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## Apple Is Accused of Violating Software Patent

By [LAURIE J. FLYNN](#)

SAN FRANCISCO, Aug. 31 - [Creative Technology](#), a maker of portable music players, has accused [Apple Computer](#) of violating a newly granted software patent covering the way users navigate music selections.

Creative Technology, which is based in Singapore and has United States operations in Milpitas, Calif., said it would consider every option available to defend the patent, including possible legal action. Apple declined to comment on the patent.

The patent, which the company calls the Zen Patent, covers Creative's interface for portable players, which allows users to select a song, album or track by navigating a succession of menus. The patent office awarded the patent on Aug. 9.

Creative uses the navigation technology on many of its portable music devices, which account for 3.3 percent of the market, according to the NPD Group. The [iPod](#), which in large part owes its popularity to its easy-to-use navigation system, has about 74 percent of the American market.

Craig McHugh, president of Creative's United States operations, said on Wednesday that Apple was the only company that Creative had identified so far that was in violation of the patent, though Creative was investigating others.

"We are looking at all our alternatives right now," he said. "We have always been very vigorous in our defense of our patent portfolio."

Mr. McHugh said Creative was focusing on hard-drive-based systems, rather than less-expensive flash-memory systems that typically sport a bare-bones navigation system.

The latest development comes a few months after the Patent and Trademark Office rejected an Apple application for a patent on some of the user interface concepts of the iPod, on the ground that [Microsoft](#) had filed for a similar patent.

"Apple is the 500-pound gorilla," said [Mark Goldstein, an intellectual property lawyer with the SoCal IP Law Group, in Westlake Village, Calif.](#) With the patent, he said, Creative is "trying to show they're in the same league" as Apple.

As written, Mr. Goldstein said, the patent gives Creative "a lot of opportunity," including the ability to add features it has not yet developed.

Creative executives said the company first shipped music players with the navigation system in September 2000, and filed the patent application in January 2001. Apple announced the iPod in October 2001.

Apple has several options, including requesting that the patent office re-examine the patent. If Apple fights the matter in court, the company would need to show the existence of "prior art," that is, similar technology that existed previous to Creative's use of the technology.

"What would matter then is what was out there in, say, 1999 and 2000," Mr. Goldstein said. "What anybody was doing similar to Creative could be a huge burden to overcome."

Technology companies have long used intellectual property protection to help them compete, and software companies have been known to reap millions of dollars in licensing fees.