Ready to Rumble: Microsoft and Google Fight Back Against Store-locator Patent Suits

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Summary: Between December 17th and 23rd, 2010, GeoTag, Inc. filed eight patent infringement lawsuits against retailers with store locators on their websites. The company felt those mapping services infringed on its patent. Two big guns, Microsoft and Google, are fighting back, arguing the suits are interfering with their customer relationships. Two lawyers pick up the story.

Microsoft and Google have upped the ante for GeoTag Inc, a Texas-based company. The two apparently grew tired of seeing GeoTag go after their customers (reportedly 300 businesses, both large and small - APB coverage) for violating its 12-year-old patent (U.S. Patent No. 5,930,474, entitled “Internet Organizer for Accessing Geographically and Topically Based Information”). As a result, on March 1st, the two jointly filed a federal complaint against GeoTag, arguing that its legal actions against their customers had “placed a cloud” over Google Maps and Microsoft’s Bing Maps.

The patent relates “to a software interface that organizes information predicated upon the geographical area of the resources about which the information is desired.” According to the patent “a geography database, a local content database and a yellow pages database are provided to allow the user to obtain information at different levels.” The user is then “presented with a viewpoint” and is thus “provided with a means whereby information which is associated with particular geographic locations can be readily accessed.” GeoTag claims companies violate the patent by using Google Maps or Microsoft’s Bing Maps for store locator or similar services.

In filing a declaratory judgment, Microsoft and Google are seeking a ruling declaring that GeoTag’s patent is invalid and/or that it has not been infringed. They are also seeking an injunction that would prevent GeoTag from suing other companies that use Microsoft’s Bing Maps or Google Maps for store locator or other services. However, to file a declaratory judgment, Microsoft and Google must first be able to show that the dispute in question involves a case or controversy directly involving them. Otherwise, the court will dismiss the action. This is a big part of the reason Microsoft and Google are making such a strong effort to demonstrate that GeoTag’s actions are harming their customers.

According to the complaint, many of the two companies’ customers have been so alarmed over GeoTag’s lawsuits—filed in the Eastern District of Texas, one of the most plaintiff-friendly jurisdictions in the country—that they have approached

Microsoft and Google seeking indemnification. In the complaint, Microsoft and Google noted that the specter of potential lawsuits haunts their future interactions with prospective customers as well. And while they never explicitly use the term “patent troll”—a rather pejorative label pinned on litigious, opportunistic patent-holding companies—it is clear from the language in the complaint that this is exactly what Google and Microsoft believe they are dealing with in GeoTag. The complaint emphasizes not only the number of patent infringement suits filed by GeoTag, but the fact that the patent being asserted has changed ownership five times. (Interestingly, one of the inventors of the ‘474 patent, John Veenstra, has been involved in each transfer of the patent and now serves as the Chief Executive Officer of GeoTag.)

For Microsoft and Google, successfully pinning the patent troll label on GeoTag will be useful for a couple of reasons. Strategically, doing so clearly will help their case as the court evaluates the complex technical arguments presented by both sides. Legally, it will help them ensure their declaratory judgment filing has standing to proceed, with recent trends showing the courts adopting more lenient standards for finding a case or controversy in actions involving patent trolls (see Hewlett-Packard v. Acceleron, LLC, 587 F.3d 1358 (Fed. Cir. 2009) (holding that it was “not unreasonable” for Hewlett-Packard to interpret letters by a “patent troll” as implicitly asserting patent rights even though the letters did not directly claim patent infringement)).

Without prejudging this case, Microsoft and Google seem to be well-positioned to get their day in court. In essence, they are saying to GeoTag, “Look, if you’re picking a fight with us, then let’s just have this out. Leave our customers out of this.”