

Appeals Court Considers Overturning Ruling That APIs Can't Be Covered By Copyright

Mike Masnick Wed, Dec 4th 2013 3:52pm

from the *and-on-and-on-it-goes* dept

Back in May 2012, Judge William Alsup (yes, he's popular today) issued a very good and very thorough ruling explaining why APIs could not be covered by copyright. Alsup, who claimed he learned to program in Java to better understand the technical details of the case, went into a fair bit of detail in his ruling, which looked like it was clearly designed to explain basic programming concepts to an appeals court who would surely be hearing the case -- and almost certainly with judges who had less (if any) programming knowledge. The appeal was officially heard by the Federal Circuit appeals court (CAFC) today and there are some reports suggesting that the judges are skeptical of Alsup's ruling and may be leaning towards overturning it. Reading through some of the details it appears that at least one judge is clearly on Oracle's side in believing that APIs can be covered by copyright, while it's not as clear where the other two judges on the panel sit.

Given CAFC's history as *exceptionally* supportive of locking up knowledge and information on the patent side, it wouldn't be terribly surprising if they did so as well on the copyright side (side note: while, normally, copyright cases should travel up the local appeals court route, since this case started as a patent case, even though it ended up as a copyright case, apparently the appeal still goes to CAFC, the court that hears all patent appeals). This is yet another issue with having a court like CAFC, which has long appeared to be captured by those who support a maximalist view of intellectual property.

Still, oral hearings in appeals are not always indicative of how judges are leaning. Reading the tea leaves there is often quite dangerous. The hearing sometimes focus on tangents, or involve judges really trying to test out a particular theory, and final rulings may be more strongly based on the written filings (and, sometimes, briefs from amici -- of which there were quite a few in this case). This case still has a long way to go, but hopefully the appeals court recognizes the careful level of detail that judge Alsup went into in determining that APIs do not deserve copyright protection.