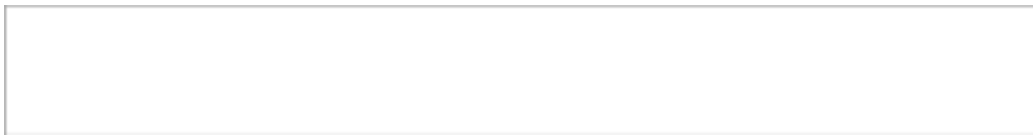


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Apple vs. Palm: the in-depth analysis

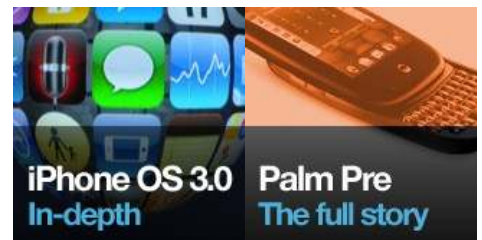
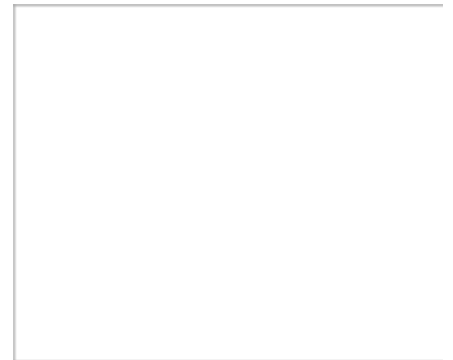
by Nilay Patel, posted Jan 28th 2009 at 1:28PM



Apple and Palm kicked a lot of dirt at each other last week -- acting Apple CEO Tim Cook flatly told analysts that ["We will not stand for people ripping off our IP"](#) when asked specifically about competition like the Palm Pre, and Palm responded with a similarly-explicit ["We have the tools necessary to defend ourselves."](#) At issue, of course, is that the Pre employs a multitouch screen and gestures almost exactly like those made famous on the iPhone -- and if you'll recall, Steve Jobs [introduced multitouch on the iPhone](#) with a [slide reading "Patented!"](#) To top it all off, the past few days have seen a number of media outlets proclaim that Apple's been awarded a "multitouch patent" without so much as a shred of analysis, instead hyping up a supposed future conflict. That's just not how we play it, so we enlisted [Mathew Gavronski](#), a patent attorney in the Chicago office of [Michael Best & Friedrich](#), to help us clear up some of the confusion and misinformation that's out there -- read on for more.

Just a couple notes before we begin: first, we're not going to get into whether or not Apple or Palm should have been granted particular patents or if the patent system is working as it should -- that's a philosophical argument way outside the scope of any potential lawsuit that might arise. Suffice it to say that although we're aware the patent system has flaws, there's no debating that people and companies should be compensated for their work, and we're not going to begrudge Apple or Palm for trying to do everything they can within rules of the current system to protect and profit from the hundreds of millions of dollars each has spent on R&D. You can bet the public policy implications of the patent system don't keep Ed Colligan or Steve Jobs up at night; we're going to assume both sides will be using every trick and decades-old patent it can find to win a potential lawsuit.

Second, while we can sit here and play with an iPhone to figure out what exactly Apple's trying to patent, we really don't have much to go on with the Pre apart from some brief hands-on time with units running alpha-level code at CES, so we can't really make definitive calls one way or another. A lot can



