

.5 bn USD damages for patent on browser extensions

<http://swpat.ffii.org/pikta/xrani/eolas/index.en.html>

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english version 2004/08/16 by Hartmut PILCH*

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The Californian university spin-off Eolas succeeded in extracting .5 bn USD rents from Microsoft using patent US5838906. This Eolas patent covers, as an Illinois jury confirmed, Microsoft's ActiveX facility. It also covers basically any means to extend a browser by scripts. Eolas lawyers try to create the impression that Microsoft actually copied their "technology" and that their latest rent-seeking aims at restoring justice in the browser war, where Microsoft leveraged its monopoly position to put Netscape out of business in 1999. Some media seem to be buying their story.

Contents

- **Eolas Browser Plugin Patent US 5838906¹**

The patent on which the litigation against Microsoft is based. Not applied for in Europe. Claim 1 reads:

*<http://www.ffii.org/~phm>

¹<http://pto.dwsearch.com/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/srchnum.htm&r=1&f=G&l=50&s1='5838906'.WKU.&OS=PN/5838906&RS=PN/5838906>

A method for running an application program in a computer network environment, comprising:

- providing at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment;*
- executing, at said client workstation, a browser application, that parses a first distributed hypermedia document to identify text formats included in said distributed hypermedia document and for responding to predetermined text formats to initiate processing specified by said text formats;*
- utilizing said browser to display, on said client workstation, at least a portion of a first hypermedia document received over said network from said server, wherein the portion of said first hypermedia document is displayed within a first browser-controlled window on said client workstation, wherein said first distributed hypermedia document includes an embed text format, located at a first location in said first distributed hypermedia document, that specifies the location of at least a portion of an object external to the first distributed hypermedia document, wherein said object has type information associated with it utilized by said browser to identify and locate an executable application external to the first distributed hypermedia document, and wherein said embed text format is parsed by said browser to automatically invoke said executable application to execute on said client workstation in order to display said object and enable interactive processing of said object within a display area created at said first location within the portion of said first distributed hypermedia document being displayed in said first browser-controlled window.*

- **Eolas digital signature patent EP 1018239²**

Applied for in 1998, still under examination by EPO. Claim 1 reads:

A method for certifying data, comprising the steps of:

- *generating a key pair at a first time interval, the key pair including a private key and a public key;*
- *receiving an certification request;*
- *automatically responding to the certification request by digitally signing data associated with the certification request using the private key; and*
- *deleting the private key.*

- **W3C 2003/08: Ad Hoc Meeting on US Patent 5,838,906³**

The World Wide Web Standardisation Consortium W3C convened for a crisis meeting after Eolas won against Microsoft in its lawsuit over the web browser extension patent.

see also

- **phm/GregNews: MS to pay .5 bn usd for license to extend web browsers⁴**

discusses a text by patent buster Gregory Aharonian, who discloses that he checked the Eolas patent for novelty before it was filed, and he feels proud that a patent which he checked also stood the test of litigation in first instance. Aharonian however stresses that verdicts in first instance are often overturned and the CAFC might decide otherwise. See also ensuing discussion, including an answer from Greg to questions as to why Eolas obtained its patents in US only: apparently they were small and deterred mainly by the high patenting costs.

²../../txt/ep/1018/239

³<http://www.w3.org/2003/08/patent>

⁴<http://aful.org/wws/arc/patents/2003-08/msg00049.html>

- **ZDNet Festa 03-08-14: Wil browser verdict snare others⁵**

Paul Festa of ZDNet.com reports how the Eolas patent endangers not only Microsoft but also companies such as Apple, Redhat and Opera, and how O'Reilly helped Microsoft fight the patent by presenting prior art in court. KDE speaker says KDE would have to remove its plug-in facility if this patent is asserted. Author speculates that patent owner might not go after small fish and that the "opensource model" is, at least for Microsoft, not an acceptable alternative to "intellectual property". The author seems to have forgotten (1) that "IP" in software means "copyright", not patents (2) that the licensees might well want to go primarily after the small fish, if Microsoft pays them well for an exclusive license.

- **Heise 2003-08-12: Microsoft hat bei ActiveX Patente verletzt⁶**

Heise reports about verdict in Eolas vs Microsoft patent litigation.

- **heute.t-online.de 2003-08-12: Patentverletzung: Microsoft muss halbe Milliarde Dollar zahlen⁷**

Article of german tv program echoes Eolas propaganda according to which Microsoft "incorporated Eolas technology in its browser". Also cites Microsoft spokesman who denies this.

- **The Seattle Times: Microsoft may alter browser: report about W3C adhoc meeting⁸**

Press echo of the W3C crisis meeting on the Eolas browser extension patent
see also

- **Eolas Inc⁹**

A small company that has been litigating successfully against Microsoft over broad and trivial software patents related to browser plugins.

⁵http://zdnet.com.com/2100-1104_2-5063444.html

⁶<http://www.heise.de/newsticker/data/tol-12.08.03-000/>

⁷<http://lists.ffii.org/archive/mails/swpat/2003/Aug/0073.html>

⁸http://seattletimes.nwsourc.com/html/businessstechnology/2001658084_microsoft29.html

⁹<http://www.eolas.com/>

- **Microsoft and Patents**¹⁰

Microsoft Corporation grew large and successful without patents, relying instead on copyright. In 1991, Bill Gates warned that software patents could lead the software industry to a standstill but could also be very useful for defending monopoly positions. At the USPTO hearings of 1994, Microsoft was the only software company that argued in favor of software patentability. Microsoft has been involved in promoting software patentability in Europe. Simultaneously Microsoft's has invested ample resources into a campaign to dissuade governments and corporations from using free operating systems. Pointing out the insecurity caused to Free Software by patents and contributing to this insecurity by occasional threats has become an important part of the campaign. Microsoft appears to be a favorite victim of patent attacks. In June 2003, Microsoft hired former IBM patent strategist Marshall Phelps, the father of the "IBM tax", to embark on an aggressive rent-extraction program. Phelps also announced to step up efforts to campaign for software patentability in Europe. Much of this campaigning appears to have been done indirectly by Microsoft partners.

¹⁰<http://localhost/swpat/gasnu/microsoft/index.en.html>