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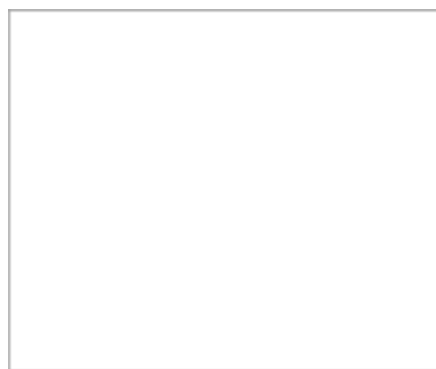


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MONDAY, FEBRUARY 9, 2009

TECHNOLOGY TRADER

Apple Hints at a Tough Legal Stance; Is It Patently Risky?

By **ERIC J. SAVITZ** | [MORE ARTICLES BY AUTHOR](#)***Apple's attack could backfire.***

AMONG THE MANY IMPRESSIVE FEATURES on the [Apple iPhone](#) is the ability to use "multitouch," manipulating the display screen using a pair of fingers. "Pinch" a picture to make it smaller, or spread two fingers apart to zoom in. The effects are astonishingly cool, making the iPhone far easier to use than other smartphones.

As often happens when Apple (ticker: AAPL) makes a big technical leap, other companies are playing copycat, and this time Apple is making noises about protecting its intellectual property. While some investors are cheered that the company may take a tough IP stance, there is reason to think they do so at no little risk that their patents in the area could end up endangered.

This issue cropped a few weeks ago when Apple's chief operating officer, Tim Cook, told investors tuned in to the company's December-quarter earnings call that it would not stand for having its IP ripped off. The unmentioned target of the remark appeared to be [Palm](#) (PALM), which last month unveiled an iPhone-like interface with its new Palm webOS software and Palm Pre handset. Because Palm Pre was developed in part by Apple refugees, led by Jon Rubenstein, the comment carried extra weight.

Pablo Pérez-Fernández, a San Francisco-based analyst at investment research boutique Global Crown Capital, last week wrote a report in which he made the astonishing assertion that a decision by Apple to sue Palm or other rivals in the smartphone business over its multitouch IP could backfire and result in the revocation of Apple's patents in the area.

On the one hand, Pérez-Fernández says, "Apple has a formidable arsenal of capacitive multi-touch patents that constitute a nearly impenetrable barrier to entry for companies hoping to commercialize capacitive multitouch devices." He views Palm as having the most legal risk because the Pre uses a set of gestures "very similar" to the iPhone's. He adds that [HTC](#) (2498.Taiwan), [Garmin](#) (GRMN) and [Research In Motion](#) (RIMM) also could be vulnerable to litigation since they all have or will soon introduce capacitive multitouch screens.

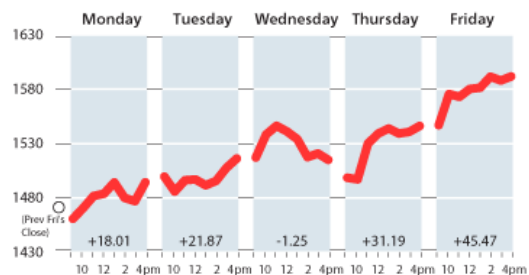
But Pérez-Fernández cautions that, were Apple's patents to come under legal scrutiny, some might be invalidated based on "prior art" considerations. He asserts that the U.S. Patent Office "may have not observed the requirement of innovation on number of occasions," that the legal owner of key multitouch technologies may actually be the University of Delaware, and that "the essential discoveries embedded in Apple's products were the result of the work of academics from the university now employed at Apple."

So he finds that "Apple almost certainly has IP claims against competing products on their way to the market." But he also finds that "the company is almost certainly violating the IP of other companies and research labs."

THE MAIN ISSUE RELATES to Apple's 2005 acquisition of FingerWorks, a company that capitalized on research at the University of Delaware by Wayne Westerman and his thesis

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FIVE-DAY NASDAQ COMPOSITE



Back in the Black: Investors expect tech firms to be showered with government dollars. The Nasdaq finished Friday at 1592, with a weekly gain of 7.8%.

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