

DON'T COPY

Dear Linux Magazine Reader,

Patent law is a very imperfect tool for establishing moral culpability. Whether you favor patents or not, it is important to face the fact that patent law is a construct of the business world. Patents protect opportunities for patent holders and restrict opportunities for others – all for some supposedly greater purpose, we are told, but in any case, none of this ever has the clarity that will allow you to point your finger at a violator as you would at someone who stole your car. So I don't have a lot of faith in patents, but I still have a feeling you'll do better in life if you come up with your own solutions.

I guess I haven't written one of these welcome columns since the Apple vs. Samsung verdict, which seems so long ago now and will be even farther in the past when you read this message. I don't really want to relive the whole range of comments that have appeared so far on the verdict. In fact, I have been amazed at how little all the "authorities" seem to know – especially the ones who seem convinced that a few patents are going to bring down Android. Is there a lesson in all this? A huge team of lawyers billing US\$ 200 to US\$ 800 per hour erected weeks of elegant arguments – investing thousands of hours – and a jury thought about the whole thing for 21 hours and 37 minutes. The 109 pages of jury instructions supposedly invited them to consider more than 700 questions, which means they read, discussed, considered, and reached consensus on 33 points per hour or one point approximately every 33 seconds.

Did the jury really consider all these different points? No. Does it matter? We don't know yet, but probably not. In the end, there is very little to take away from this. Apple's stock price went up. Samsung obviously isn't going anywhere. They will lose some money on the Galaxy tablet, then they'll just revise the design and put out some new devices for the next season.

The one thing Samsung could maybe take away from this is: At least try to be original. I'm not convinced that any of these

patents are actually valid, but I am convinced that Samsung would do well to place a higher premium on originality in their office culture. According to the evidence introduced at the trial, Samsung's own OS partner Google told them their tablet was too similar to the iPad and said they should work on developing a "distinguishable design." And in Samsung's internal evaluation, consultants working for Samsung warned that the Galaxy S looked like it copied the iPad too much.

Of course, Samsung argued that Apple also copied, which is no doubt true, but just because Apple got away with it doesn't make it okay. Both sides said that, though it might have looked like they were copying, they were actually teasing out a primordial solution that is free to use. But then, when your own internal documents show that important partners and people working for your own company think you are copying, it really should set off some kind of alarm bell – for everyone, not just the legal department.

Joe

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