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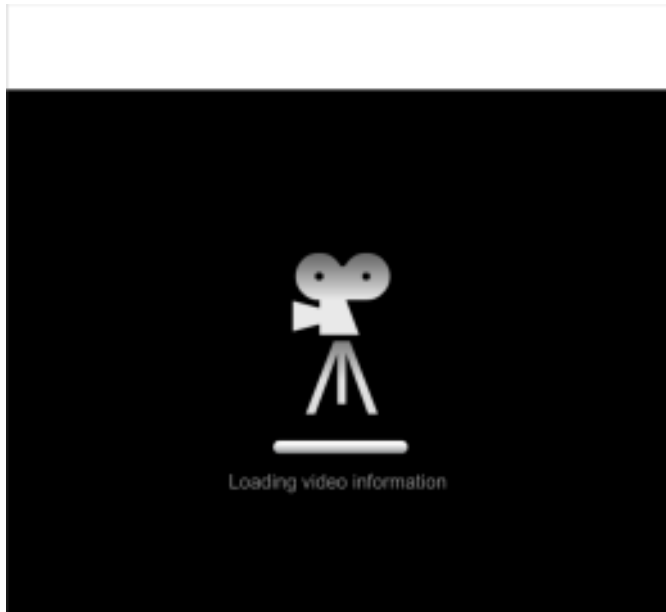
change between now and whenever the Pre is launched, so while we're going to do our best to identify the elements of the Pre and the iPhone that could potentially infringe Apple or Palm patents, treat the Pre stuff with an extra dose of salt.

So now that we've got the caveats out of the way, let's get started breaking down the areas where Apple and Palm can really do some courtroom damage, shall we?

Apple, multitouch and "the multitouch patent"

If you're to believe the conventional wisdom, Apple has a death grip on multitouch patents, which is why we haven't seen it (officially) implemented or fully exploited on other capacitive touchscreen phones like the G1 and Storm, even though they might be [capable of it](#). Like all conventional wisdom, this meme is partially rooted in reality, and partially exaggerated for the sake of the story: while multitouch itself is nothing new -- Palm PR is actually sending out this [2007 Bill Buxton white paper](#) showing roots of multitouch appearing as early as 1984 -- Steve wasn't kidding around when he said that Apple had patents on its particular implementation. The company purchased a [company called FingerWorks](#) in 2005, and several patents on the tech came along with founders Wayne Westerman and John Elias -- and Apple's been busy since, applying for several more multitouch patents in the three years since the acquisition.

Here's the thing, though -- patent #7,479,949, entitled "[Touch screen device, method, and graphical user interface for determining commands by applying heuristics](#)" that you might have seen touted around the web as Apple's "key multitouch patent"? It's really not, at least anymore. **Patents become narrower in scope as they go through the approval process**, and although we teasingly referred to it as "[the iPhone patent](#)" when it was initially filed, it now only covers touch devices that have a very specific interface feature: sensing whether or not you want to just scroll up and down in one dimension or pan around in two dimensions based on the angle you initially move your finger relative to the screen. It's way easier to explain this in a video:



There's a little more to it, but that's really the key element covered in the broadest claims of the patent. **If a device doesn't have this feature, it doesn't infringe this patent.** So in order for Apple to win a case against Palm based on this patent, it would have to show that the Pre has the same scrolling behavior. Which it very well might, as we saw at CES:

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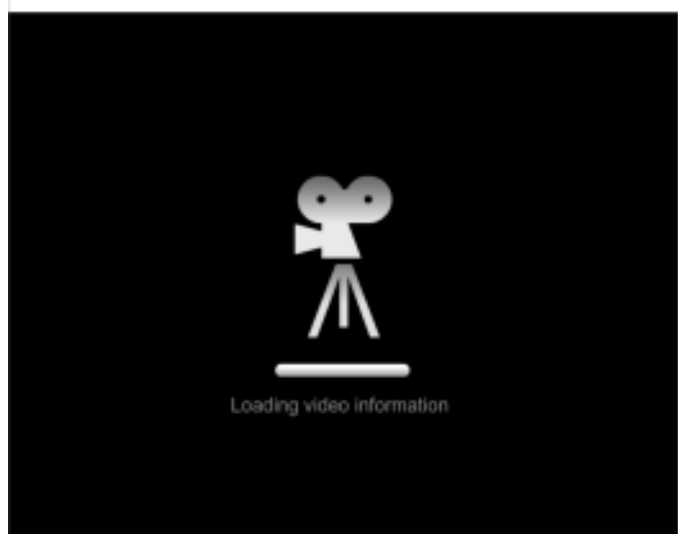
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(Skip to the bookmark if it doesn't load automatically)

That looks awfully similar, if you ask us, but without having spent the same amount of time playing with the Pre as we did toying with an iPhone to figure out what this patent was getting at, we can't say for sure it's the same thing. Let's just say it'd be for the best if the Pre was always panning in two dimensions, rather than switching to a purely vertical scrolling mode -- Apple's patent really wouldn't be applicable in that case. Easy, right?

