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Court Takes on Software Patents

Microsoft Case May Have Global Reach

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The name alone -- Microsoft *v. AT&*T-- conjures a galactic showdown. And the legal battle over a patent dispute that unfolded in the Supreme Court yesterday brought together elements of an epic.

Millions of dollars, at a minimum, ride on the outcome. The companies have hired two of Washington's most prominent Supreme Court gladiators, who together have argued nearly 100 cases before the high court, to present their cases. Some justices were on the edges of their seats as they absorbed a mind-bending blend of law and abstract thought, of computer-code poetry and patent-law banality.

The case even involves a "golden disk."

So what if that disk only contains Microsoft's Windows operating system?

"I hope we can continue calling it the golden disk," Justice Antonin Scalia said, when one justice blandly referred to it as the master disk. "It has a certain Scheherazade quality that really adds a lot of interest to this case."

At issue is whether Microsoft can be held liable for violating an AT&T patent on technology that condenses speech into computer code, similar to that found on Microsoft's Windows program.

Microsoft admitted it infringed the AT&T patent domestically but contends that it is not responsible if its programs are installed by computer manufacturers overseas.

In 1984 Congress amended the patent law to forbid companies from shipping components of patented inventions overseas and having the parts assembled elsewhere in an attempt to skirt patent laws.

So in this case, justices are looking at whether digital software code can be considered a "component" of a patented invention and if so, whether it was "supplied" from the United States.

The case has sparked intense interest among U.S. technology firms, especially software developers, who worry they could be left increasingly vulnerable for infringing patents if the ruling goes against Microsoft.

"It would create an enormous base for damages," explained Stephen B. Maebius, a lawyer at Foley & Lardner specializing in intellectual-property rights. This could create an incentive for companies to move their research and development operations abroad, beyond the reach of U.S. courts, he said.

Even some of Microsoft's traditional competitors such as Yahoo and Amazon.com have joined to support the company's argument that overseas production should be governed by those countries' laws.

"At the time the statute was amended, global trade was far more limited and certainly did not include easily distributed computer and Internet transmissions," according to an analysts' report issued yesterday by Stifel Nicolaus, a brokerage firm specializing in technology and telecommunications.

The report quoted a lawyer for Yahoo as saying an unfavorable ruling for Microsoft could extend patent liability "to every corner of the world" where a copy of U.S.-developed software is used, including software downloaded over the Internet.

Seth P. Waxman, AT&T's lawyer and a former Clinton administration solicitor general, told justices they should uphold two lower courts' rulings in the company's favor.

Waxman said there is no dispute that Microsoft sends Windows code from the United States, via the "golden disk" or electronic transmission, to be installed in foreign computers.

"Those facts resolve this case," Waxman said. "Microsoft has 'supplied' a 'component' that when 'combined with hardware' enables the practice of AT&T's invention."

But Microsoft's lawyer, former Bush administration solicitor general Theodore B. Olson, countered that the code is copied outside the United States and installed on computers overseas. Thus, U.S. patent laws don't apply, he said.

"Those are computers that are sold abroad," Olson told the court. The components the law refers to, he said, were all manufactured overseas.

The justices wrestled with whether computer code would be patented or whether the code alone could be a component.

Waxman said code is "dynamic," in that it causes a computer to take action, while Olson said it was more like a blueprint. It can be used to produce exact copies that are not patent infringements, he said, whether the product is a pill, a car or a mousetrap.

The court sought help from the current solicitor general's office, which largely supported Microsoft's position.

Assistant Solicitor General Daryl Joseffer said lower courts have interpreted U.S. patent law too broadly. And he said the government's view is that the component at issue would be the software with the code on it, not the code alone.

He compared it to a key and lock.

"A key has a series of ridges on it that enable it to open a lock," Joseffer said. "And that series of ridges can be denoted by a sequence of numbers, bigger numbers for deeper ridges. But the component is the key that actually turns the lock, not the abstract sequence of ridges on the key."

Eight justices will decide the case before July; Chief Justice John G. Roberts Jr. is recused because he owns Microsoft stock.