

Burst.com files counterclaim against Apple

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Burst.com Inc. announced it has filed a counterclaim alleging that Apple's iTunes Music Store, iTunes software, iPods, and Apple QuickTime applications has infringed on four of Burst's 10 U.S. patents.

The Santa Rosa, Calif.-based developer of fast streaming media technologies filed the counterclaim in the San Francisco Federal District Court in response to a suit filed by Apple back in January of this year.

Whereas Apple's seeks a declaration that Burst's patents are invalid and Apple does not infringe on them, Burst's counterclaim would have Apple pay royalty fees for the infringing products as well as an injunction against further infringement, the company said.

This isn't the first time Burst has been caught up in an infringement case; it won a settlement in a similar dispute with Microsoft last year.

Microsoft settled with Burst.com in March 2005 after on-going litigation, with the PC giant paying Burst \$60 million for a non-exclusive license for Burst's patents for its own Microsoft products.

The lawsuit from 2002 against Microsoft had claimed that the company had infringed upon Burst's technology for its video-on-demand applications in the 2001 Windows Media Platform.

According to Chief Executive Officer and Co-founder Richard Lang last year, the company would be using the money from the Microsoft settlement to payoff or reserve current and long-term liabilities amounting to \$2.8 million, reserve money for costs to launch enforcement of its patent rights against infringing parties and to distribute funds through a cash dividend to its shareholders.

And this might be the case, now that it's seeking out Apple for patent infringements.

In Burst's April 17th filing to the federal district court, it alleges that Apple has infringed on its patents 4,963,995; 5,995,705; 5,057,932 and 5,164,839 that were filed from 1990 to 1992, claiming Apple's success is crucial on the audio and video-on-demand media delivery solutions.

The patents include specific apparatus or methods developed by Burst on improved recorder and transceiver technology with expanded functionality and capability through "analog to digital conversion, signal compression, and intermediate storage in an integrated circuit, random access memory" over either "a compressed or decompressed format over fiber optic lines, conventional phone lines or microwaves."

"While we had hoped to avoid litigation and negotiate a reasonable license fee, it is Apple's own actions that have forced our hand," said Lang in a statement. "We now look to the courts to reaffirm Burst's rights as innovators and to be paid fairly for our widely acknowledged contributions to the industry."

Burst is hoping that the settlement paid by Microsoft will validate infringement claims against Apple.

"We have a responsibility to protect our patents and to seek a fair return for the many years and tremendous investment that we have made in developing Burst technology and patents," he also stated.

Spencer Hosie, of the San Francisco law firm Hosie McArthur who represented Burst against Microsoft and now in with the Apple case, told United Press International that Burst's patents are crucial in the iTunes and iPod platform, and that the law firm expects to vindicate Burst's patent rights.

"Because of the PR campaign of big companies, small owners and innovators are seen as exploiting patents by suing these big companies," Hosie said, "but the very same companies do the same when someone infringes on their patents -- this is a classic giant and Goliath story."

An Apple spokesperson declined to comment on the matter, citing that it was pending litigation.

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