That's not the case for another iPhone interface patent, which is less to do with "multitouch" and more to do with touchscreen interface behavior (a common theme with Apple's iPhone patents, actually): #7,469,381, entitled "[List scrolling and document translation, scaling, and rotation on a touch-screen display](#)." This one covers a pretty famous iPhone behavior -- scrolling to the end of a document, revealing the edge, and then "springing back." Again, way easier to demonstrate on video:



Yep, the Pre does it exactly the same way:

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It's not going to be easy for Palm to claim that the Pre isn't infringing this one -- there's just no denying the note-perfect reproduction of the iPhone behavior. We'll see if Palm releases the Pre with this interface intact, since Apple has at least the beginnings of a claim against this one.

So where's the "multitouch patent" everyone keeps going on about? Well, we certainly couldn't find the sort of broad patent that would qualify, and **we didn't find much of anything that would keep anyone from using multitouch gestures like pinch-to-zoom** -- in fact, Apple has a better patent position with regard to pinching gestures to cut, copy and paste than it does on pinching to zoom. We're not kidding: it picked up #7,339,580 "[Method and apparatus for integrating manual input](#)" last year, which straight-up covers "generating a cut command in response to a pinching motion between a thumb and a fingertip detected on a multi-touch-sensitive surface." You won't find anything like that for pinch-to-zoom, and at this point there are so many [other multitouch systems](#) (including Microsoft [Surface](#) and [Windows 7](#)) out there [using the gesture](#) that we don't know if Apple could convince Uncle Sam to dole out a patent on the idea. Go ahead and skip the Flintstones, there's your irony for the day.

Of course, just because Apple's current multitouch patents aren't as broad and sweeping as commonly assumed doesn't mean it can't put the hurt on Palm with what it does have -- and from what we've seen, the Pre's in some dangerous territory. (Plus, Apple still has plenty of pending patent applications out there it can try and tweak to target the Pre, but we'll get to that later.) We'll be able to find out way more when the Pre is actually launched -- trying to determine exact behaviors from short videos and hazy recollections is a road to ruin.

We *do* have an iPhone here, however -- and looking at some of Palm's patents, we can pretty much say that Apple's got some 'splainin to do.

Palm's patent portfolio

In all the rush to portray Apple as the big bad wolf, people seem to have forgotten that Palm is a *comeback* story -- it's been in the game since 1992, and it's got a pretty hefty patent portfolio of its own. Take #7,268,775, entitled "[Dynamic brightness range for portable computer displays based on ambient conditions](#)," for example -- it covers automatically adjusting display brightness using an ambient light sensor while leaving a user-selected brightness setting alone. Yep, that's exactly how the iPhone does it:

