

Android Trademark Lawsuit Against Google & Open Handset Manufacturers: Who's Confused?

May 4 2009, by Mary Anne Simpson



Android Data Logo

The rumors about a possible trademark lawsuit by Eric Specht owner of Android Data of Illinois presents a twisty-tie legal concept. As reported by The Android Guys and ZDNet's Dana Blankenhorn, Android Data believes Google, Motorola and other open handset developers stole their trademark, Android.

According to the U.S. Patent and [Trademark](#) Office, "A trademark is a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others. A service mark is the same as a trademark, except that it identifies and distinguishes the source of a service rather than a product. Trademarks are registered and require fees ranging from \$275 plus an in-use fee of \$100. The trademark has to be in use in "commerce".

So, unlike the days of yore domain hounds who bought and parked every potentially hot domain name with the expectations of selling it for top dollar later. Trademarks require use, the word or image, mark has to be affixed to something and placed in the stream of commerce.

In 2000, Android Data filed a "Typed Drawing" application for a trademark, stating that it was "good and services, computer e-commerce software to allow users to perform electronic business transactions via a global computer network" Stating further, it was filing a First Use in Commerce affidavit. Android Data performed the requisite notice periods and ultimately was given a registration number 2639556 in October, 2002. The exclusive right to use the word "Data" apart from the "mark" was not claimed.

In 2007, Google applied for a trademark of Android. The Google Android is an open mobile platform that was developed by Google and later by the Open Handset Alliance as a "software stack" for mobile phones. Android is based on a Linux OS, and all of its applications are written using JAVA. Anyone can download an Android software development kit from Google and create applications for Android. Motorola and other handset companies have installed Android on their phones. Google has no plans as of this writing to manufacture a Google Android handset.

In 2008, Google's application for a trademark was denied because Android Data and Google are involved in the development of software and related services which might in effect confuse the consumer into thinking the goods are related and originate from a single source.

This tricky little piece of logic does not effect the numerous androidesque registered trademarks, like American Android, Android 17, Android, (a testosterone, thyroid etc. tablet), or another Android mark for blood testing apparatus. Nope, the USPTO wasn't too worried

about the exact use of the word Android for a testosterone tablet and a blood testing apparatus. It was concerned about a software suite used exclusively for e-commerce and an open source software stack which merely enables users to bring down the fences between networks and allow free use to create applications.

Android Data has a website and offers a Content Manager, Caching Server and Administrator's Tool Kit with a segmented little robot figure pictured above. There is a substantial difference between the generic Android image that looks like a Lego piece by Google and the metallic Android Data robot image. (shown above)

Android Data is rumored to be asking for millions from [Google](#) and other handset manufacturers using the [Android](#) software stack. So, who's confused here? USPTO or the consumer.

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