

Legal battle may redraw embedded SW bounds

By Charles J. Murray

Chicago — Two of the embedded industry's biggest software companies revealed last week that they have squared off in a legal dispute that could alter the way embedded-software houses create and market related products. The months-long conflict is shaping up as a case study of how shifting strategies can turn business allies into bitter enemies.

Green Hills Software Inc. filed suit last week against Wind River Systems Inc., charging federal antitrust violations, trade libel and trademark violations. The legal action follows a June 2004 lawsuit by Wind River (Alameda, Calif.) seeking relief from a 1992 contract that's still in force. That agreement called for Wind River to provide software updates to Green Hills so that the latter could market an integrated development environment for Wind River's VxWorks operating system.

The dispute could be a cautionary tale for embedded-technology companies because the litigants are battling over one party's right to extricate itself from a pact signed before the two became competitors. Green Hills contends that Wind River, by pulling out, is trying to monopolize the market, in violation of federal antitrust laws. Wind River argues that it has a right to make decisions about its own product, especially when the matter involves competitors.

Intellectual-property experts said last week that the dispute goes to the heart of how the embedded market is defined.

"The question is whether Wind River is attempting to use the legitimate monopoly that it has by virtue of trademarks and patents, or if it is trying to create some larger monopoly that is in violation of antitrust laws," said Eben Moglen, a professor of law at Columbia Law School and general counsel to the Free Software Foundation. "In any such dispute, that question is usually answered by determining what share of market they possess."

The key, Moglen said, will be whether "market" is inter-

preted to mean the broader software market or the more tightly drawn embedded-software segment.

"There is room for fighting in such cases," Moglen added. "It could come down to the testimony of hired expert witnesses about what constitutes the market and who has what share of it."

Developer questions

In the more immediate future, however, Green Hills executives claim that Wind River's refusal to cooperate could cause problems for the 1,600 to 1,700 software developers who today use VxWorks in combination with Green Hills' Multi integrated development environment. If those developers want to update their operating systems, Green Hills says, they will be forced into using a Wind River IDE. That, in turn, will mean that the developers will face changes in software libraries and interfaces, resulting in time-consuming retraining.

"There are a lot of developers who use our tools with VxWorks, particularly in the defense and aerospace markets," said Dan O'Dowd, chief executive officer of Green Hills (Santa Barbara, Calif.). "Now, if they want to upgrade VxWorks, they can't use our tools. That's going to create a problem for them."

O'Dowd told *EE Times* last week that Green Hills' legal action was a last resort, following nearly a year of fruitless attempts to get Wind River to supply its latest VxWorks updates.

"We're not asking for source code or anything proprietary," O'Dowd said. "We just need an off-the-shelf binary copy of their standard product. But they've refused to give it to us. They won't even sell it to us."

Industry analysts acknowledged that the stalemate could cause problems for developers who use both VxWorks and Multi. "If I were one of those 1,600 or 1,700 developers, it would certainly be a problem for me," said Stephen Balacco, embedded analyst for Venture

Development Corp. (Natick, Mass.). “There are consequences to deal with in terms of licensing, porting and recompiling.”

Market share matters

In its lawsuit of June 2004, however, Wind River observes that it did not directly compete with Green Hills when the companies inked their agreement more than a decade ago. Wind River’s business at the time was production of its operating system for embedded computers, while Green Hills marketed software development tools. Wind River later began producing its well-known Tornado development tools, and Green Hills launched its Integrity operating system, making the two companies direct competitors. Still, both companies maintained the business relationship, which under the 1992 pact was to persist for 99 years.

In 2004, however, Wind River appointed a new chief executive officer and adopted a new business model, calling for an increased emphasis on software tools. Moreover, the embedded-software giant apparently became increasingly disenchanted with its smaller competitor, purportedly in part because of comments made by Green Hills executives.

Wind River’s lawsuit states that “Green Hills encouraged customers to forgo the Wind River operating system in favor of the Green Hills operating system.” The lawsuit cites comments, claimed to be taken from the Green Hills Web site, in which Green Hills took shots at Wind River’s royalty-based business model.

“Your operating system [i.e., Wind River] is competing with you for your customer’s dollar, and they are winning,” the lawsuit quotes the Green Hills site as stating. “Eventually, the operating system vendor is not going to just reduce the royalty to accommodate you. Why should they?”

When asked last week to explain the reasons behind its actions, Wind River’s public relations department sent an e-mail quote from John Bruggeman, senior vice president of worldwide marketing, stating that “Wind River stands

behind its decision to file suit against Green Hills Software Inc. We are committed to our customers and are continuing to work with them to deliver the industry’s most reliable device software optimization solutions.”

O’Dowd, however, vehemently argued last week that Wind River is trying to monopolize the tools market for its VxWorks operating system. “They’re trying to squash smaller competitors out of the market, not by offering a better product or lower prices, but by cutting off our access,” he said. “That is, very simply, an antitrust activity.”

Green Hills also argued that Wind River has lied to customers, telling them that Green Hills refused to support VxWorks. And Green Hills claimed that Wind River had added insult to injury by allegedly co-opting the name Multi-X for its own debugging software.

“We’re appalled,” said O’Dowd, who likened Wind River’s alleged actions to producing a new breakfast cereal called Wheaties-X. “We don’t understand what makes them think they can do that.”

Wind River last week denied that it is using a Green Hills trade name. “Wind River does not have a product that is a debugger called Multi,” said a Wind River spokeswoman. “Wind River does not sell a standalone debugger.”

Industry analysts said last week they understand Wind River’s reasons for backing away from the 1992 contract. “The OS has become commoditized, and the margins are bigger for tools and middleware, so in that sense, Wind River and Green Hills have become competitors,” said one analyst, who asked not to be identified. “The sad part is that this works against the interest of the customers. They may not want to move to a new OS and rewrite a bunch of applications.”

Legal experts said the outcome of the case ultimately will hinge on the legal definition of a monopoly.

“The dominant ingredient is market power,” said Moglen of Columbia. “And without a showing of overwhelming power in the relevant market—however that may be defined—there is no legal claim.”