WIN Network

Autos

Technology

Lifestyle

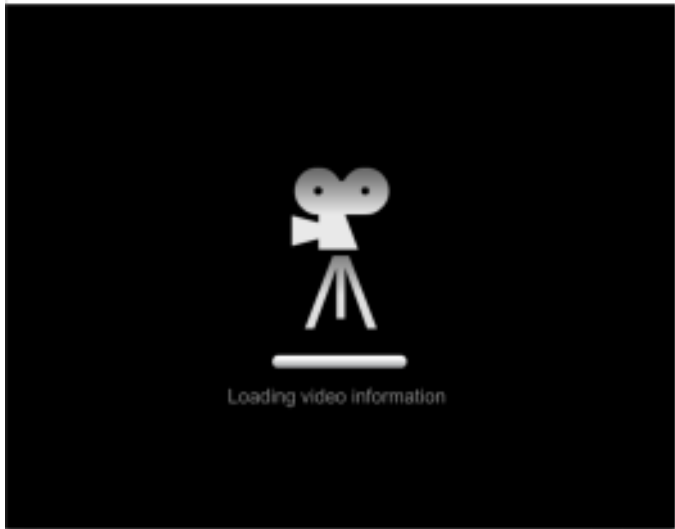
Gaming

Entertainment

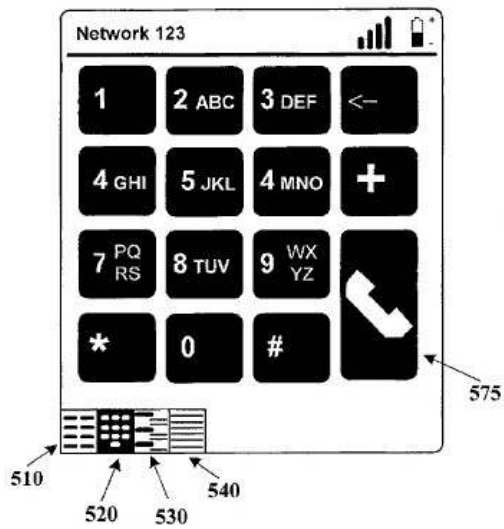
Finance

Sports

Also on AOL



Or how about #7,007,239, "[Method and apparatus for accessing a contacts database and telephone services](#)"? Claim 10 is an almost exact description of the iPhone's phone app -- buttons for dialing, call history, contacts, and speed dial that stay on-screen as you toggle between them:



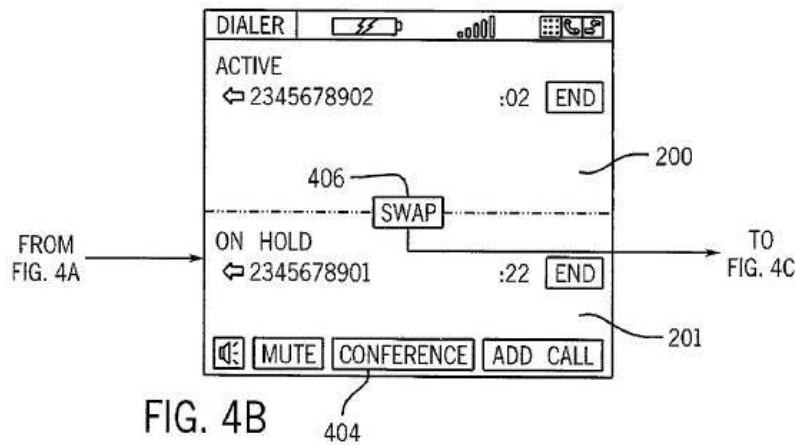
(510 is speed dial, 520 is the dialer, 530 is contacts, and 540 is call history)



Not only that, but it covers pulling up contacts by just typing in initials, which is totally in the iPhone:



Or how about #7,296,107, "[System and method for detection of an accessory device connection status](#)"? It covers leaving the display at full brightness instead of auto-dimming while connected to a power source during sync -- go ahead and try it, iPhone owners, that's what it does. And let's not forget 2001's greatest hit, patent #7,231,208, "[User interface-technique for managing an active call](#)": it describes in detail a conference call management system that's exactly like the iPhone's -- you put one call on hold while you make another, and then you can independently manage each call from a single screen. Look familiar?



If you're going to say that the Pre crosses the boundaries of Apple's spring-back edge scrolling patent, you're really not in a position to say that the iPhone doesn't similarly ape Palm's call-management patent -- or the brightness patent, or the contacts patent, or the dim-during-sync patent, or... you get the idea. Apple might be the more infamous IP juggernaut, but **Palm has literally hundreds of patents of its own, and we managed to dig up four that seem to directly implicate the iPhone in just a few hours of searching.** Imagine what Palm's lawyers could do, armed with their actual knowledge of what Palm owns and the motivation of some serious hourly fees.

