



De La Salle University
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Introduction to the IT Profession and Ethics CSETHIC

Intellectual Property SY 2017-2018 T1

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Table of Contents

Software Copyrights	1
Introduction	1
Case Description	1
Discussion	2
Conclusion	2
References and Appendix	2
Software Patents	3
Introduction	3
Case Description	3
Discussion	3
Conclusion	4
References and Appendix	4
Cross Licensing Agreements	5
Introduction	5
Case Description	5
Discussion	6
Conclusion	
References and Appendix	

Software Copyrights

Introduction

Copyright, as defined in oxforddictionaries, is “the exclusive legal right, given to an originator or an assignee to print, publish, perform, film, or record literary, artistic, or musical material, and to authorize others to do the same.” Infringement of that copyright or Copyright Infringement would be the violation of those terms and agreements.

The case between Apple Computers, Inc. and Microsoft Corp. was argued in the United States on July 11, 1994. This case focuses on Apple trying to protect the visual graphical user interface (GUI) of both the Lisa and Macintosh Operating Systems from Hewlett-Packard (HP) and Microsoft. (Apple, 1994)

In this case, I will point out the misconceptions on software copyrights of Apple Computers, Inc. as unethical for the following reasons:

1. Using Software Copyrights as an advantage against competition.
2. False accusations to competitors.

Case Description

The main characters of this case are namely Microsoft Corp. and Apple Computers, Inc. but the following companies are also affected in this case namely Hewlett-Packard and Xerox Corp. The case was filed around the time Microsoft made changes in Windows 2.0 from Windows 1.0 where Apple had agreed to license some GUI elements for Microsoft's use where then Steve Jobs went ballistic over Bill Gates (Pirates of Silicon Valley, n.d.). Apple claimed that the general idea and feel of the Macintosh Operating System as a whole was a copyright infringement and stated that the elements of the GUI individually did not matter. Apple has listed 189 elements of the GUI to be claimed under the licensing for Windows 1.0 but 10 of these were stated as uncopyrightable by the court. The court then required a standard for “Virtual Identity” from Apple to support their claim of copyright infringement by Microsoft. Which led to a decision that made the case for copyrighting the “look and feel” of their GUI favor Microsoft. (Andrews, 1993) Apple pointed out that the court only considered the individual elements of the GUI for infringement and not as a whole where then the court replied and established that “almost all the similarities spring either from the license or from basic ideas and their obvious expression... illicit copying could occur only if the works as a whole are virtually identical.” (Apple, 1994). Apple eventually lost the case for failing their claims on originality as they also have licensed elements from Xerox.

Discussion

The case revolved around Apple's attempt to somewhat abuse the copyright agreements for their Visual Graphical User Interface elements and ultimately failing. With the case targeted to Microsoft and the ironically similar case that was filed by Xerox targeting them, antagonizing Apple to a role that looks like it's taking advantage of its competition.

- Apple trying to claim copyrights for something as vague as “Feel”

Apple’s claims were very vague and generalized which placed them in a role that made them seem to colonize the idea of a dynamic interface with features to be unique only to them. It made them look like they were hoarding the ideas and selfishly protected them for their own use only to make a profit.

- Apple being a hypocrite in its claims

The poetic case of Xerox against Apple for copyrighted Visual Graphical User Interface elements placed Apple in a position where winning the case against Microsoft would give more than enough reason to lose in the case that Xerox filed. Since Apple claimed that the “Feel” of the GUI as a whole is copyrighted and was violated by Microsoft, it would then put the company guilty for doing almost the exact same thing with Xerox.

Conclusion

Apple attempted to abuse the copyright system on their Visual Graphical User Interface against competitor companies such as Microsoft and Hewlett-Packard with something as vague as the “feel” of the interface. This abuse of the copyright system is definitely unethical no matter how Apple could put it in.

