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Defense from software patents

Halloween VII, Microsoft vs Linux email inspires a rant about going to court.



In Sept. 2002 my friend Robert Kelly sent me the link to the latest Halloween memo by Microsoft on Linux. I responded with this this post. Mr. Raymond suggested I post it here.

Halloween VII, Microsoft vs Linux.

This is so good it makes my teeth hurt. I sent it along to some friends. It is obvious that a Microsoft patent infringement blizzard is coming and I advise all developers sued by Microsoft to to learn from my experience riding a Harley in lily-white power-elite Sunnyvale:

- Read the charges and look them up on the internet. Read all the applicable legal codes until you understand them better than the kernel.
- Do NOT hire a lawyer-- that is just paying the parasite class to sell you out, which is what they do every time. In addition, even if those stock options made you independently wealthy, not having a lawyer is certain to give you the image of the "little guy" getting beat up by a bully.
- Appear in Federal Court at the appointed time. Dress well, be respectful and act with a sense of guileless wonder-- something along the lines of: "What pretty mahogany paneling, I wonder what I'm doing here?"
- Plead not guilty, demand your right to an immediate jury trial and MOST IMPORTANTLY do not waive your right to a speedy trial. Politely explain to the judge that no pretrial hearings will be needed and that you would prefer to have the trial this week, but, next week is fine too.
- Just show up and tell the truth. Subpoena a few buddies if you want to have a little party. (Ahh-- an invitation where they have to come, now THAT's a party-- think about that cheerleader you had a crush on in High School-- and just subpoena her as a character witness. It's kinda like Erin Brokovitch meets the Big Chill.)
- Subpoena every single employee of Microsoft. That's right, all of them, that pig Bill Gates first on the list. When that gets quashed then subpoena everyone on the patent application, everyone in their department at the time, all their bosses and everyone in the General Consul's office that worked on the patent. Then subpoena everyone that is in their department today, all their bosses and all the high-dollar lawyers.
- Politely inform the judge that when you are found not guilty by the jury you will need some help from his clerks filing civil and criminal cases against Microsoft, including RICO act conspiracy charges. Since the Supreme Court found the RICO act applies to a loose cadre of abortion protesters we all know it applies to the Redmond Mafia.
- Enjoy cross-examining all those Microsoft employees. Be sure to ask if they think the idea is patentable. Ask if Microsoft encouraged them to seek patents and what they think the motivation was.
- In a pleasant non-condescending way explain to the jury what your code does and why it is not patentable. Use the phrase "Obvious to one skilled in the art" every 5 or 6 sentences. Never use the word "basically" when explaining.
- Point out to the jury the immense set of egregious business practices Microsoft engages in. Tell the judge you are simply trying to point out a crime is being committed in his courtroom and you are just trying to establish motive. Have a list handy of all their convictions. (Remember Stacker?)

- In your summation (and only then) point out all the FIJA (Fully Informed Jury Association) stuff about how a jury has the power to judge the law as well as the case. Point out that even if they think you technically broke the law they have the right and the duty to still find you innocent.
- Issue frequent press releases about the case to every news media outlet you can think of including your High School yearbook and the free arts tabloid in town. FAXes may work best but email should be acceptable. Making this document look good is far more important than any legal or defense issue so spend 90% of your time out of court on this.

I would say the chances of any nice spectacle-wearing ponytail-sporting untanned developer pulling a conviction at about 20%. If you are anything even close to competent the odds are about 5%. If convicted, remember that the entire legal system of our great country relies on two fundamental principles:

- 1) Getting the Forms.
- 2) Turning them in.

Be sure to ask the judge where you get the forms for an appeal and file them immediately. Explain how the challenged code is essential to your product and livelihood, not to mention your reputation, and make sure the judge orders that you can still distribute the code until the outcome of the appeal.

Now even if you don't think taking on Microsoft is a good-odds proposition you have to understand the larger picture. Remember that Frank Capra movie "Mr. Smith Goes to Washington" where Jimmy Stewart held up the entire Congress to protect the rights of the little man? If you remember your High School civics, this is called a filibuster. By prolonging this federal trial as long as you possibly can, like good sex or a nice car wash, you will be instituting a new tactic in American Jurisprudence -- the Judicial Filibuster. Now the politically astute among us might question this-- pointing out that the judiciary is instituted to interpret the law and why would anyone what to needlessly prolong the interpretation. I would respond that this view is correct as long as the judiciary is a tool of justice and not the tool of some rent-seeking pig-monopolist power-elites that think the judiciary is their personal club to beat up the peasants. Act accordingly. Enjoy the trial;

