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Microsoft gets new trial in browser patent case

\$520 million award to Eolas is at stake

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A federal appeals court on Wednesday ordered a new jury trial to decide whether Microsoft Corp. must pay more than \$520 million in damages to a Chicago inventor for patent infringement.

The ruling throws into doubt one of the largest patent-infringement awards in history and prolongs a six-year legal battle that has far-reaching implications for scores of Internet companies and millions of Web users.

The case involves browser technology to call up computer plug-ins and applications.

Inventor Michael Doyle of Eolas Technologies Inc. and the University of California claim Microsoft illegally incorporated their patented technology into its Internet Explorer browser to defend its Windows empire at a critical time in the development of the World Wide Web.

Microsoft argued the technology was not novel and never should have been patented. The company cited a browser demonstration by software developer Pei-Yuan Wei more than a year before Doyle's invention. But a U.S. district judge in Chicago, during a five-week trial in 2003, ruled the jury should not consider Wei's Viola browser or Microsoft's claims that Doyle should have disclosed his knowledge of Viola to patent examiners.

Wednesday's ruling by the U.S. Court of Appeals for the Federal Circuit in Washington ordered a new trial on those issues alone. It upheld the lower court's rulings regarding a number of other issues, including infringement and the basis for the jury's damage award.

Eolas' attorney, Martin Lueck of Robins, Kaplan, Miller & Ciresi LLP in Minneapolis, said he is confident of winning a second trial.

"The range of arguments that Microsoft can make as to why they should not pay [damages]

has been dramatically reduced to essentially one issue," he said.

Microsoft declared a "clear victory" Wednesday.

"Today's reversal gives Microsoft the opportunity to tell the jury the whole story ... and present evidence that shows that Eolas did not invent this technology," the company said.

Patent attorneys disagreed in their assessments.

"On balance, I view this as a win for the plaintiff," said Chicago lawyer Paul Vickrey, a partner at Niro, Scavone, Haller & Niro. "The hurdles the plaintiff has to overcome at this point are much narrower."

But John Rabena, a partner at Sughrue Mion PLC in Washington, D.C., said the ruling "certainly puts Microsoft back in the playing field with a pretty strong defense."

And Dennis Crouch of McDonnell Boehnen Hulbert & Berghoff LLP in Chicago said Eolas has "another uphill battle."

A who's who of Internet technology has rallied around Microsoft, including the main standards body, World Wide Web Consortium. The consortium asked the U.S. Patent and Trademark Office in November 2003 to re-examine Eolas' patent. That review is pending.

Daniel Weitzner, the consortium's technology and society domain lead, said his group intervened because if the patent is allowed to stand "it threatens interoperability across the entire World Wide Web."