References and Appendix

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Software Patents

Introduction

According to Tibken (2014), Samsung was sued by Apple for infringing copyrights. The copyrights included Apple's slide-to-unlock feature, and its quick links feature, both of which are patented by Apple, and present in the iOS ecosystem. This was a big issue a couple of years ago, and was the start of many copyright issues between the two companies.

The case between Samsung and Apple concerning the slide-to-unlock feature took place in the USA. The USA Supreme Court ruled in favor of Apple, as they proved that it was in the original iPhone design.

In this case, I will argue the unethical and ruthless use of patents by Apple. They have not only used patents to handicap other competing companies, but also to blackmail companies to go their way.

Case Description

The case was between the two mobile giants, Samsung (Android) and Apple (iOS). Samsung was ruled to have infringed the copyrights, but was later on overruled nearly two years later, only to be reinstated after a year. In the end, Samsung conceded to Apple, but stated that Apple's abuse of the patent system hinders innovation, and allows the company to "unjustly profit" from the patent.

Discussion

The case revolves around the abuse of Apple of the patent system to a then growing mobile market. Back then when fingerprint scanners, face ID, and other biometric security were yet to be developed, Apple used this chance to patent the most convenient way of unlocking the phone. As stated by the Samsung representative, this hinders innovation and allows Apple to profit from growing competition around them.

- **Apple as a Patent Bully**

Apple uses its patents to bully other companies. According to O'Connor(2013), Steve Jobs uses patent lawsuits as a threat if his business partners do not comply with his demands. When Jobs went against former Palm CEO Edward Colligan, he threatened to go through with patent lawsuits against him, and when Colligan replied that he was not threatened by Jobs' statement, Jobs made a passive-aggressive statement that could translate to: "We are a large company and we will have no problem paying a lot of money for patent lawyers to pursue you, regardless of its legality."

- Apple handicapping the market with its patent

Apple handicaps its competitors by patenting every single detail of their design. Like the feature slide-to-unlock, there's no reason to go after another company just because of a lockscreen gesture, but instead they restrict the market and force them to apply another method of unlocking their screen that is less preferred by most people.

Conclusion

Apple has abused the patent system so that they could profit, or force other companies to move in their favor. They have gone to court with other companies over basic phone features, and even blackmailed companies to either do what they want, or they'll have patent lawyers take them to court. This use of the patent system is unethical and they should be the ones penalized for it.

Reference and Appendix

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Cross Licensing Agreements

Introduction

In 2001, IEX Corporation, a wholly owned subsidiary of Tekelec, Inc., sued Blue Pumpkin Software, LLC, for infringement of its [US Patent No. 6,044,355 \(the '355 Patent\)](#), but settled their dispute by entering the Blue Pumpkin/IEX Settlement and a cross-license agreement. According to uslegal.com, when used in the context of patents, a cross-license agreement is an agreement pursuant to which two or more license holders exchange licenses so that each party may benefit from the other's patent. With this, the two party are allowed to market commercial products made from both party's patents without having to pay each other.

The case is said to be done in the US District Court for the Eastern District of Texas, in mid-2009. The case focused on the breach of contract Ruling in Patent License Dispute filed by Tekelec Inc. against Verint System Inc. .

In this case I will point out Verint System Inc.'s unethical behavior by breaking an ongoing cross-license agreement with Tekelec Inc. .

