

Microsoft FAT patent falls flat

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As part of a re-examination, the U.S. Patent Office has issued a preliminary rejection for a patent previously granted to Microsoft for a Windows file format.

The agency ruled that, based on existing inventions at the time, the ideas behind the FAT (File Allocation Table) patent would have been obvious and are therefore not subject to patent. Microsoft now has 90 days to respond to the filing and make its case for why the patent should be upheld.

The Patent Office's ruling, known as an "office action," is not final, since Microsoft has further opportunities to respond before an ultimate decision is made.

"It's just one substantive step in an ongoing process," said Mark Goldstein, a lawyer with the SoCal IP Law Group.

In a statement, the software giant predicted it will eventually prevail: "We understand that this is another step in the long process that assures high levels of patent quality. At this point, we have the opportunity to demonstrate why this file system innovation deserves patent protection and believe that the (patent office) will find these patents valid."

A representative added that the company looks forward to weighing in "with Microsoft's side of the story."

The little-known Public Patent Foundation had been leading the [push for a re-examination](#). There had been concern by that group and others that Microsoft could use the patent to seek royalties from open-source software vendors. In June, the patent office [agreed to a re-hearing](#).

"The Patent Office has simply confirmed what we already knew for some time now--Microsoft's FAT patent is bogus," Daniel Ravicher, executive director of the Public Patent Foundation, said in a statement.

The FAT file format is a common means of storing files not just on computers, but also on removable flash memory cards that are used in digital cameras and other devices. It is also used by the open-source Samba software that lets Linux and Unix computers exchange data with Windows computers, and by Linux to read and write files on Windows hard drives.

Some have worried that Microsoft may claim Linux infringes this or other Microsoft patents and that the software giant could someday seek royalties. Even the requirement of the smallest monetary compensation could threaten Linux which, under the terms of the [General Public License](#), may not be distributed if it contains patented technology that requires royalty payments. Users and distributors of Linux have also faced legal threats [from the SCO Group](#), which charges that the operating system infringes Unix copyrights it claims to hold.

Microsoft is already trying to [license the technology](#) to flash drive makers and manufacturers of devices, such as digital cameras, that use FAT. It is unclear how a final ruling could affect that effort, because the patent being re-examined is one of four that Microsoft licenses as part of its [FAT file format program](#). The company also grants license to intellectual property that has not yet been patented, according to its Web site. Microsoft charges 25 cents per device (up to a maximum of \$250,000) from makers of products that use the FAT format.

"I hope those companies that chose to take a license from Microsoft for the patent negotiated refund clauses so that they can get their money back," Ravicher said.

Microsoft said its licensing of the FAT technology has continued despite the patent challenge and that the company has signed new licensees beyond Lexar, its first, although Microsoft did not name those companies. A Lexar representative was not immediately available for comment.

Microsoft has been stepping up both its efforts to license its intellectual property as well as moving to [file for more patents](#). Chairman Bill Gates said the company hopes to file 3,000 patent applications this year, up from a little more than 2,000 last year and 1,000 a year as recently as a few years ago.

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