

Microsoft Defeats \$2 Billion Patent Challenge

Madison, Wisconsin

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Court finds that Microsoft's *Smart Tags* feature does not infringe HyperPhrase's patents

Judge Barbara Crabb, of the United States District Court for the Western District of Wisconsin, granted Microsoft's summary judgment motion, finding that HyperPhrase, LLC was unable to support the allegations that Microsoft's *Smart Tags* feature infringed the claims of its patents. *Smart Tags* is one of the new features in Microsoft Word 2002 and Excel 2002, applications in the Microsoft Office XP suite of software. The Smart Tags feature gives users the option of performing certain actions while working on a Word document or an Excel spreadsheet based on text the program recognizes that is entered into that document or spreadsheet.

The plaintiffs alleged that the *Smart Tags* feature infringed claims in three of its patents and sought \$2 billion in damages for the alleged infringement. The plaintiff's contentions were based on its view that the *Smart Tags* feature employed the same or equivalent methods of linking words and data files as those described in the plaintiff's patents.

However, the Court found that the plaintiffs failed to present sufficient evidence proving that the *Smart Tags* feature combined the three components necessary to be deemed a hyperlink as claimed in the patents. Specifically, the Smart Tags feature does not link or associate a keyword phrase, an address, or information stored at that address. Nor does the feature use an equivalent method for achieving the link or association.

The court also found that the claims of the patents required that both the keyword phrase and its "hypertext linking reference" or address, had to be recognized by the computer software in real time. The Court noted that with the *Smart Tags* feature the actual association between records does not occur until the user takes the necessary action to establish the link. As such, at the time that the software recognizes the keyword phrase, the address is not linked or brought together with the keyword phrase in a tangible way. Plaintiff's infringement claim failed because of its inability to prove that *Smart Tags* work in real time.

Finding no basis for literal infringement or infringement under the doctrine of equivalents, the Court found it unnecessary to consider Microsoft's contentions that the HyperPhrase patents-in-suit were invalid.

Litigation Strategies Ltd. provided jury research and strategic consulting services to Frank Scherkenbach and the Microsoft trial team from Fish & Richardson P.C.



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