

- > BUYERS' GUIDE TO MOBILE PHONES
- > THE MEN WHO FIGHT VIRUSES
- > PUBLIC SECTOR TECH HOTS UP

# COMPUTERS in business

THE SUNDAY BUSINESS POST



## MY STORY:

HOW  
MIKE DOYLE  
BURNED  
MICROSOFT  
FOR OVER  
\$520 MILLION







Mike Doyle (right), who took on the mighty Microsoft and won. Bill Gates, chief executive of Microsoft (main pic) GETTY IMAGES

Irish-American entrepreneur Mike Doyle and his alma mater won \$521 million from Microsoft in a court case last month, the second biggest patent infringement award in history. On appeal by Microsoft, the figure could well go up. Doyle gave his first post-victory interview to **Adrian Weckler**

# CONQUEROR AT THE GATES

**F**or a guy who has just taken Microsoft to the cleaners for over \$500 million, Mike Doyle does not seem at all distracted. What he really wants to talk about, even more than his plan to change the world through the next generation internet, is a little place on the waterfront in New Ross, Co Wexford.

He was browsing there earlier this year, for a new research facility for his Chicago-based company, Eolas Technologies. He liked what he saw, but was unsure about financing a site there. Happy days then, that, four weeks ago, he won up to \$200 million in a \$521 million lawsuit verdict against Microsoft.

"I think I can afford the place in New Ross now," he said.

"In fact, I have my eye on this one building on the waterfront."

In 1999, Doyle and the University of California San Francisco (UC) sued Microsoft for infringing a patent on web browser technology. The technology is very basic to web browsers because it controls plug-ins such as 'applets', a commonly used browser application.

On August 11, a jury in an Illinois court ruled in their favour. Between them, they won exactly \$520.6 million, the second largest patent infringement award in history. The University of California picked up 25 per cent of the award.

Lawyers got between 33 and 40 per cent. That left about \$200 million for Eolas, in which Doyle is the majority shareholder. Predictably, Microsoft is appealing the verdict, but Eolas and UC aren't taking it lying down, seeking more compensation for sales of Internet Explorer in the last two years. Doyle isn't really worried about the appeal.

"The process should take about 12 to 18 months," he said drily. "And then Microsoft will be writing us a big cheque."

The case is hardly a crippling blow to Microsoft, which has an estimated \$40 billion in cash reserves. But it is very embarrassing to the company's core brand publicity, which has been positioned around the concept of 'innovation' and 'creativity'. This advertising claim has always infuriated the hardcore programming com- > 12







THE CASE IS  
HARDLY A  
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Mike Doyle, chief executive Eolas Technologies (right) and his attorney Michael Lueck leave the federal court in Chicago after a jury ordered Microsoft to pay \$521 million to Eolas and the University of California for infringing a patent

< 10

munity. "With the amount of money they put into product development, I don't understand why they're not more genuinely innovative", Doyle said. "I guess you'd have to get into the company to answer that question."

Doyle's attitude is not untypical of those with purebred academic backgrounds like his. A self-taught programmer, he was one of a team of three in the University of California San Francisco campus who, in 1993, began to explore the possibility of allowing scientists to read not only what was published online, but to interact with that data.

**A**t the time, programmers and early internet users were struggling to implement 'helper' applications allowing such interactivity. But Doyle, together with fellow researchers David Martin and Cheong Ang, started developing features that would lead to 'plug-ins'.

(Plug-in applications are programs that can easily be installed and used as part of your web browser. They do things such as play music or video.)

The patent, filed later in 1994 by the University of California and licensed exclusively to Doyle's company Eolas, was the result of this research.

Microsoft's browser came

out in 1995. The jury found that Microsoft began using the technology after the patent was filed and continued to use it after the patent was issued.

The damages award is based on the sale of the Windows operating system, as Microsoft has long bundled its browser with its operating system.

More than 300 million copies of Internet Explorer have been sold mostly as part of Windows.

Among other things, critics say that it helped Microsoft bury rival browser Netscape, which was still struggling with more cumbersome 'helper applications' which didn't use the patented technology.

The question is, why did Microsoft do it?

Why didn't it try to license the technology in the first place?

"Microsoft was contacted in 1994, along with a number of other companies, regarding the technology," a statement from the University of California said. "UC cannot speculate as to why Microsoft never pursued licensing opportunities then."

So, in 1994, the university decided that Eolas (and Doyle) "best understood the technology and was in the best position to bring the technology into the commercial marketplace", according to the university's spokesman.

**PATENT INFRINGEMENT SUITS ARE COMMONPLACE, ESPECIALLY IN TECHNOLOGY. THEY OFTEN FAIL AND RARELY GO TO TRIAL**

"While the patent application was pending, Microsoft and others adopted the technology for use in its products," the spokesman said. "The result was that, by the time the patent issued, Eolas had been crowded out of the marketplace."

Doyle attended the court case every day over the five week trial in July and August. Did he feel intimidated by the size and power of his opponent? (This is the entity that the might of the United States failed to break down.) Was it a tense atmosphere?

"The atmosphere varied," he said slowly. "There were a lot of witnesses and some of them were less than exciting. It was a very complex case."

One of the turning points in the case came when a key Microsoft claim was thrown out by the Illinois court.

