is obvious that prosperous societies care a lot about maintaining the health of the ecosystem where innovation is supported and incentivised by patent rights.

I was deeply concerned that that had gone through many, many years of erosion and ideas and policy positions that were being advocated, particularly with respect to cellular standard essential patents, were just wrong, had no basis in law and from a policy perspective, from an innovation perspective, from the point of view of long-term health of technology development in our space, were just absolutely toxic to them. We were essentially injuring ourselves, while other markets and other economies like China and India were looking at it exactly the opposite.

They were looking at it the way that we looked at it some years ago and understood the value and were actually building patent systems that protected innovation and encouraged innovation and that we were simply being foolish in the way that we were moving forward. I think the pendulum has swung a little bit, and when you look at some of the recent decisions in the US and in Europe, people are beginning to recognise that some of these arguments that were designed to simply undermine the value of intellectual property associated with cellular standards were specious, just simply had no merit, and some of those arguments are beginning to fall by the wayside.

It is creating a healthier environment, which I think will endure to the long-term benefit of these markets and these economies. And it couldn't happen any sooner because when you look at those arguments that have been made, they have mostly been made in the battle between SEP holders and handset manufacturers. But 5G is not just about handset manufacturers.

Developing this technology over the next decade and then developing the technology beyond the next decade is about everything else. It is about connecting everything else outside of the handset space and it is really important that we don't undermine the incentives to continue to drive that research for the benefit of these other industries as 5G basically goes out and connects everything. So I think that there has been some balance restored to this system and some common sense has prevailed in some of these recent decisions we have seen.

Is it too soon to see that balance, that righting of the pendulum, impacting the licensing discussions you are currently having? Do you notice a difference?

I'll go back to a statement I made previously. Even in the midst of all of the challenges that we were facing, even while the FTC case was still pending and we hadn't received that Ninth Circuit decision, we were able to organise our licensing programme and drive forward and have success in licensing 5G. The fundamental reason is that Qualcomm's leadership in developing 5G technology is well-known in the industry, and also we were able to demonstrate the strength of our portfolio associated with those key innovations in 5G.

Still, I think that it is important that some of these decisions are coming out because it provides validation to the things that we have been saying all along. For example, the Ninth Circuit decision essentially validates our business model, which we have been arguing is pro-competitive and really good for the enablement of innovation on top of the technology that we create. And then some of these other decisions have come out, for example the Daimler decision in Germany, and some other decisions that basically have dispensed with some of the arguments that we think had no basis whatsoever, but were potentially destructive of incentives to innovate in this space. So, the validation is helpful in contributing to what we see as a kind of a stability that we have created in our licensing programme.

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Qualcomm's Rogers - if it ain't broke, don't fix it should be the rule when it comes to standards bodies

In the second instalment of our exclusive interview, Qualcomm's licensing chief talks about why we won't see a dramatic about-turn in US SEP FRAND policy, looks at the rise of a new litigation playbook and explains why there's more work to be done on developing licensing strategies for device makers in the Internet of Things

Yesterday we ran the first part of our two-part interview with Qualcomm's licensing head Alex Rogers which covered improving conditions for SEP owners, the rise of China and heading a multi-billion-dollar business during a pandemic (you can see part one [here](#)). Today we have part two in which he talks more about SEP policy in the US, the role of arbitration in settling global FRAND fights and licensing in the Internet of Things (IoT).

You've spoken about the pendulum swinging back a little bit, and part of that is down to the Department of Justice's antitrust division. The division's head has made several decisions, which are in effect a 180 degree turn on some of the policy positions of the Obama Administration. To what extent are you concerned that should we see a change in Administration that we see another kind of whiplash in SEP FRAND policy?

You have probably as good a crystal ball as I do and I'm not expecting a whiplash. Here's why. I think that as we have emerged from the narrower context of SEP-related issues associated with handsets, people are beginning to see the full scope of the value of this technology for the rest of the world outside of the handset space. I think it is easier for us to make the arguments that you should not do things that artificially disincentivise the very few companies that are left in the world who do this research.

