

Q&A – What does a company like Microsoft or Apple or Google have to do to meet full compliance with the Settlement for US6370629’s terms?

- 1) The “Successors” to the Licensing are not just the assignees of the Patents, they are the third parties they provide direct and indirect license to use for Plaintiff’s PHASE-II Properties.
- 2) Since the software itself used with PHASE-II Technologies inside it is used to create new Intellectual Properties, those carry the limitations of the PHASE-II Licensing with them.
- 4) The specific language of US6370629’s settlement section 8.7, 8.5, and 8.4 were crafted to create a liability which rolls down to the end-user for their compliance.

WHERE DOES THIS LEAVE THE COMPLYING ENTITY?

The complying entity has the obligation to show that they properly disclosed the use of US6370629 controlled Phase-II IP inside their products, and that they fully met the terms of the licensing. Further that their end-user’s must also accept those terms and cannot use the software without accepting them.

Failing to obtain the agreement of the end-user to be bound by the terms of the settlement agreement (whatever they may be) invalidates their use of the software and creates a breach/loss instance for each user or software program refusing to comply.

FOR ANY SOFTWARE PRODUCTS THEY SELL:

- a) They must maintain a full set of compliance records or get a waiver for their responsibility there for each and all uses of the US6370629 protected PHASE-II IP they use outside the limited uses provided to Microsemi in the settlement.
- b) The ‘Installer’ kits must obtain approval to be bound in the installer acceptance of licensing terms for US6370629 compliance. Each installed software must properly report compliance with the licensing disclosure requirements created in 8.7, 8.5, and 8.4 of the Settlement’s terms.
- c) All of this must be auditable and reported to the Shareholders in the yearly reports since it constrains all of their key products.

FOR ANY PATENTS THEY FILE USING OR DERIVED FROM PHASE-II IP’S

- a) Payment of \$300,000.00 USD – due upon filing whether the patent issues or not. Full compliance with the Phase-II requirements for sale in the US.
- b) Full compliance for each and every patent and every software product or component published and relicensed which contains or relies on PHASE-II IP, or a release from that responsibility.