The corporation said the patent was invalid because a man called Pei Wei had invented the technology before the University of California.

Following presentation of that evidence by Microsoft at trial, the judge determined that, as a matter of law, no jury could find for Microsoft on that issue.

"I always believed that the truth would win," Doyle said. "On the other hand, with a jury you never know. But I expected that this would be a big battle and that we were talking

about a big case."

It's a big win, too, and not just in relation to Microsoft. With the court ruling in its back pocket, Eolas can now start approaching other big companies that it believes have similarly wrongly incorporated its technology.

For Doyle, though, it's about respect and proper attribution as much as a few more dollars. He regards the verdict as a massive step forward for genuine innovators and inventors.

"In the past, people depended on copyright law to protect their work in this business," he said. "The problem was that if a competitor wanted to copy it, they just pointed to the product and said 'make me one of those'. As long as they didn't copy the source code they could get away with it.

**W**ith patent law, that isn't the case. I really hope the industry will recognize more clearly that the people who are creative should be rewarded."

Patent infringement suits are commonplace, especially in technology. They often fail and rarely go to trial.

Microsoft still faces more than 30 pending cases, while 12 others have been thrown out in the past three years. Bill

Gates's lawyers know this.

Their strategy is to crush lawsuits early. They must have wondered why Doyle's tiny company would not relent in the four years of the case.

But if they wanted clues, maybe they should have looked at Doyle's family background.

If they had, they would have noticed that the Chicago Doyles have a habit of doggedly taking on staggeringly big opponents - and winning.

One of Mike's brothers, Geoff, is a retired FBI agent who masterminded the biggest drugs bust in US history when his team broke an international heroin operation.

Then there is John, his eldest brother, who, as chief of staff of the US House of Representatives Committee on Public Works, wrote the hard-fought Clean Water Act, against the might of big corporate polluters. To see it through, he then became principal deputy assistant secretary of the US Army, where he oversaw the implementation of the act by the US Core of Engineers.

If Doyle's siblings' achievements weren't enough to signal a pattern of tenacity, those of his father, who died recently, should have.

A cryptologist like his son, Mike, J Stuart Doyle was one of the US Army's key code-breakers in World War Two.





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right now.”

In fact, the scope and ambition of Eolas's current projects is massive. It currently has a patent pending on what Doyle calls the human phenome project. This is part of the US government-funded Next Generation Internet Initiative. It seeks to tag images with data in a way that shows that data in much greater detail. The examples are mostly medical ones, in particular organs and human tissue.

“It's kind of based on the following theory – if you have unlimited bandwidth, what would you do differently?” said Doyle.

The company is also about to roll out a commercial knowledge management software suite that aims to tap and store the kind of crucial business information that is usually left out of conventional enterprise software systems. It is particularly aimed at large law firms.

**I**t is also working on a project called Dark Iron, which seeks, among other things, to turn applets (which Doyle's original research helped spawn) on their ear.

And it has filed further patents for a system for authenticating records without reliance upon a trusted third party and a Saga (Spatial Analysis of Genomic Activity) system.

According to Eolas's website, the latter system “enables the automated large-scale discovery of the precise three-dimensional morphological distribution of the simultaneous gene expression activity of tens of thousands of genes in any biological tissue”.

And there is plenty more where that came from. In fact, if there is one thing not even Microsoft disputes it is that there are brains to burn in Eolas.

The extra money might ease resource pressure, but still, how can Doyle and his colleagues decide on which projects to pursue?

“It goes through an evolutionary process, the survival of the fittest where the most exciting ideas surface towards the top,” said Doyle. “Part of the expansion of the company will involve spinning off new companies, like for the knowledge management suite project.”

“We've already spun off one for cryptographic work. And obviously the genomics work will become its own identity.”

But spinning off companies can turn good men into business slaves, Doyle has seen. He allows maximum flexibility for Eolas's employees.

“One thing you find in start-ups is that the really creative people get frustrated and feel they have to start their own companies, writing business plans, stuff they don't want to do,” he said. “They're not creating any more. In Eolas, we incentivise people to stay at what they're good at, which is being really creative.”

Somewhere in between all of this, Doyle plans to update a textbook he wrote on a new programming language called TCL (pronounced ‘tickle’).

“It's an amazing programming language,” he said. “We just finished doing a three-year contract for the National Institute of Health on next generation internet, which involves very high-speed computing. We built a lab for general re-

searchers where all the languages were written in TCL. You will be hearing a lot more of this in the future.”

But it is not finished with Microsoft yet.

“While we're working on going towards an appeal, it's very clear that Microsoft is continuing to deny that they have an obligation here,” said Doyle. “We might very well enforce an injunction.”

In most programming quarters, Doyle is a hero. Microsoft, whose nickname in programming circles is ‘The Beast of Redmond’, is considered a target because of its still unbreakable control of the desktop operating system market. So if anyone comes up to him and tells him that he's their hero, he is. “I think people are just responding to pent-up frustration,” said

Doyle. “Especially after seeing what had happened with Microsoft and previous legal battles, including the case with the US government where, despite being found to be at fault and breaking the law, they got off with a slap of the wrist.”

The community, he said, was just happy to see that someone was ensuring “that big companies play by the rules”.



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