I am now able to have conversations with folks that are interested in policy and help them understand the broader implications of this and they seem to have shifted away from some of these arguments that were made in the smartphone handset space and begin to see some of the flaws in those arguments. For example, take license to all.

It wasn't that long ago when I was very, very vigorously trying to help policymakers and other folks understand that the notion of having to license everywhere up and down the value chain made no sense whatsoever and actually would disable, as a practical matter, the ability to engage in licensing. And I was struggling to convince folks of that despite the fact that this seemed so obvious to me.

Whereas recently I had conversations and I've heard policymakers say, "yeah, of course that doesn't make any sense". I'm like, okay, I'll stop talking because now you see it doesn't make any sense, because I think as people understand the potential for 5G and what it means to the world outside of the handset space they are beginning to see the full view of some of these arguments that have been made in the past and really kind of what they are designed to do.

So there has been a pendulum shift and I don't expect that to shift too far back the other way if it does at all because I think one of the things that we have managed to get through is the massive consternation over NPEs and patent assertion entities. And we've begun to sort out the clutter and understand that if we simply organise our innovation policy, particularly with respect to patents around that concern, we are not going to develop a policy plan that is good for the long-term, and people are beginning to see that.

In addition, I think the consternation over tech has shifted to a different concern, a much more kind of centre stage concern if you look at the recent House report on Big Tech platform companies. So there is a shift in focus as well, and then when you look at some of the decisions that have come out recently, again, some of these issues have just been put to bed by some of these decisions. There will always be debate because there are legions and legions of lawyers out there on one side or the other who go out and create whatever arguments they create and so there will always be debate, but I think there has been some shift in focus on some of these things.

Just sticking on that debate, we've seen in recent years the rise of the anti-suit injunction and the anti anti-suit injunction, and a complex litigation playbook now that covers SEP FRAND licensing. How concerned are you that this now colours getting deals done, that it becomes a race to national courts of choice to try to hit out at the other side and stymie its efforts?

That is a concern and we have to see how that plays out. The race to the courthouse has always been an element of patent litigation to some extent. But once you start bringing in the notion that worldwide FRAND determinations, in the context of evaluating the appropriateness of injunctive relief, become acceptable, well then it becomes a little bit more of a heightened concern. Of course, it really depends on the outcomes. I mean, it really depends on whether or not these global companies can get good, fair hearings and results, whether they are in one jurisdiction or another.

So, we will see how that plays out, but you are right, there is complexity, but again I come back to some of the substantive issues that were purposely designed to essentially destroy the value of this innovation and the intellectual property associated with it. Some of those arguments have just been thoroughly rejected at this point in time. For example the smallest saleable patent practising unit (SSPPU).

Even Judge Radar, who first articulated the concept of SSPPU in HP versus Cornell, stated in that case and then stated later when he was off the bench that that was just an evidentiary ruling to basically guide what type of information an expert could provide to a jury. It is not a rule that determines how you should value portfolio licensing, for a portfolio of patents including SEPs. But people just ignored that until finally the Federal Circuit and other courts including the Ninth Circuit have said exactly what I just articulated from Judge Radar's perspective.

It was a live issue for years and years, even though the argument about SSPPU was just completely dead wrong. But it has been finally rejected, so it is good to see some of those things being rejected because again, the destructive effect is actually bad. It is bad for the industry and it is bad for other industries that are looking to essentially take advantage of what is extraordinarily valuable essential technology underlying these standards.

To what extent do you think there is a role for standard setting organisations, such as ETSI, to play here to clear up what might be some remaining ambiguities between licensors and implementers?

I don't really know that there is a role. Maybe this is too simplistic, but I kind of have a perspective with ETSI that if ain't broke, don't fix it. ETSI's IPR policy regarding FRAND, under French law, has been in place during the rollout of one of the most successful technology platforms in human history. To the extent that we are talking about problems or issues, if you look at the big picture, this has been massively successful. When you start tinkering with an IPR policy that has resulted in or accommodated or accompanied a massive technology success and will be even more successful, exponentially more successful, why would you want to tinker with that? Because it just opens the door for essentially all of the type of advocacy, which is frankly just specious, that I've been talking about.