The consequences of playing with fire

If you're asking yourself why Apple or Palm would develop a product that so obviously infringes on published patents, it's because somewhere along the line, each company made the decision that it could realistically convince a court that those patents were invalid -- most likely because they're "obvious," which is a word loaded with legal meaning in the patent realm. For our purposes, we can just say that "obvious" means that you can't patent a combination of different existing things, you have to do something new -- and while we're not going to judge Apple or Palm's patents on that standard, we will say that there's plenty of meat for the attorneys on both sides to chew on. All you really need to know is that by suing Palm, Apple's putting its iPhone patents at risk, and that's an awful big ante. Same for Palm if it sues Apple and loses -- it stands the risk of losing its patents, and we'd bet it's making a tidy sum licensing at least some of them out to other companies.

Speaking of tidy sums, we haven't even begun to talk about the money involved here, and it's a lot -- enough to seriously tip the scales. Let's say Palm were to win: not only might Apple lose its patents, the court would at the very least award Palm royalties for the patents the iPhone infringes, and at [over 16m iPhones sold so far](#), even a few percentage points adds up fast -- we're talking hundreds of millions of dollars. If Apple wins? Well, Palm hasn't sold any Pres yet, so its exposure to royalty payments is much lower -- and potentially losing some older patents it may or may not even be using doesn't seem like a terrible punishment. Then again, if Palm loses, it probably won't be able to ship the

Pre on time or as promised, and that could well be the end of Palm.

What both sides *could* do is tweak their pending patent applications to more accurately describe their competitors' products and then try to sue based on those -- **it's actually considered good practice for tech companies to always have patents pending, so they can try and cut their competitors off**. For example, Apple has a second patent identical to the "iPhone patent" filed with the patent office that it can certainly slightly revise to try and loop in the Pre's scrolling behavior. Not only that, but Apple also has tons of pending patent applications on multitouch that haven't really gone anywhere since they've been filed, like [this one](#) that purports to flatly cover all capacitive multitouch surfaces. Will it ever get granted? Who knows -- but it's certainly another card Apple can try to keep in its back pocket.

Wrap-up

So let's take a step back here and think about the bigger picture. You've got two large companies, each loaded up with tons of patents and pending patents, only some of which we've touched on here, and plenty of reasons to fight this one out: not only is Apple historically protective of its IP, it's got the massively popular iPhone to defend, while Palm's more or less staking its survival on the success of the Pre. It's going to be a bloodbath, right? Well, maybe, maybe not -- while we're not going to say that the attorneys on each side aren't mentally picking out colors for their new BMWs, it's important to realize that both sides stand to lose an awful lot in a potential lawsuit as well. Plus, to these lawyers' ears, Tim Cook's statements the other day sounded more like an attorney-coached nonanswer than some angry shot across Palm's bow -- it felt like Cook knew the question was coming and delivered his prepared response a tick early, not like he suddenly remembered Apple's multimillion-dollar patent portfolio and got fired up.



Still, we doubt this will all settle quietly in the night. More likely it's going to come down to whoever decides to blink first -- and unless Palm decides to go out in a blaze of glory, files a declaratory judgment action and tries to preemptively invalidate Apple's patents, **we'd say the first shot's going to come from Cupertino**. After that, it's anyone's guess as to what might happen -- this isn't anywhere close to a full-blown patent analysis, and we're sure the attorneys and law students out there will be able to find angles and tactics we've missed. That said, we'll go on record: all we want is for both Apple and Palm to come to the table, hammer out a cross-licensing agreement like other companies in the wireless industry do all the time, and get back to work on innovative, exciting technologies and devices. The lawyers get paid that way too, you know.

Disclaimer: Although Matt and Nilay are lawyers, they're not your lawyers, and this isn't formal legal advice or analysis. To the extent this article might contain any statements regarding infringement of a particular patent by a particular device or what those patents cover, those statements are attributable to Nilay, not Matt, who still makes a living by giving actual legal advice to actual clients.

