

relevant art (in this case computer programming) would be able to make the transition from the prior art (for instance the Bush, Berner, Engelbart and Nelson publications) to the invention claimed by simply ordinary efforts. While critics of the BT patent argue that the invention claimed in the BT patent is merely an obvious variation on the earlier ideas of Bush, Berner, Engelbart, Nelson and others, Prodigy must overcome a number of evidentiary hurdles in order to invalidate the BT patent on the grounds of obviousness. An issued patent is legally presumed to be valid. The United States' courts interpret this to mean that an infringer such as Prodigy must establish its case by "clear and convincing" evidence.

Consequences of BT Success

It is unclear what the result of a successful claim by BT would be. While BT is obviously interested in getting licence fees from ISPs and others who use hyperlinking,

Wired.com notes that programmers believe that it would be relatively easy to code a completely new method of linking Web pages⁶. This kind of work-around may mean that ISPs and others would not need to license BT's technologies. The economic consequences of a decision favourable to BT would depend on the cost of implementation of such a work-around.

The importance to organisations of regularly reviewing intellectual property rights

This litigation highlights that while it is important for innovators to secure protection for their inventions through patents or other intellectual property rights, the management of such rights is of equal importance. Like any asset, patents should be used in a strategic way. It is necessary for organisations to maintain a culture of knowledge and understanding of intellectual property rights within the

organisation, which extends to all levels of the organisation including senior management. Simply having a register of one's intellectual property rights may not be sufficient. It is important to regularly review such a register and ensure that any intellectual property rights are used to their full potential and do not go "missing in action".

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1 British Telecommunications PLC v Prodigy Communications Corporation, 00Civ. 9451 (CM), Opinion and Order following preliminary hearing, McMahon J, 13 March 2002.

2 Title 35, United States Code, section 102(2).

3 <http://www.theatlantic.com/unbound/flashbks/computer/bushf.htm>.

4 <http://sloan.stanford.edu/MouseSite/1968Demo.htm>.

5 Its history is documented in www.xanadu.net.

6 www.wired.com/news/business/0,1367,50361,00.html

Electronic Signatures (UK)

UK Law Development: The Electronic Signature Regulations 2002 came into force on 8 March. They implement provisions of Electronic Signatures Directive (1999/93/EC) which relate to the supervision of certification-service-providers, their liability in certain circumstances and data

protection requirements concerning them. Provisions in the Directive relating to the admissibility of electronic signatures as evidence in legal proceedings were implemented by s7 of the Electronic Communications Act 2000.

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