Case Description

The two sides of the story are Tekelec Inc. and Verint System Inc., but the case started with IEX Corporation, a subsidiary wholly owned by Tekelec Inc. , suing Blue Pumpkin Software, LLC, for infringement of its [US Patent No. 6,044,355 \(the '355 Patent\)](#), but eventually they settled their dispute by entering into the Blue Pumpkin/IEX Settlement and Cross License Agreement (the Blue Pumpkin/IEX Agreement). One relevant agreement was "Blue Pumpkin would make six annual payments of \$500,000 to IEX beginning on April 1, 2007 (referred to in the opinion as the Section 6.1.2 Payments). " These payments became the subject of the later contract dispute. Blue Pumpkin timely made the initial payment of \$8,250,000 in the agreement. However, shortly after Blue Pumpkin and IEX executed the agreement, Tekelec sold IEX to NICE Systems, Inc. In a separate Assignment of Royalty Rights executed at the same time NICE acquired IEX, IEX assigned its right to the Blue Pumpkin payments to Tekelec. But before paying their first annual payment, Witness Systems, Inc., assumed all of Blue Pumpkin's rights and obligations under the Blue Pumpkin/IEX Agreement, including the license to the 355 Patent and the payment obligations. Witness made the first \$500,000 payment on April 1, 2007. After one month Verint System Inc acquired Witness and assumed all of Witness's rights and obligations under the Blue Pumpkin/IEX Agreement. Verint made the second \$500,000 payment to Tekelec on April 1, 2008. Fast forward a bit, after continuous progress in the agreement, in August 2008, Verint and NICE entered into the Verint/NICE Settlement Agreement and Covenant Not to Sue to resolve separate patent disputes between them. After a few months Verint System Inc. refused to make anymore annual payments to Tekelec Inc. after their third annual payment on April 21, 2009. Verint System Inc. claimed that the Non-accrual Clause extinguished its obligations to Tekelec. On February 13, 2013 , the Fifth Circuit affirmed the district court's grant of summary judgment in favor of Tekelec.

Discussion

The case revolved around Verint System Inc. breaching a contract it had inherited/ assumed from a business it had acquired with Tekelec Inc. after having a agreement with NICE System Inc., former owner of IEX Corporation, the original business who started the agreement. Breaching a contract that was assumed/inherited from a previous business is wrong and unethical.

- Verint System Inc. tried to use its agreement with NICE System Inc. to escape a contract with Tekelec Inc.

Verint System Inc. stated that the non-accrual clause extinguished its obligations to Tekelec Inc. , but this clause was an agreements between Verint System Inc. and NICE System Inc., which IEX Corporation gave all the authority of the old agreement to Tekelec Inc. , its old owner, meaning that NICE System Inc. does not have any power over the previous agreement.

- Verint System Inc's appeal

On appeal, Verint presented three theories about how Tekelec Inc. lacked the ability to enforce rights to the disputed Section 6.1.2 Payments, each of which the Fifth Circuit rejected.

First, Verint argued that IEX only assigned the limited and discrete right to receive the payments to Tekelec, not the power to enforce those payments against Blue Pumpkin or its assigns. The Fifth Circuit rejected this argument, noting that Texas contract law does not require that a promise to pay be accompanied by an express grant of enforcement authority.

Verint next argued that because the Blue Pumpkin/IEX Agreement set out termination as the only remedy for failure to pay, IEX (and therefore its assignee Tekelec) did not have the right to enforce the payments. However, the Fifth Circuit found nothing in the Blue Pumpkin/IEX Agreement requiring termination to be the exclusive remedy for non-payment and therefore preventing Tekelec from enforcing its inherent right to sue for contract breach. It noted that under Texas law, a court should not construe a specified remedy within an agreement as an exclusive remedy unless the parties clearly indicated or declared it to be exclusive.

Finally, Verint claimed that IEX retained the right to terminate the Blue Pumpkin/IEX Agreement and it therefore would be inconsistent to allow Tekelec to sue for the non-payment of royalties that IEX was entitled to distinguish. However, the Fifth Circuit found nothing in the Blue Pumpkin/IEX Agreement giving IEX the unilateral right to terminate the agreement.

Conclusion

Verint System Inc. misused its agreement with NICE System Inc. to try to escape or end an ongoing contract it had with Tekelec Inc. This case was taken to court and was proven to be illegal by the Fifth Circuit. The court asked Tekelec Inc. to clearly define vague terms and conditions in the agreement and proceed to finish the agreement between the two companies. Verint System Inc. should have been penalized for this misconduct they have done.

References and Appendix

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