

EMERGING LEGAL ISSUES

The importance of the search

Background: Companies are always concerned about patent infringement. No one wants to spend time and money creating a new product only to discover someone else has rights to it. But fear of a judgment of willful patent infringement, which can triple the damages a defendant has to pay, has caused some businesses to avoid patent searches altogether. “I have seen attorneys advise new companies to ignore the whole patent research process,” notes Douglas Kline, a partner in Goodwin Procter’s Intellectual Property Group. “They think that you can’t be a willful infringer if you don’t know about the existing patents. In my view, that is really bad advice.”

Case in Point: Willful infringement concerns are not limited to start-up companies. For eight years, Microsoft has spent millions battling Eolas over the use of plug-in technology Microsoft used in its Explorer browser program. In August 2003, Eolas was awarded \$521 million in damages. The Supreme Court has refused to hear Microsoft’s appeal, leaving intact the Federal Circuit Court of Appeals decision in favor of Eolas with respect to overseas sales of Microsoft Windows.



Lesson: “Patent searches are absolutely necessary and should be done early,” Kline says. “That way, if you identify a patent relating to your product that appears to be valid, you can deal with the patent in the engineering or business process, rather than in litigation. If the patent presents a conceivable risk, but you believe it is not valid or infringed, you can get a written opinion from an attorney confirming that, which can protect you against a finding of willful infringement.”

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On My Radar Screen

THE PREDICTIONS

Words and Pictures

“Cell phones will start to evolve into the 5-7 megapixel (MP) range in less than two years. Cell phones are already being equipped with 3.2 MP cameras and lenses from the likes of Carl Zeiss. This means camera phones can both surf the web and take a decent photograph. It also means that there is another point of failure in an ‘all in one’ digital product.” —*Sincevich*



Monitoring the Home Front

“Home automation is going to be huge! So many people are working longer hours or traveling more and would like to be able to control the settings on their home from a remote

location. Not only does it save on electric bills, it also makes your home a lot more secure from potential dangers like fires, floods and burglars [when you monitor your home remotely]. I can tape TV shows through my computer at work on my TIVO at home.” —*Drum*



Less is More

“Everyone talks about convergence at the Consumer Electronics Show, but the result is usually feature-bloat—devices with more buttons, options and features that no one can understand. We believe that simpler products like the Jitterbug phone with fewer features will constitute an important trend. It’s actually incredibly hard to design simple technological devices because everyone knows

that the incremental cost of one more capability is low. So the hard part is saying ‘no’ and opting to design products that don’t require instruction manuals.” —*Mills*

THE EXPERTS

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