

Patent Briefing

Open Software and IP Issues:

WHEN PATENTS MEET THE INTERNET

Immediate access to information, over the Internet, has changed the way we work. The patent system, which for decades has worked to protect inventors and their work, has struggled to

keep pace with the technological and operational changes that the Internet presents. The result is that the use of the patent system in connection with the Internet has become controversial. Do patents help or hinder the cause of progress in this global information environment?

The World Wide Web famously originated at CERN (Europe's centre for research into nuclear physics, based near Geneva in Switzerland). Their system for sharing information was based around the use of:

- *HTML (HyperText Markup Language) to write the web documents*
- *HTTP (HyperText Transfer Protocol) to transmit the pages*
- *URLs (Universal Resource Locators) to identify the pages, and*
- *Web browser client software programs to receive and interpret data and display results.*

No attempt was made to patent any of these features, and so they are available, royalty-free, for all to use. The last ten years have seen exponential increases in the numbers of websites and web users, and have also seen a large amount of commercial interest in innovations which either rely on the Internet, or allow users to get more out of the Internet. Many of these innovations have been patented, and it is interesting to compare the effect of some of these patents.

It is certainly true that the unpatented features, which are the building blocks of the World Wide Web, were widely adopted very quickly. Would they have been adopted so widely if royalties were payable for their use? Impossible to say, but it's interesting to speculate, and to speculate too about the level of royalties which CERN might have collected, if it had patented any of the key features of the World Wide Web. Whatever figure you arrive at, it's easy to see that a significant amount of nuclear research could have been done with the royalties!

More recently, some companies have obtained patents on Internet features which have become central to certain types of Internet use which have then been used widely by Internet users. In the most extreme case so far, a US court ordered Microsoft to pay Eolas Technologies \$521 million damages, after Microsoft's Internet Explorer® product was found to infringe Eolas's US Patent No. 5,838,906, relating to the use of a browser program to access and execute an

embedded program object. This illustrates the level which damages can reach, if a successful product is found to infringe a patent. Microsoft planned to modify its product to avoid infringement of the patent, but this would have meant that millions of existing web pages could not then have been read by the modified product. In March 2004, the US Patent Office issued a preliminary finding to revoke Eolas's patent, after a re-examination started in response to an outcry from the industry. Unfortunately for Eolas, this case illustrates two further facts about patents. Firstly, no patent can ever be guaranteed to be valid. Secondly, the more money you try to make from your patent, the more incentive people have to try and prove that your patent is invalid. A final decision in the Eolas case is expected this autumn.

In another notorious case, which also provoked widespread industry concern, the online retailer amazon.com obtained US Patent No. 5,960,411 for its "One-Click" method of placing an order, and sued its competitor Barnesandnoble.com for infringement of the patent. In this case, the concern appears to have been overdone. Pro-patent and anti-patent activists alike sometimes perceive patents are more powerful than they really are. Barnesandnoble.com may have infringed the patent, but this did not lead to the end of e-commerce as we know it nor to the collapse of Barnesandnoble.com. Rather, they modified their system so that the user was required to make two clicks, and so avoided future infringement.

So how powerful was that patent? It would be very unusual for a single patent to allow its owner to monopolize a whole industry, and amazon.com's "One-Click" patent certainly hasn't allowed it to prevent all competition in online retailing. But perhaps it has given it a small edge over its competitors by allowing it to have the more user-friendly interface? As such, the patent may play a useful part in an overall business strategy, and this would seem to be a more realistic aim than world domination!

More recently, BTG sued both Microsoft and Apple over alleged infringement of patents owned by TeleShuttle

"...patents are available for inventions which use the Internet..." Technologies. BTG has exclusive licensing rights to the patents which relate to software updating performed over the World Wide Web. According to BTG spokesperson Christopher DeFusco, the patents cover not only software upgrades but, arguably, refreshing the content

"...the use of the patent system in connection with the Internet has become controversial..."

"...amazon.com's "One Click" patent hasn't allowed it to prevent all competition in online retailing."

of web pages. Thus, many other Internet companies may find themselves in BTG's sights.

These examples show that patents are available for inventions which use the Internet, and so companies who are not considering how best to protect their innovation in relation

to Internet applications may lose out to those who are. Not all inventions are worth hundreds of millions of dollars, but companies should consider patenting in order to protect any invention which gives them the edge over their competitor.

