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Federal Circuit Extends U.S. Patent Liability to Foreign Sales of Foreign-Made Software Copies of U.S. Originated Master and a System With Components Residing in Canada Used by U.S. Customers. July 13, 2005 & August 2, 2005. In *ATT vs. Microsoft*, the Federal Circuit held that "for software components, the act of copying is subsumed in the act of supplying, such that sending a single copy abroad with the intent that it be replicated [abroad] invokes [35 U.S.C.] § 271(f) liability for those foreign-made copies." Meanwhile, in *NTP v. RIM*, the Federal Circuit held that the Blackberry system infringes U.S. patent law even though a component of the patented invention was located in Canada. The court reasoned that "…use of a claimed system under 271(a) is … the place where control of the system is exercised and beneficial use of the system obtained." Interestingly, the turbulence of territoriality and § 271 is not addressed in the patent legislation pending in the U.S. Congress, see below.

U.S. Congress Considers Patent Law "Reform" Legislation. June 8, 2005. The bill *H.R. 2795* does away with the severe limitations on injunctive relief that were proposed earlier in the spring and objected to by the small company/small inventor community. In addition, the legislation provides: (i) a willfulness safe-harbor via reliance on an attorney opinion letter, (ii) a post-grant reexamination on request by a patent infringement defendant within 6 months of a complaint being filed and (iii) appears to repeal established judicial doctrine so that secret commercial use where the invention is not disclosed will not be an on-sale bar to a patent. Other provisions include a first-to-file system and the publication of all applications 18 months after the priority date, which is the same as the European system. The foregoing is not an exhaustive list of the substantive changes to U.S. patent law that are proposed.

U.S. Copyright Office Proposes Abolishing §115 Compulsory License for Musical Works. June 21, 2005. At a hearing before the House Subcommittee on Courts, the Internet, and Intellectual Property, Register of Copyrights Marybeth Peters proposed that the compulsory copyright license under 17 U.S.C. §115 be repealed and that private contract replace the current system. She further proposed that a "music rights organization" be established to handle the licensing process for all music publishing rights (the underlying song, not the sound recording) -- possibly by merging the Harry Fox Agency with performing rights organizations like BMI or ASCAP. Her comments were aimed at resolving turbulence surrounding the fixation of copies of musical works resulting from streaming or caching of public performances over the Internet and the process of licensing such uses. She submitted proposed legislation to effectuate the repeal. The timing of her comments is interesting in light of developments in Europe, see below.

U.S. Supreme Court and F.C.C. Set Up Titanic Battle Between Telephone and Cable Industries. June 27, 2005. In *F.C.C. v. BrandX*, the U.S. Supreme Court ruled that the F.C.C. could exempt cable

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television providers from providing competing internet service providers access to their facilities. In addition, the F.C.C. then lifted the same regulatory apparatus that required telephone companies to permit rival ISP's access to customers over DSL lines. The court reasoned that a regulatory agency had the power to resolve the statutory ambiguity in the Telecommunications Act of 1996 between a "telecommunications service" vs. an "information service" -- the latter being exempt from common carrier status.

European Commission Considers Pan-Europe Music Licensing Program. July 7, 2005
The European Commission is considering how to lower transaction costs regarding music licensing, which is governed by national copyright law. The report asserts that the current music licensing process developed for the hard-copy replication business is unsuitable for the on-line environment. The report proposes to "give rights-holders the choice to authorize a collecting society of their choice to manage their works across the entire EU." This would include both the public performance and duplication rights in the same collecting society.

European Parliament Rejects Europe-wide Software Patents. July 6, 2005. The European Parliament voted against hotly contested legislation that would have harmonized European patent law regarding the patentability of software. Both sides of the debate, the large software houses and the open source community, claimed a victory. The end result is that software patents will continue to be dealt with on a country-by-country basis.

U.S. Supreme Court Decides in Favor of Copyright Industry in Grokster Case. June 27, 2005
In case the reader was vacationing on Pluto this summer: the U.S. Supreme Court reversed the 9th Circuit ruling in favor of Grokster and the P2P industry by ruling that "… one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties." The Court distinguished the landmark Sony case (which absolved Sony of liability for selling VCR's because home taping was not a primary infringement) stating that "… nothing in Sony requires courts to ignore evidence of intent if there is such evidence, and the case was never meant to foreclose rules of fault-based liability derived from the common law."

Florida Police Arrest a Suspect for Using a Wi-Fi Signal in a Public Place Without Permission.
July 7, 2005. A resident of St. Petersburg, Florida reported a man sitting in a truck outside his house who was operating a laptop -- typical of many travelers with a laptop or other Wi-Fi device. The resident apparently had a wireless network without password protection that the man was using to access the Internet.

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