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 **maveric101** @ Jan 28th 2009 11:04AM Highly Ranked   

pretator will pwn an alien any day.





[Reply](#)

 **Jamma** @ Jan 28th 2009 11:04AM Highly Ranked   

You mean PRE- dator





 **Vito** @ Jan 28th 2009 11:28AM Neutral   

Nice.

 **Taylor** @ Jan 28th 2009 11:23AM Neutral   





Ah, yes. Pre-dator vs iAlien. A classic in the making.

Here's hoping that they have a sit down, realize they are both infringing on each other and decide to agree not to file a lawsuit against one another. We can only hope.





 **maveric101** @ Jan 28th 2009 11:40AM Neutral   

gah typo.

also, "Go ahead and skip the Flintstones, there's your irony for the day."
lol.

 **Kelmon** @ Jan 28th 2009 12:15PM Neutral   





In fairness, I seem to recall the Predator snuffed it at the end of AvP to the Alien Queen and that it took some silly woman to whup her, plus it's corpse ended up with a Alien in it so that was a double embarrassment. Mind you, it's probably not as bad as remembering a pretty forgettable movie...

 **Katie** @ Jan 28th 2009 12:20PM Highly Ranked   

They both need to just shake hands and play ball.





 **David** @ Jan 28th 2009 1:15PM Highly Ranked   

Technically aren't they both aliens?

 **lawyer bird** @ Jan 28th 2009 2:28PM Low Ranked   

Yeah, but one's a CYBORG alien.





On a completely unrelated note, how likely is it that it'll be possible to install Android on the Pre without too much fuss? That would be perfect.

 **Big Sam** @ Jan 28th 2009 2:42PM Neutral   

"But invisibility has little meaning to creatures with no eyes"





 **Jason** @ Jan 28th 2009 4:02PM Low Ranked   

Apple innovates - Other Companies Rip it off - The Techno Race keeps getting better - Now Apple will have to do something else incredible for as at again - the real question in the game of Technology and invention IS- who will you give your money too - the ripp off or the original? haha - one of the reasons why i will never buy Microsoft products shahahaha - - I am wondering if the Palm can take a drop - My iPhone has been dropped so many time - i cant believe it still works - I dropped my Treo back in the day once about 3 feet and the screen Cracked piece a junk





 **dramamoose** @ Jan 28th 2009 4:38PM Highly Ranked   

@Shugg:

Did you even READ the article?

 **RC** @ Jan 28th 2009 7:16PM Highly Ranked   

So now we know why the Aliens have no weapons. Because the Predators patented all of them!

 **CJ** @ Jan 29th 2009 12:21AM Highly Ranked   

@dramanoose:

You're implying that Shugg can READ. So no.

**nikster** @ Jan 29th 2009 1:45AM

Highly Ranked

Love the PRE-dator vs iAlien idea, but the tagline needs to be changed:

Whoever loses... the lawyers win.

**haX0r** @ Jan 31st 2009 1:57AM

Neutral

Does that then make the Nokia N97 Superman?

**Deed** @ Feb 1st 2009 10:06AM

Highly Ranked

I agree with Katie on this. I think both companies should leave this the fuck alone and let technological advancement run its process. If it turns out that both phones really are aping each other in many ways, then they're just going to sling shit and settlement fees at each other until they're both left with chunks of money gone. Besides, if every company has to come up with contrasting ideas, it makes smartphones as a general platform less accessible, for there isn't a universal set of ideas to grasp when using any device. Hopefully this won't deteriorate into one of those "what could have been" stories, where the Pre has to be watered down until it's not nearly as awesome as it's looking, simply for the sake of legal fisticuffs.

**Orrett Junior** @ Jan 28th 2009 11:08AM

Neutral

Its ironic that Apple is so angry when they license so many patents form Palm.

Quite ironic.

[Reply](#)**Nathan** @ Jan 28th 2009 11:17AM

Highly Ranked

I am guessing you mean infringe on Palm patents. AFAIK Apple doesn't license anything from Palm. It really doesn't matter anyway because Apple could sue Palm, drag it on for years and put them out of business. Remember Apple is sitting on a multi-billion dollar warchest of cash whilst Palm is surviving on investor money.

