

Pursuing a Piracy Claim Against Apple

John Schwartz

Nov. 4, 2011



David Gelernter, of Yale University, is a pioneer in computer science. He says software that Apple uses is based on his Scopeware, designed to make data more accessible.

Credit...Christopher Capozziello for The New York Times

WOODBIDGE, Conn. — David Gelernter is known for many things. As a pioneering computer scientist, he first earned renown by connecting computers together into collaborative networks. Then in 1993, he gained the kind of fame no one wants, as a victim of Theodore Kaczynski, the Unabomber, who mailed a pipe bomb to his office at Yale University that left him gravely injured.

Professor Gelernter had to fight for his life then. Now he is fighting to prove his contention that his innovations were pirated by Apple for its computers, iPhones and iPads. He did it once, and a company whose original incarnation he co-founded won a stunning jury verdict, but then an extraordinary judicial ruling took it all away.

He has said little publicly about the case, and Apple did not provide comment. But with the appeal now under way, he agreed to talk about it — including an internal Apple e-mail from Steve Jobs that left one patent law expert not affiliated with the case saying, simply, “Wow.”

Last October, a jury awarded \$625 million to Professor Gelernter’s company, Mirror Worlds. The verdict, one of the largest patent awards in history, seemed an astonishing windfall for the professor, now 56. “I had the feeling of everybody looking at me and thinking, ‘There’s a half billion dollars on the hoof!’ A private jet service sent an

invitation to ‘join our elite clientele.’ ” Business Insider ran a photo of him with “I’m Rich!” scrawled on it.

And then it was gone. In April, in an unusual move, Judge Leonard Davis of the United States District Court overruled the jury. He wrote that the patents were valid, but that the company had not proved that Apple had infringed them.

“Mirror Worlds may have painted an appealing picture for the jury,” Judge Davis wrote, “but it failed to lay a solid foundation sufficient to support important elements it was required to establish under the law.”

When Joseph Diamante, the lead lawyer for Mirror Worlds, called his client about the decision, he was distraught at having to deliver such bad news. But Professor Gelernter gently said, “Joe, I’ve been through worse.”

The bomb that exploded in June 1993 blinded Professor Gelernter in one eye and severely damaged his right hand, which he covers with a glove. He suffered extensive internal injuries as well, and a legacy of surgeries and chronic pain.

But, as Mr. Diamante learned, David Hillel Gelernter does not let trouble daunt him. He sent an upbeat e-mail to colleagues less than two months after the bombing that said, “All in all, I am the luckiest man alive (emphasis on alive). Surviving the explosion was evidently a pretty neat trick on my part,” he wrote, and joked that in computer science, “one decent typing hand and an intact head is all you really need.”

Long comfortable in the academic realm, where his work anticipated the interactivity of the World Wide Web and cloud computing, he tried business. Mirror Worlds (the name came from one of his offbeat books about adapting technology to people instead of the other way around) offered a way to break out of the numberless files and folders that clutter computer desktops and make information hard to find. The product, Scopeware, created a stream of varied documents — word-processing files, e-mail, calendar items and presentations — in a row of icons stretching into the past and future. Users could slide the icons back and forth to view them. George Gilder, the technology analyst, called it “elegant, easy, natural and beautiful,” and predicted, “It will prevail.”

It did not, at least as part of Mirror Worlds. The company marketed its product to businesses and state agencies across the country, but sales never really took off, and the company closed its doors in 2004.

From 2005 on, Apple introduced new versions of its software, and elements of three fundamental new technologies — Spotlight, Cover Flow and Time Machine — looked and behaved more than a little like Professor Gelernter’s brainchildren. Mirror Worlds, now owned by a hedge fund, sued Apple in 2008 in Tyler, Tex., a place with a reputation for friendliness toward infringement claims.

Among the documents obtained from Apple was the e-mail Mr. Jobs sent in 2001 to his lieutenants after seeing an article in The New York Times about Scopeware.

“Please check out this software ASAP,” he wrote. “It may be something for our future, and we may want to secure a license ASAP.”

An Apple executive at the time said in a deposition that “this was the first time I recall having received a specific mail to look at a company or its technology” from Mr. Jobs. Apple subsequently met with Mirror Worlds, but nothing came of the discussions.

Jeanne C. Fromer, a patent law expert at Fordham Law School in New York, called the e-mail from Mr. Jobs “as close as you get to a smoking gun.” Peter J. Toren, a patent litigator, summed up with a single word: “Wow.”

The jury seemed to agree.

The enormous verdict pushed a hot button in the technology world, where those who sue technology companies are often derided as greedy patent trolls. But Mr. Toren said Professor Gelernter is “not a patent troll — this is clearly a brilliant guy” who “clearly had a case.” The rumpled scholar sat discussing the dispute on a recent afternoon in his high-ceilinged living room, which was crowded with books and his paintings. A parrot named Ike provided the occasional squawk, and sunlight streamed over the 400 pipes of an organ that his older son, Daniel, bought and rebuilt by hand after discovering it, unused, in the basement of Yale’s Woolsey Hall. On Professor Gelernter’s desk sat a large-screen iMac.

Of Mr. Jobs, he spoke of a kinship. “He was, above all, a designer. I am, above all, a painter. I care about aesthetics.” One of the greatest joys of the long recovery from “when I was blown up,” he said, was realizing that he could paint with his left hand.

As for the money, he said he did not know precisely what his share of any verdict might be. “I have 2 percent of something,” he said. As much as he acknowledges that the money matters, what he wants most of all, he said, is to see the record reflect his role. “I know my ideas — our ideas — when I see them on a screen,” he said.

“Whatever happens in the end with the appeal, the six months of vindication between the jury verdict and the judge’s decision were worth many lifetimes of some cheaper pleasure.”

The Ted K Archive

John Schwartz
Pursuing a Piracy Claim Against Apple
Nov. 4, 2011

<www.nytimes.com/2011/11/05/us/david-gelernter-discusses-patent-claim-against-apple.html>

A version of this article appears in print on Section A, Page 12 of the New York edition with the same headline.

www.thetedkarchive.com