For advice on computer and software patents and copyrights contact any of the IP attorneys listed below.



JAMES SUNDERLAND, Partner – Munich
UK and European Patent Attorney
Oxford University Honors Degree in Physics (Electronics and Solid State Physics)

Email: jsunderland@haseltinlake.com
Tel: +49 (0) 896 227 1760



TIM STEBBING, Partner – Leeds
UK and European Patent Attorney
Edinburgh University Honors Degree (Physics with Electronics and Computing)

Email: tstebbing@haseltinlake.com
Tel: +44 (0) 113 233 9400



CHRISTINE FENLON, Partner – London
UK and European Patent Attorney
London University, Imperial College of Science and Technology and Medicine, (Physics)

Email: cfenlon@haseltinlake.com
Tel: +44 (0) 207 420 0500



DAVID O'CONNELL, Partner – Bristol
UK and European Patent Attorney
Oxford University Engineering Science Degree (Electrical and Electronic Engineering)

Email: doconnell@haseltinlake.com
Tel: +44 (0) 117 910 3200



CHRISTOPHER GIBBS, Partner – Leeds
UK and European Patent Attorney
Cambridge University Honors Degree in Natural Sciences (Physics)
Six years as a Search Examiner with the EPO (Semiconductors)

Email: cgibbs@haseltinlake.com
Tel: +44 (0) 113 233 9400



MATTHEW HITCHING, Partner – London
UK and European Patent Attorney
Cambridge University Engineering Degree (Electrical and Information Sciences)

Email: mhitching@haseltinlake.com
Tel: +44 (0) 207 420 0500



CHRIS VIGARS, Partner – Bristol
UK and European Patent Attorney
Oxford University Honors Degree in Engineering Science (Electrical/Electronics and Computing)

Email: cvigars@haseltinlake.com
Tel: +44 (0) 117 910 3200



STEVE MOHUN, Partner – Leeds
UK and European Patent Attorney
Sheffield University (Physics and Electronics)

Email: smohun@haseltinlake.com
Tel: +44 (0) 113 233 9400



SIMON REES, Associate – Bristol
UK Patent Attorney
Glamorgan University Honors Degree (Electrical and Electronic Engineering)

Email: srees@haseltinlake.com
Tel: +44 (0) 117 910 3200



FRANCES WILDING, Associate – London
UK and European Patent Attorney
Brunel University Honors Degree in Manufacturing Engineering
(Accredited Institutes of Production, Mechanical and Electrical Engineering)

Email: fwilding@haseltinlake.com
Tel: +44 (0) 207 420 0500



BEN BILLINGTON, Attorney – Leeds
UK and European Patent Attorney
Liverpool University Honours Degree (Electrical Engineering and Electronics)

Email: bbillington@haseltinlake.com
Tel: +44 (0) 113 233 9400



ALISON CLARKE, Attorney – Bristol
UK and European Patent Attorney
Bath University Honors Degree (Electronic and Communication Engineering)

Email: aclarke@haseltinlake.com
Tel: +44 (0) 117 910 3200



MANUELA NETTINGER, Attorney – Munich
German Patent Attorney
Technical University of Munich, Diploma in Physics (Dipl.-Phys. Univ.)
(Electronics, Medical Physics and Technical Thermodynamics)

Email: mnettinger@haseltinlake.com
Tel: +44 (0) 896 227 1760



LIZ COOPER-ROLFE, Attorney – London
UK and European Patent Attorney
Bristol University Honors Degree in Physics (Optical Communications, Medical Sensors and Instrumentation)

Email: erolfe@haseltinlake.com
Tel: +44 (0) 207 420 0500

Email hl@haseltinlake.com www.haseltinlake.com

London: Imperial House, 15 – 19 Kingsway, London WC2B 6UD
Tel: +44 (0) 207 420 0500 Fax: +44 (0) 207 420 0500

Leeds: West Riding House, 67 Albion Street, Leeds LS1 5AA
Tel: +44 (0) 113 233 9400 Fax: +44 (0) 113 233 9401

Munich: Rosenheimer Strasse 30, D-81669 Munchen, Germany
Tel: +49 (0) 89 6227 1760 Fax: +49 (0) 89 485 686

Bristol: Redcliff Quay, 120 Redcliff Street, Bristol BS1 6HU
Tel: +44 (0) 117 910 3200 Fax: +44 (0) 117 910 32001