Pretty crappy way to compete if you ask me but then again almost all the IT companies have played nasty at one stage or another.

**AlekZander** @ Jan 28th 2009 11:17AM

Neutral

They paid huge bucks to license those patents though, or Palm would've sued already.

**Dorv** @ Jan 28th 2009 11:27AM

Neutral

Alek: Not necessarily... They could have been holding back knowing that this eventuality would come.

**Aaron** @ Jan 28th 2009 11:33AM

Neutral

Alek - I don't think you understand how big businesses use patents.

Most big businesses use patents like countries use nuclear weapons. They're a deterrent to stop other people attacking them. This is why Palm are confident that Apple won't sue - it would be mutually assured destruction.

Of course this system all falls down when patent trolls (the terrorists of the piece) stroll into town. Nuclear weapons are pretty useful against an entity with no tangible assets.

**AlekZander** @ Jan 28th 2009 11:58AM

Neutral

Your argument is plausible but considering that Palm has been millimeters from death for some time, I feel pretty sure that if they felt they had even the slightest chance to win a patent suit against Apple and make millions (to say nothing of removing one of their strongest competitors), they would've taken it by new. Holding back for this long would just be insane.

**adrian** @ Jan 28th 2009 12:18PM

Neutral

I reckon Apple must of known about those Palm patents. And used it's patents as backdoor leverage to get around them when developing the iPhone.

**TitaniumMan** @ Jan 28th 2009 12:23PM

Neutral

I wonder if Apple goes against palm, whether the other big guys (microsoft, google, nokia) will join palm against curpentino.
This looks more and more like the "look and feel" apple vs microsoft lawsuit.
Apple won't go against them unless they are pretty sure they can win this.
The above apple patents seem to be more precise, while palm's have more to do with the os inteface (where apple lost against microsoft in the past).

**THJ** @ Jan 28th 2009 1:14PM

Neutral

@ Aaron

Thanks, that comparison makes it much easier to understand.

Explains why RIM kept getting raked over the coals (Patent Troll Terrorist), but other major patent cases are few and far between (Mutually Assured Destruction).

**JM Palacios** @ Jan 29th 2009 9:20PM

Neutral

@ TitaniumMan,

I am also seeing a lot of similarities to Apple vs. Microsoft. The main difference is, Apple lost because Microsoft already had a license to use Apple's GUI. It would be most interesting if Apple is able to win this time, but Palm's patents are going to make it pretty touch to achieve.

**Edward** @ Jan 28th 2009 3:19PM

Highly Ranked

Alek, we've seen the "let's sue our way out of death" strategy before -- remember SCO? Aaron is right -- most big companies, including mine where I hold two patents -- use their IP portfolio defensively for mutually-assured destruction, to use the Cold War era phrase. Any of the big tech titans could destroy each other through many years and millions of dollars in litigation, but it wouldn't necessarily benefit the stockholders. Apple would be smart to let the Pre steal a few percentage points of market share, because that's far cheaper than defending a Palm countersuit.

**sid.watal** @ Jan 28th 2009 3:41PM

Neutral

@ Aaron

you mean "Nuclear weapons are pretty useless against an entity with no tangible assets"

**Flashpoint** @ Jan 28th 2009 11:35PM

Low Ranked

DAMN I'M GLAD I BOUGHT AN IPHONE !

I want apple to succeed beyond success

Put LG, and Nokia OUT OF BUSINESS !!!!

**dishbreak** @ Jan 28th 2009 11:46PM

Highly Ranked

Flashpoint, do you TRY to get low ranked?

**SenorK** @ Jan 29th 2009 3:40PM

Neutral

Do patents work the same way as copyrights? I.E. you'll lose claim on a copyright if you don't actively defend it. If Palm hasn't already come after Apple, do they have a leg to stand on?

