



Microsoft, i4i Argue Patent Law Before U.S. Supreme Court

By **Nicholas Kolakowski** | Posted 2011-04-18

Microsoft and Canadian firm i4i have had their day in the nation's highest court, with the software giant arguing that longstanding standards for patent infringement should be lowered. In doing so, Microsoft hopes to end a years-long battle against i4i over patents related to custom XML.

Chief Justice John Roberts, who apparently owns Microsoft stock (http://www.judicialwatch.org/jfd/Roberts_Jr_John_G/2009.pdf), recused himself from the case. Out of the remaining eight court members, Microsoft must win five votes in order to succeed in its appeal, which seeks to overturn earlier rulings that Word 2003 and 2007 violated i4i's patents for custom XML.

Microsoft's legal counsel argued that the overwhelming evidence needed to invalidate patents makes it too difficult for companies to beat back frivolous patent-infringement suits, and that the standard of proof needs to be lowered. "When the Patent Office didn't even consider the evidence, it makes absolutely no sense," Microsoft attorney Thomas Hungar told the court, according to an April 18 Bloomberg report (<http://www.bloomberg.com/news/2011-04-18/patent-challenges-debated-as-high-court-hears-microsoft-appeal.html>).

But i4i is arguing that the precedent is a sound one.

"It is abundantly clear that the fundamental change in the law, which Microsoft seeks, would result in an enormous decrease in innovation," i4i chairman Loudon Owen wrote in an April 18 statement. "Microsoft did not present either policy nor legal reasons that would justify any changes to the law, particularly the sweeping change they now apparently seek."

Microsoft first asked the Supreme Court to hear its appeal in August, seeking to overturn earlier rulings concerning i4i's patents. The previous April, a federal appeals court had rejected Microsoft's request for a multiple-judge review of the lawsuit, which resulted in a nearly \$300 million judgment.

Executives from i4i have repeatedly announced their intention to fight the case to the bitter end. That makes the case stand out somewhat from the bulk of intellectual-property suits, which have a tendency to be settled behind closed doors for undisclosed amounts of money.

An in-depth breakdown of i4i's patent by eWEEK can be found [here](#). The bulk of Microsoft's troubles extend back to August 2009, when the federal judge in the U.S. District Court in Eastern Texas ordered that all copies of Word 2003 and 2007 be removed from retail channels within 90 days. Microsoft's attorneys managed to argue a delay, only to have the U.S. Court of Appeals uphold the verdict four months later.

That upheld verdict came with the court order that all offending copies of Word be yanked from store shelves by early January 2010. Microsoft responded by asking for the review by all 11 judges on the U.S. Court of Appeals for the Federal Circuit, on top of issuing a patch for Word that it insisted would sidestep the alleged infringement.

The Supreme Court case is filed (<http://topics.law.cornell.edu/supct/cert/10-290>) under Microsoft Corp. v. i4i Limited Partnership and Infrastructures for Information, No. 10-290. The judges could hand down a decision by the end of June.