



## **U.S. Supreme Court today – i4i v. Microsoft**

Washington DC, April 18, 2011 – In Washington DC today, eight Supreme Court justices heard oral argument of the appeal for i4i v Microsoft. Microsoft has asked the Supreme Court to lower the standard of proof, for challenges to the validity of a properly issued patent, from clear and convincing evidence to a preponderance of evidence.

Seth Waxman, of WilmerHale, who was Solicitor General in the Clinton Administration, argued on behalf of i4i. The United States argued in favor of i4i's position, and was represented by Malcolm L. Stewart, Deputy Solicitor General.

Loudon Owen, Chairman of i4i, says, "We certainly appreciate the extraordinary presentation to the Supreme Court of i4i's position by these magnificent counsel. It is abundantly clear that the fundamental change in the law, which Microsoft seeks, would result in an enormous decrease in innovation." Owen continues, "Microsoft did not present either policy or legal reasons that would justify any changes to the law, particularly the sweeping change they now apparently seek."

Owen says, "In our view, Microsoft cannot overcome the prevailing law and sound policy of the clear-and-convincing standard based on its spin campaign that now seems to be focused on innuendo about i4i and an atrociously weak argument that weakening the patent system will encourage innovation. We are confident we will continue to prevail."

Owen says, "It is ironic and revealing that Microsoft itself has directly cited i4i's '449 patent in four separate patent applications, and indirectly in approximately 100 other patent applications, demonstrating that Microsoft expressly seeks to build on i4i's invention in its own applications for patents filed at the US Patent and Trademark Office."

In March 2007, i4i sued Microsoft for willful infringement of its patent. On May 20, 2009, the jury found i4i's patent to have been willfully infringed, and awarded Microsoft to pay damages to i4i. On August 11, 2009, the Honorable Leonard Davis issued a final judgment against Microsoft that included (a) an award of damages in excess of \$290 million USD to i4i (including enhanced damages, interest and post-verdict damages), and (b) a permanent injunction, which took effect on January 11, 2010. Microsoft unsuccessfully appealed to the Federal Circuit Court of Appeals in late 2009, and also unsuccessfully sought a rehearing in early 2010. This was the largest patent infringement judgment ever upheld by the Federal Circuit.

The case today was heard by the eight Associate Justices. The Chief Justice of the United States, John Roberts, recused himself from the case. For its appeal to be successful, Microsoft must win votes from five of the eight Associate Justices. i4i's legal team includes WilmerHale, McKool Smith, Finnegan Henderson, and Sterne Kessler. Written transcripts of the argument will be available online later today. A decision from the Court is expected by the end of June.

i4i is a global technology company headquartered in Toronto, Canada. For more information on i4i v. Microsoft, selected court documents can be found on [www.i4ilp.com](http://www.i4ilp.com).



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