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## Lawyers discuss Apple co-founder's impact on IP law

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Steve Jobs, co-founder of Apple Inc., showed the world the upside and the downside of closely protecting intellectual property. Jobs died Wednesday.

He also made technology "cool" in the view of Chicago area intellectual property experts.

"He embodies the true joy of being in the innovation business," said Arthur Yuan, executive director of the

Chinese Intellectual Property Resource Center at The John Marshall Law School.

"He makes using technology a very cool and very good and pleasant experience so that technology is no longer just a piece of hardware."

"Steve Jobs was not only a visionary when it came to technological developments, but also when it came to intellectual property protection," said professor Doris Estelle Long at John Marshall.

"Apple under Jobs aggressively used IP to protect its innovations. It often relied on newly emerging doctrines in its quest to translate its technological developments into legally protected market exclusivity. Thus, Apple Inc., was an early user of copyright to protect its software."

Therein hangs a tale.

Steven G. Parmelee, partner at Fitch, Even, Tabin & Flannery, said in the early years of personal computers, "Apple maintained a clamp on their intellectual property so hardly anybody could make anything similar to a Mac."

Parmelee said Apple launched the personal computer market with Apple IIc and Apple IIe in the late 1970s and early 1980s, (a computer Apple history says was designed by the firm's co-founder Steve Wozniak).

But soon IBM got into the game with its Peanut, which used the DOS operating system licensed from Microsoft, Parmelee said.

IBM had relatively few patents on the Peanut because it began as a sideshow or "skunk works project" for IBM, which then focused on mainframe computers, Parmelee said.

"Because there wasn't much protection on the Peanut, all kinds of other companies made compatible computers with the Peanut and they could go to Microsoft and Microsoft would happily license DOS to them," Parmelee said.

"Apple was not that way. They kept it very controlled."

As a result, "the PC market exploded and Apple's share shrank and shrank," Parmelee said, "and Apple was held up as an example of how not to use your IP."

In the same vein, Timothy M. Nitsch of Levenfeld, Pearlstein LLC., said Apple came out with one of the first PDAs or personal digital assistants in the 1990s. But the technology was so closely held, "no one developed any applications on it," Nitsch said. "Basically, it became a dinosaur. ... Apple was always very locked down."

Yet Jobs "made progressions in his career," Nitsch said. "He learned as he went along. He had early success. Then a series of failures got him kicked out of Apple."

Jobs left Apple in 1985 and rejoined it in 1996.

When Apple brought out the iPhone, which became a tremendous success, the company allowed anyone to develop applications for the iPhone. "In my opinion, it was a very sharp change from their previous methods," Nitsch said.

Nevertheless, Apple under Jobs still was very aggressive and innovative in protecting its intellectual property even to the present, Long said.

Apple "tied its revolutionary iPod and iTunes together using the Digital Millennium Copyright Act and its protection of Digital Rights Management in a model that became a cornerstone for competitors,"

Long said.

"While its efforts were not always successful" and Apple could not trademark the "i" in front of iPod, Long said, "Apple under Jobs could always be relied on to push the envelope on the legal front."

Nitsch said Apple is effective legally even in procuring trademarks for fonts, such as the Chicago font.

Jobs "really embraced the patent process and incorporating it into his business," Nitsch said. "There's almost an underground industry that would heavily monitor what Apple filed ... trying to decide what the next Apple product would incorporate."

"Jobs symbolizes what entrepreneurs can do if they're given the freedom to do it," said Larry E. Ribstein, professor of law at the University of Illinois at Urbana-Champaign in an e-mail to the Chicago Daily Law Bulletin.

"We sometimes forget this huge upside when we focus on the downside of the misbehavior that can occur when corporate executives are not heavily regulated."

On the blog Truth on the Market Ribstein also wrote today, "imposing more bureaucracy and investor democracy on business will mean fewer Steve Jobses. As we celebrate the incredible amount of value he created, let's remember the other influential entrepreneurs and try not to forget the conditions that enable them to flourish."

"Steve Jobs was a terrible loss for the technology world and the IP community," said R. David Donoghue of Holland & Knight LLP, who writes Chicago IP Litigation Blog.

"He was an unparalleled inventor and innovator. ... Apple will no doubt continue innovating, but we will all miss Steve Jobs."

By some counts Jobs' name is on 327 patents. But Yuan said in his view that narrowing the search with both Jobs' first and last names yields 73 patents and 57 pending applications.