

EXHIBIT 5



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Trademarks

Google's Android Angst

Elizabeth Woyke, 04.30.09, 6:45 PM ET

Could a lawsuit hold up Android, Google's high-priority, open-source software project?

It could if Erich Specht gets his way. The software developer is seeking close to \$100 million in damages from Google and 46 other technology companies over the term "Android."

Specht, who runs a small, Palatine, Ill.-based firm called Android Data Corp., is seeking an injunction on Android-branded products and up to \$94 million in damages for infringing his trademark. "Basically, it's a stolen name," says Specht's attorney, Martin Murphy. "It's our trademark, and Google is using it as if it's theirs."

Google spokesman Andrew Pederson says the company believes the claims are without merit and "will defend vigorously against them."

In addition to Google, the suit filed Tuesday with the U.S. District Court, Northern District of Illinois, Eastern Division, names every company in the "Open Handset Alliance," Google's Android-centric consortium, as defendants. The list includes major U.S. firms like Motorola, Qualcomm, Sprint Nextel, T-Mobile and Texas Instruments, and foreign companies such as China Mobile, Samsung, Telefonica, Toshiba and Vodafone.

Specht's complaint hinges on filings with the U.S. Patent and Trademark Office (PTO) that go back nearly a decade. The developer first incorporated his firm in 1998, specializing in software that would help Web sites transfer data securely and efficiently. Enamored by the word Android and its geeky connotations, he tried to trademark "Android Data," related to computer e-commerce software, in 2000. The PTO granted his request in 2002.

Google applied for its Android trademark in October 2007, just days before it publicly unveiled its Android plans. The PTO rejected the application in February 2008, citing similarity to Specht's mark. Google quickly appealed the decision, arguing that Specht's firm had lost its claim due to inactivity. In a document, the company's legal team pointed out that someone had voluntarily dissolved Android Data Corp. in May 2004 (though later reactivated it) and failed to re-register the firm's Web site URL at one point. The PTO rejected Google's appeal, along with subsequent attempts, and suspended Google's trademark application last November.

Murphy portrays Specht as the David to Google's Goliath. "[Specht] put a lot of thought into that name, Android," says Murphy. "He felt, 'Google is taking this away from me.'" Specht didn't take action until this month because, Murphy alleges, he only recently realized the search giant was infringing on his trademark. "He had heard about the Android phone, but thought, 'That's a mobile device,'" says Murphy. "As soon as he learned it was software, he stepped up, and we filed as fast as we could."

The classification of Android as software is key. The PTO lists dozens of trademarks with the word Android, including one for Android-branded jewelry. Specht and Google are tussling because both filed for a trademark in so-called "International Class 009," which covers computer software and hardware.

The case gets even more complex. Specht technically has a trademark for the term "Android Data." But since a provision in his PTO registration notes that the word "data" is merely descriptive, Murphy argues that Specht has a claim to the one-word term Android regarding software products. "Essentially, that word [data] gets left out, which makes Android the dominant word," says Murphy.

To prove trademark infringement, trademark owners must show that people are likely to confuse other marks with theirs. That

could trip up Specht's case. Murphy concedes that educated consumers can probably distinguish between Google and Specht's small firm, and the Android mobile platform and Specht's e-commerce software. But Murphy contends that Google is hurting Specht's business by making his software--and brand--look like a copycat. "My client is trying to sell something, and it looks like a knockoff of Google," says Murphy.

Though Google is aware of the suit, the company hasn't directly contacted Specht or Murphy. That's likely to change soon. Murphy plans to file a temporary restraining order seeking a preliminary injunction as soon as Thursday. The document will ask for all Google Android-branded products to be removed from the market and repackaged under a different name. In the U.S., that would mostly affect sales of the G1, a phone Google launched last fall with T-Mobile. Murphy says the action could also affect Web sites and marketing materials that use the term Android related to Google.

Murphy expects to land an Illinois court date sometime next week. Google will have 60 days to respond to the order, but Murphy says a representative from the company will probably show up in court to argue against the motion.

The outcome is likely to be a settlement, rather than a court showdown, mostly because of the long roster of defendants. "No judge will want to be flooded with that much paperwork," says Murphy. "We'll probably be asked to sit down and work this out."

Murphy says a settlement could mean that Specht gets credit for the Android mark, an outcome that would leave Google's Android products labeled with the unlikely disclaimer, "Android is a registered trademark of Erich Specht/Android Data Corp." (Currently, Google describes Android as a trademark of Google Inc.)

First, of course, Google has to actually respond. "We'll have to see what they have in mind," says Murphy. "So far, no one's offered me anything."

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