

BGH: Patent infringement by Microsoft in cloud technology



Simon Lüthje • 7. December 2021



The German Federal Court of Justice has confirmed in a ruling that Microsoft infringes the patents of a German company with its cloud technology. The ruling is likely to raise fundamental questions not only for the company in question, but for the entire cloud industry.

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The proceedings

The proceedings, which ended on October 7 with a ruling by the German Federal Court of Justice, mark the end of a years-long legal battle between the *Patentpool Group* and Microsoft. At issue was whether Microsoft's cloud computing technology infringed a patent held by the *Patentpool Group*. The BGH has now answered in the affirmative. The patented technology is not a concrete program, but rather a basic foundation that cloud offerings must use in order to function. All dynamic websites must also rely on the patented form of secure data communication and server-side website creation. It is thus already clear that the patent infringement now confirmed

by the BGH is likely to have far-reaching consequences: Not only Microsoft, but also numerous other companies are thus committing patent infringements with their practice.

The background

The plaintiff company is part of the aforementioned *Patentpool Group*, which was founded in the late 1990s. The aim of the company is to develop patentable ideas and make them usable for marketable applications. To this end, the Group not only finances corresponding projects, but also assumes operational project management – in other words, it is more than just a venture capital provider.

The technology at issue in the current proceedings was developed by the *Patentpool Group* and IT systems architect Hardy Schloer under the project name *Project Tosca* and marketed from the 2000s. The patent was applied for in 2000 in both Germany and the UK. It was granted six years later.

As part of the marketing efforts, numerous IT companies, including Microsoft, were contacted. These contacts and the accompanying presentations and negotiations resulted in partial disclosure of the technologies offered – all of them basic components for dynamic Web applications. Microsoft thus gained extensive knowledge about the background, functionality and possibilities of the technologies offered; however, the US company refused to cooperate. Subsequently, the company continued to work on its own monetizable application possibilities.

At the end of 2012, it then became obvious to the general public what possibilities the patented basic technologies entailed: Cloud computing began its triumphant march, which continues to this day. Microsoft introduced its Azure platform and has been a major player in the cloud market ever since. This market, in turn, is expected to generate around \$445 billion in revenue in 2021.

Patent pool windfall

The *Patentpool Group* or the companies it supports that hold patents for the technologies in question can in all likelihood look forward to a windfall – of that Heiner Pollert, founder of the group, is certain. However, it is still completely unclear how much Microsoft will pay. Now that the verdict has been pronounced, the way is clear for the *Patentpool Group* to address Microsoft with claims. The US group has not yet commented on its ideas.

Pollert emphasized that an agreement could also consist of concluding license agreements that regulate the further use of the patented technologies and

compensate for the previous unauthorized use. In this context, claims can be made for the past ten years.

Open questions

In addition to the question of the concrete consequences for Microsoft and the *Patentpool Group*, other, more fundamental questions remain open. For example, the ruling now pronounced affects not only Microsoft for a long time, but indirectly every company that offers cloud services. This also includes Google and Amazon. It remains to be seen whether Patentpool will also take action against these companies and file claims. However, it has already been announced that a possible action against Microsoft will also be examined in the UK, since a patent for the technologies in question has also been granted there.

#Germany

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