

Microsoft-Novell Pact Is Already in Dispute

By STEVE LOHR

Published: November 22, 2006

Less than three weeks after they reached an accord hailed as proof that rival software companies could work together, the chief executives of Novell and Microsoft are engaged in an unusual public dispute.

The pact was seen as an affirmation of the importance of Linux, an open-source competitor to Microsoft's Windows operating system, and of the need to satisfy corporate customers who want to run both Windows and Novell's variety of Linux in their data centers.

Explaining the agreement at a software developers' conference in Seattle last week, Steven A. Ballmer, Microsoft's chief executive, said it "appropriately compensated Microsoft" because Linux "uses our patented intellectual property."

On Monday, Ron Hovsepian, Novell's chief executive, shot back with an "open letter" that declared, "Some parties have spoken about this patent agreement in a damaging way, and with a perspective that we do not share." He added, "Importantly, our agreement with Microsoft is in no way an acknowledgment that Linux infringes upon any Microsoft intellectual property."

Microsoft replied with a news release Monday evening, saying the companies "have agreed to disagree."

Yet the terms of engagement between Microsoft and Linux promise to become an even greater source of controversy. The general counsel of the Free Software Foundation, which holds the license to Linux, yesterday called on Microsoft to alter its pledge not to file patent-infringement suits against customers who use Novell's version of Linux, called SuSe Linux. He said the pledge should be extended to all Linux users or to none.

That point was a crucial part of the Microsoft-Novell pact, which also included joint technology development and marketing programs.

The deal was also regarded as a way for Microsoft to try to undermine its leading open source competitor, Red Hat, whose customers would not enjoy the same patent pledge as Novell customers.

Preferential treatment for one distributor or group of developers of Linux over others is something the new version of the Linux software license, which is nearly complete, will seek to prohibit, said Eben Moglen, general counsel of the Free Software Foundation.

“This deal raises important questions,” said Mr. Moglen, who is a law professor at Columbia University, “and it is not going to work well under the new license.”

The new version, the General Public License 3.0, is in the final public comment stage, and is scheduled to become effective next March. A major aim of the license revision is to deal with the spread of software patents, and patent lawsuits, in recent years. And the new license will almost certainly make it difficult for companies to make selective patent pledges to some Linux distributors, developers and users, and not to others, Mr. Moglen said.

He said the concern was that Microsoft could use such patent promises as a competitive weapon to undermine companies who are rivals or to threaten independent Linux software developers.

“Microsoft should take back the patent promise to Novell customers or extend the promise of patent safety to everyone, not just Novell customers,” he said.

Microsoft has not previously made an issue of patent claims against Linux companies or developers. And while Mr. Ballmer’s assertion last week that Linux code includes Microsoft’s intellectual property may be his personal belief, it is not been reflected in the company’s strategy — at least not so far.

In an interview after the Novell deal, Bradford L. Smith, the general counsel of Microsoft, pointed to the agreement as an example of the “new intellectual property paradigms” that would be needed so that corporations and consumers could more easily use all kinds of technology, from open-source and proprietary software to digital music and video in different formats.

The different technologies and businesses will remain different, Mr. Smith said, but rigid intellectual property rules should not prevent them from working together. “What’s needed are bridges, not walls,” he said.

In its statement on Monday, Microsoft said, “Both of our companies are fully committed to moving forward with all of the important work under these agreements.”