

Court hears arguments in Microsoft patent case

April 19 2011, By JESSE J. HOLLAND , Associated Press

(AP) -- The Supreme Court on Monday heard arguments from Microsoft Corp. asking it to overturn a \$290 million patent infringement judgment against the world's largest software maker, a ruling that could have a profound effect on how corporations protect and profit from their future inventions.

An eight-justice court on Monday heard arguments from the Redmond, Washington-based [Microsoft](#), which wants the multimillion dollar judgment against it erased because it claims a judge used the wrong standard.

Business groups are closely watching this case. The U.S. government made more than \$64 billion off of international licensing and royalties from patents in 2009, with an expected growth rate of 15 percent a year. A ruling for Microsoft could make companies less likely to invest in new inventions, but a ruling for i4i, the company which brought the lawsuit against Microsoft, could make it harder for large corporations to fight off such challenges.

The cost of fighting off a [patent](#) lawsuit could be as much as \$4 million per defendant, companies say.

"It's a bad thing not to give protection to an invention that deserves it, and it is just as bad a thing to give protection to an invention that doesn't deserve it. Both can seriously harm the economy," Justice Stephen Breyer said.

Toronto-based i4i sued Microsoft in 2007, saying it owned the technology behind a tool used in Microsoft Word. The technology in question gave Word 2003 and Word 2007 users an improved way to edit XML, which is [computer code](#) that tells the program how to interpret and display a document's contents.

The lower courts say Microsoft willfully infringed on the patent, and ordered the world's largest [software maker](#) to pay i4i \$290 million and stop selling versions of Word containing the infringing technology.

Microsoft now sells versions of Word that do not contain the technology in question.

The legal issue being debated by the court was over which standard should be used to by a jury to determine a patent's validity: a "preponderance" of the evidence or a more heightened "clear and convincing" evidence standard.

Microsoft's lawyer, Thomas G. Hungar, said Congress always intended to use the lower standard, especially when the Patent and Trademark Office has not considered all of the evidence. Microsoft contends that the patent office did not consider that i4i had used its HTML editor in software before receiving a patent.

Inventions are considered not patentable once they are in the public realm, a term called prior art.

"It makes no sense to have a heightened standard of proof when the relevant prior art evidence was never even considered by PTO," Hungar said.

But i4i's lawyer, Seth Waxman, said the Supreme Court has never ever agreed with that. "There is not one opinion, there is not one sentence,

there is not one phrase in any of this court's line of decisions that supports that proposition," Waxman said.

Chief Justice John Roberts did not take part in the consideration or the decision in this case. He reported owning between \$100,000-\$250,000 worth of Microsoft stock in 2009 on his annual disclosure report.

The court will rule later this year.

The case is Microsoft Corp. v. i4i Limited Partnership, 10-290.

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