**dg** @ Jan 29th 2009 7:39PM

Neutral

In reference to Flashpoint's comment as well as some others':

I swear this is the only site that makes me want to apologize for being an Apple enthusiast.

I love their products and I'll probably never buy a computer, PMP, or cellphone from another company as long as things stay comparable to the way they are now, but good lord, Flashpoint, you couldn't POSSIBLY have even read the article.

**dg** @ Jan 29th 2009 7:41PM

Neutral

Correction: Shugg (up a few comments), not Flashpoint, couldn't POSSIBLY have even read the article.

**itsnotabigtruck** @ Feb 2nd 2009 1:08AM

Neutral

@SenorK: Neither copyrights nor patents work like that. You're thinking of trademarks.

**JozJonlin** @ Jan 28th 2009 11:10AM

Neutral

Move over Apple and fanb0yz. There's a new Sheriff in town.

[Reply](#)**lanejasper69** @ Jan 28th 2009 6:45PM

Neutral

And they shall call him "Pre"....!



adam @ Jan 28th 2009 7:14PM

Neutral

isnt it weird that the service bar/wifi and battery bar are not on the screen, but on the glossy black portion.

picture fail? or added feature??



iphopenutz @ Jan 28th 2009 8:18AM

Low Ranked

The Pre victory party has been postponed indefinitely. Ed Colligan is gonna get knocked out when that 358 page patent report hits him in his arrogant, oversized head.

The end is near for Palm and the Pre will be the final nail in their coffin. Apple has submitted a patent for use of the finger so Palm Pre users will need to use their knuckles to do any screen input. Palm users have been knuckle-dragging for years and all those callouses will surely get in the way.

Well, Palm still has the Centro. Maybe some new colors will increase its sales.



Christopher Cox @ Feb 20th 2009 4:52PM

Neutral

@adam It's a feature. The screen itself is rectangular; the corners are just black to give the illusion of a rounded screen. In the right light you can tell.

That picture, however, is an official press shot for Palm. I'm willing to bet it has been prettied up a bit.



dennis @ Jan 28th 2009 11:11AM

Highly Ranked

Finally, an intelligent, in depth analysis of this issue. There's so much CRAP online about this, like "Watch out, Microsoft" (seriously). Thanks.

[Reply](#)



ahdok @ Jan 28th 2009 11:36AM

Highly Ranked

Yeah, this is a pretty decent article. Thanks engadget.

Thengadget.



j_g_puff @ Jan 28th 2009 12:08PM

Neutral

Thanks for that subtle reference ahdok. It's just made my day.



j_g_puff @ Jan 28th 2009 12:18PM

Neutral

Oh, and Ahdok, you seem to be affiliated with a company called PL. Do you know Playford by any chance? I believe he worked there a few summers back.



Nick @ Jan 28th 2009 1:33PM

Highly Ranked

This unbelievable, Engadget has actually done a insightful and fair article... way to go... but i won't hold my breath on that because there's been other fair good articles Engadget has done but they they go back to drinking Apple Juice.



pm @ Jan 28th 2009 2:06PM

Highly Ranked

Yeah, that was my thought too - nice to see a well-written article on the subject. Thank you, Engadget.



Eddie @ Jan 28th 2009 3:20PM

Neutral

Definitely agree. I am linking this everywhere already :)
Thanks guys.



theharmonyguy @ Jan 28th 2009 3:49PM

Highly Ranked

Exactly. This article is why I read Engadget. Ever since word about the recent "multitouch patent" broke, I've been looking for a reasonable legal analysis of how it would affect the Pre. I finally have it. Kudos to Engadget for an excellent article yet again.



compmd @ Jan 28th 2009 11:13AM

Neutral

Sweet review

[Reply](#)



C @ Jan 28th 2009 11:14AM

Highly Ranked   

Great Article. Although I wonder if Apple/ Palm could secretly "encourage" a third company to sue the other one for them as a test case? That way, even if the third party company loses the case, Apple/ Palm has nothing to lose as their own patents aren't on the table.

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