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Monday, October 14, 2002



Multimedia Live settles a patent suit that could have far-ranging effects

Multimedia Live has reached an out-of-court settlement with Divine Inc. over claims by Divine that Multimedia was infringing on a Divine patent by designing web sites that presented text and graphics to consumers and allowed the site to collect payment.

Divine says it holds patents on shopping cart technology and the exchange of value for online transactions. Last month, attorneys for Divine began contacting retail web sites that they felt were in violation of the company's patent. Those contacts in turn prompted the retailers to contact the outside firms many had hired to design the sites. As it happened, many of them were clients of Petaluma, CA-based Multimedia Live.

"We have over 100 clients running e-commerce technology; clearly we needed to do something about this," Ken Burke, president of Multimedia Live, says. But with annual revenue of \$15 million, Multimedia Live was unwilling to spend the money or devote the resources to fighting Divine's claims. Within two weeks of the initial notice, Multimedia had settled with Divine by agreeing to pay a five-year licensing fee that would give Multimedia the right to the patented systems and all of Divine's patents for itself and all clients in perpetuity, Burke says.

Burke says he didn't want to pay the fee or give Divine any basis for pursuing other web site operators, but he felt he had little choice. "By doing this, we strengthened their case, but we protected our customers," Burke says. "Our cost to litigate could have been in the millions of dollars."

Sandra Shepard, Multimedia Live's outside counsel, says Multimedia Live was under no obligation to settle with Divine, since the threatened suits were against the retailers and not against the site designers. As part of the settlement, Multimedia Live obtained a license to all Divine's patents.

Divine will not comment on any aspect of the patents it claims or its efforts to persuade retailers to pay fees for licensing the technology, citing ongoing litigation. It does say it stands by the description of the process as outlined in a press release that Multimedia issued announcing the settlement. That release says that Divine claims 64 U.S. or international patents with more than 150 pending.

The three patents in question covered:

- "methods and business processes used to transact business over a network including the Internet."
- "processes of purchasing goods and services over the Internet. It

specifically patents both the shopping cart and the checkout process.”
--“methods for identifying an online user over the Internet. This method is essential for tracking a customer through the online buying process.”

Shepard says it's clear that Divine believes its patents are enforceable against a broad array of retailers. Because of the wide-ranging nature of the patents, she expects many other retailers to find themselves at the receiving end of a Divine filing.

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