Trying to Understand Software: Why *Microsoft Corp. v. AT&T* was Mistakenly Decided

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INTRODUCTION

In the recent Supreme Court case *Microsoft Corp. v. AT&T Corp.*, two contentious issues in patent law jurisprudence collided: 1) extraterritorial protection of patents, and 2) the patenting of software. The Court's decision to appreciably limit software patent protection is misguided as it fails to account for the complexities of patent law as applied to modern technology.

A patent provides its owner with the right to exclude others from utilizing the claimed invention.[1] Under U.S. law, if someone makes, uses, sells, offers to sell, or imports an infringing invention in the United States, that person may be liable for patent infringement.[2] Section 271(f) of the Patent Act provides patent protection for infringement that occurs overseas if a component of the patented item is first manufactured in the United States and then exported for final assembly abroad.[3] This statute is easily applied to the manufacture of tangible goods such as gearboxes or

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1 *See* 1 Donald S. Chisum, Chisum on Patents § 1.01 (2006).

2 35 U.S.C. § 271(a) (2006).

3 35 U.S.C. § 271(f).