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Lawyers Suing Google Say Proof Is in the Post-its

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SAN FRANCISCO — Lawyers for smaller companies have been known to accuse Google Inc. of stealing and profiting from their clients' trade secrets. But this time, the slighted company's lawyers say Google left behind a paper trail of Post-its as evidence.

London-based VSL Communications has [accused](#) Google of stealing its novel method for shrinking video and audio files without sacrificing image or sound quality. Google used those trade secrets to enhance the streaming and downloading features of virtually all Google services, including YouTube, Google Play and Google Earth, according to the complaint filed Monday in Santa Clara County Superior Court.

Google coerced VSL to hand over its technology by claiming it was interested in an acquisition, according to the complaint. After eight months of fruitless discussion, VSL decided the deal was going nowhere and asked for the return of its intellectual property. Google complied, but the files VSL received were littered with Post-its on which Google insiders apparently had written notes about how best to make use of VSL's technology, including suggestions that Google employees destroy emails and close their eyes to possible infringement.

Grant & Eisenhofer partner Adam Levitt, of Chicago, is leading the charge against Google, along with attorneys from Buether Joe & Carpenter in Texas and Walkup, Melodia, Kelly & Schoenberger in San Francisco. The suit names YouTube and On2 Technologies, which Google acquired in 2010, as additional defendants.

Levitt also filed a [patent infringement suit](#) against the defendants in Delaware federal court.

"This case is yet another of the many occasions on which Google has unlawfully taken, rather than developed for itself or paid for, valuable technology that is core to the functioning of its many businesses and products," Levitt's team wrote.

The conflict started in 2010, according to the complaint, when a Google executive reached out to VSL's CEO to talk about buying VSL's video streaming and downloading technology, or acquiring VSL. Google had refused to pay royalties to use the data compression standard that was in vogue at the time, which was covered by a patent owned by MPEG LA. Google purchased New York-based On2 for roughly \$124.6 million with the hope of creating its own

compression technology, but its video quality still lagged behind the competition and "was in desperate need of improvement," according to the complaint.

After obtaining a nondisclosure agreement, VSL provided Google with three CDs containing working versions of its technology, 400 files and photocopies of additional VSL trade secrets, and charts that compared the VSL technology with its competitors'.

"Little did VSL know that behind the scenes, Google had devised a scheme to steal the VSL trade secrets and incorporate them into Google's own products without compensating VSL for their use," the complaint states.

When VSL ended deal talks with Google and demanded the return of its files, the documents came cluttered with incriminating Post-its apparently left behind by Google employees, according to the complaint. The notes said Google was possibly infringing VSL's then-pending patent, Google should "keep an eye" on VSL's technology and sweep it into a Google patent, and engineers should be discouraged from "digging deep" and should "close eyes to existing IP," Levitt wrote. Other notes discussed various Google products that could use VSL's technology, suggested Google evaluate the risk of getting sued if the products are "money making," and pointed out the need to obtain a noninfringement opinion from outside counsel, the suit alleges.

Sure enough, Google in 2010 had begun to amend its preexisting patent applications and to file new applications using VSL's technology, according to the complaint. In 2012, VSL noticed that the video quality of Google's Android operating system and other Google software had significantly improved. In June, VSL staff analyzed Google's publicly available code and discovered it contained VSL trade secrets.

"Defendants' theft of VSL's trade secrets pervades virtually every website and product offered by defendants," according to the complaint.

Levitt declined comment on the pending litigation Tuesday, as did a Google representative.

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