When you look at the full scope of what has been enabled here I don't think that it makes sense to tinker with the ETSI IPR policy or try to improve on it. And you saw what happened with the IEEE. With the IEEE there was a change in the policy and what did they do to it? They created an IPR policy, a FRAND policy that was simply designed to make licensing impossible.

If you had to walk through all the tests, all the hoops that were associated with the factors in that FRAND policy, at the end of the day, you would never get to agree on a licence. It just wouldn't happen, you wouldn't get there and it was designed to do that; and so with this IEEE letter the DOJ came out with recently saying, "hey, by the way, you are not in step with current law, you might want to rethink this", I think that is right. They certainly took a policy that was fine and they made it into a policy that was bad. So, you know, that didn't help them from an innovation perspective.

A fellow SEP licensor, Bill Merritt CEO of InterDigital, has declared his support for arbitration as a way of settling SEP FRAND disputes. Do you think that there is a space for perhaps a global adjudicatory body using arbitration or another form of alternative dispute resolution to settle some of these big global fights?

I certainly think that arbitration has a role to play. There is no question about that. Arbitration is efficient and if the parties want to arbitrate, that is a good, less hostile, less litigious way to resolve a licensing issue. Whether or not a single body should be designated as the arbiter of arbitrations from here on out, I don't know. That there is a kind of flexibility that, parties have right now to make choices about arbitration and, where and who and that sort of thing which is not a bad thing; but I certainly think arbitration has a role to play, sure.

You have spoken of how 5G is about opening up the connectivity to other industries and obviously the IoT is at the heart of that. How do you see that universe, as it becomes connected, changing licensing for you and others?

There are possibilities to change the way in which you license depending on what emerges in the IoT space. Qualcomm has been involved in licensing in the automotive space for telematics for quite a long time, over ten years. And I think for example that the sorts of issues that have been part of the current litigation disputes in the automotive space, can all be solved. One of the things that SEP holders can do, is that they can communicate with other industries, to understand what is of concern in other verticals with respect to taking licences as they adopt 5G technology.

They can help these other industries understand what is important to key research companies in our space, and see if we can reach compromises that will stand as industry precedent on an industry basis. But that doesn't mean that if you reach a compromise on how to do SEP licensing in a particular vertical like automotive that it needs to necessarily or has to necessarily or is somehow a matter of law or FRAND principles, which become the way that it happens in a different industry. There needs to be flexibility industry to industry. We don't need to have the same level or kind of litigation that we had in the smartphone space. So I think there are opportunities to engage vertical by vertical and see how we can work through this.

Can you do that? Because we're talking about a step change in connectivity if you just look at the opportunities that might develop say over the next two decades. Can you build licensing around the same kind of bilateral deal model that you have done with handset makers so far?

When you get into, the really fragmented IOT spaces, it becomes more difficult. There is no question. So it really depends on which area you are looking into. In the automotive space, yes, I think solutions can be reached that are good for both SEP holders and the automotive industry. Again, in very fragmented IOT spaces, I think there is work to be done and I think it is just upside both for implementers and also for companies that want to continue to drive the research and have a reasonable licensing programme. But I do think there is work to be done to try to figure out how that is practical and how that is feasible and it is worth exploring different ways to do that. I can't tell you that we've got it all sorted out in these more fragmented IOT spaces, you know, looking forward five years from now.

Thanks Alex, that has covered pretty much everything I wanted to address is there anything else that you wanted to add?

I really want to emphasise how the company dealt with those challenges you mentioned earlier was extraordinary. All across the executive team and the other folks within QTL and legal that worked on all these issues. Our CEO Steve Mollenkopf likes to say, 99% of the company was focused on developing new technology and great products and there was a small group of people that focused on dealing with these challenges. He organised the company really well to do that. And we never would have gotten through this if we didn't have a CEO who had tremendous backbone, tremendous courage, tremendous foresight, and is a terrific leader along with a bunch of other folks that contributed.

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