

WHEN PATENTING WORKS

In April, after four years of bitter and expensive patent litigation, the computer chip maker Intel agreed to pay Huntsville, AL-based Intergraph a whopping \$300 million. It is one of the largest patent settlements in history. Don't feel bad if you missed the news, though. The press pretty much missed it, too, at least in part because word of the agreement was largely overshadowed by news of Intel's relatively upbeat (big news in these hard times) quarterly earnings report.

The press missed an important opportunity, however, because the case says a lot about the strength of our patent system. To be sure, I am frequently critical of deficiencies in this system, noting, for instance, that the U.S. Patent and Trademark Office often grants unnecessarily broad or obvious patents. But even when I make these critiques, I am very mindful of the fact that, however flawed, our existing system often does do its job by protecting patent holders against those powerful players who might try to get around or steal away or somehow wrongfully employ their intellectual property. And that's really what this case is about.

The case centered on Intergraph's claim that, to develop its Pentium processor chips (the first of these workhorses appeared in 1993), Intel illegally appropriated technology covered by five Intergraph patents. The lawsuit saw many twists and turns, including Intel's argument that Intergraph's patents were invalid and that, in any case, they were covered by a cross-licensing agreement Intel had made with a third party.

Notably, though, Intel never really challenged the claim that it had used Intergraph's technology. Nor is there much question that it tried to use its tremendous size to pressure Intergraph into a licensing agreement.

Intel spokesperson Chuck Mulloy emphasizes that the settlement ought not be construed—legally speaking—as an admission of guilt by his firm. But let's face it: even giants like Intel don't part with nearly a third of a billion dollars unless they have to. And as Intergraph general counsel David Lucas bluntly put it before the settlement was reached, by first trying to muscle Intergraph into an unfavorable licensing arrangement, and then by shutting Intergraph off from technical information about its Pentium line, Intel had acted like "the schoolyard bully."

Those far more knowledgeable than I am about the history of semiconductors might dispute the validity of the five Intergraph patents in question. As I understand it, Intergraph, now a software firm but then in the chip design and workstation business, was incorporating ideas like multiple pipelines and large caches into its microcomputer chipsets well before Intel's designs. But there are undoubtedly other

firms besides Intergraph (as Intel also argued in court) that might have claims to some of these ideas.

Nonetheless, as a patent holder, Intergraph is recognized by the U.S. government as the rightful owner of powerful chip design technology. And as such, the firm is entitled to the protection its patents afford, meaning that the big guys on the block—in this case Intel—must play by the same rules as everybody else. To my mind, it's nice when the patent system can be used to enforce this rudimentary sense of equal intellectual-property justice under the law.

Along these lines, I am reminded of the late Jerome Lemelson, who was far and away the most prolific independent inventor of the 20th century—with more than 500 patents (second only to Thomas Edison in U.S. history) covering everything from machine vision to bar code scanning. A few years before his death in 1997, Lemelson told me how he came by his ardent support for the patent system.

As he recounted, back in the 1950s, when he was in his 20s and his work focused mostly on toy designs, he had gone



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to a major cereal manufacturer with his idea for a cutout face mask that could be printed on the back of a cereal box. The company said thanks but no thanks. But sure enough, a few years later, a shocked Lemelson noticed that the same firm began printing its cereal boxes with cutout face masks on the back.

Lemelson never got over the audacious ripoff of his work. And he never forgot that patents were his only practical means to protect himself against powerful players in the marketplace. Lemelson's tale is worth repeating because it is so simple and clear. At its core, our patent system is designed to prevent such wholesale theft.

So here's to Intergraph. Yes, it may be a *Fortune* 1,000 firm. But it is still a mighty underdog in its patent battle against Intel. And while it won a substantial settlement in this case, it continues to champion its patent rights in a separate dispute in which it claims that Intel's new, 64-bit Itanium processor design illegally includes patented Intergraph technology. This related case, only now coming to trial, may not earn Intergraph a whole lot of press either. But Intergraph and the rest of us should take some comfort in the fact that the biggest players with the most money don't always win. ■

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