

# Patrick Racz: App Store and iTunes wouldn't exist without my tech — now I'm suing Apple for billions

Brit Patrick Racz claims the tech behind the App Store and iTunes was his. Now he wants payback

Danny Fortson, San Francisco

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Patrick Racz claims that 'virtually every product they launched incorporated my tech in some way'  
CHRISTOPHER L PROCTOR FOR THE SUNDAY TIMES

Those who know Patrick Racz well call him “Tap Man”, a nod to the British entrepreneur’s invention of the three-way mixer tap in the late 1980s. It made him a rich man.

Search the internet for his name, though, and you will find another label: patent troll. Racz, 59, claims the insult is part of an elaborate scheme — orchestrated by the world’s biggest company, Apple — to tarnish his reputation and rob him of billions of dollars.

It is a tale that, on the surface, strains credulity. On one side is Racz, an autodidact from Jersey who left school at 14 and claims he invented a file-sharing and payment technology at the dawn of the digital music era in 1999, only for it to be stolen by Apple. On the other is Apple itself. In Racz’s telling, the iPhone giant stole his system and then used its power and influence to stack US patent courts to ensure he would never get his just dues.

Racz won a stunning court victory eight years ago when a jury found

that Apple had indeed stolen his system. He was awarded \$533 million in damages.

But a patent court nullified his patent the following year, which led to his case getting overturned on appeal.

Racz, though, has not given up. Having spent the past few years gathering evidence through freedom of information requests, including suing to force the US Patent and Trademark Office to produce documents, he is set to launch a fresh legal assault on Apple. He is seeking billions of dollars in damages.

The odds are clearly stacked against him. But Racz is not a solo quixotic adventurer tilting at windmills. He has the backing of a group of private investors who, together with his own resources, have ploughed some \$50 million into the effort. Racz reckons he is on the cusp of proving not only a galling case of corporate theft, but also how America's corporate titans have captured the patent courts, turning them into an instrument to snuff out innovation.

"The technology I invented allowed Apple to become the biggest company in the world, and I still haven't earned a penny," Racz said. "After 21 years of fighting for justice, the time has come for me and my long-suffering investors to finally get paid."

Racz and his legal team plan to hit Apple with suits for wilful patent infringement as well as a potential racketeering suit — the type of charge often used to bring down mafia dons and financial scammers. Racz reckons that Apple's continued unlicensed use of his system, which he claims constitutes the core of Apple's entire digital ecosystem, means he is owed up to \$18 billion. And that is just Apple. Alphabet, Samsung and Amazon — all of which Racz has also sued, though is not currently pursuing — are also, apparently, using his tech and not paying for it.

The story winds all the way back to the go-go days of the late 1990s, when the dotcom boom was still booming and the would-be tech tycoons of the time could often be found at Home House, a private members' club in the West End. It was there that Simon Morris, co-founder of LoveFilm and, until recently, chief creative officer at Amazon, first met Racz.



Racz says that he anticipated the shift to digital music  
JUSTIN SULLIVAN/GETTY IMAGES

“He was quite memorable,” Morris said. “He used to drive this big black Jag and walk around in this long black leather jacket, looking tall, intense, like this kind of crazy inventor.” Morris said Racz was different to the other dotcomers seeking to turn no-hope ideas into million-pound fortunes before the bubble burst. “I remember talking to him and he said, ‘I’ve got this thing. And you can store music files on it, and you can charge, make payments. You can create a new business model.’ ”

MP3 players were still relatively new, but Racz said it was clear to him that the digital shift was about to disrupt the music industry. “I was like, ‘Guys, there’s no accountability, no security, no payment functionality, and no rights match. No one is going to get paid.’ And that’s exactly what happened.”

A self-proclaimed “tinkerer” flush with cash from the sale of his share of the mixer-tap firm, called Avilion, he began work on a system for the secure downloading and sharing of, and payment for, digital files. That summer of 1999, Napster went live. The peer-to-peer sharing service unleashed an era of piracy that tore the music business apart.

Racz said he put millions of pounds of his own money into developing a Napster antidote — digital media players, including one called Smartflash, and content provision systems to allow for secure downloads and payments. He filed applications for seven patents in 1999 and began working with partners including Gemplus, a French SIM card giant, to design a device. He signed up Britney Spears, then the world’s top pop star, as a Smartflash brand ambassador.

Then 9/11 happened. Spears pulled out, as did Gemplus. Racz said in court that Gemplus, which also worked with Apple, began to claim the technology as its own. Racz was left with some pending patent applications, and no product.

Steve Jobs launched the iPod MP3 player in 2001, but it was not until

2003, when Apple unveiled its iTunes stores — allowing people for the first time to securely download and pay for songs — that Racz said his allegedly purloined idea was put to use. “From that point on, virtually every product they launch incorporated my technology in some way, shape or form,” he said. In 2005, Gemplus’s former research chief joined Apple as head of digital rights management.

There was not much Racz could do until 2008, when his first patent was granted by the US Patent and Trademark Office — nine years after filing. He spent the next four years gathering evidence and finding investors, and, in 2013, quietly sued Apple in the eastern district of Texas, leading to his historic, \$533 million victory.

The dismantling of his case, and the smearing of Racz as a “patent troll”, began swiftly thereafter. News stories dismissed him as a chancer who was abusing the US patent system. Apple declined to comment for this article, but pointed to its 2015 statement: “Smartflash makes no products, has no employees, creates no jobs, has no US presence, and is exploiting our patent system to seek royalties for technology Apple invented.”



He says Apple used his idea for its iTunes stores, launched shortly after the debut of the iPod  
JUSTIN SULLIVAN/GETTY IMAGES

The first blow to Racz’s case came in May 2016, when a body called the Patent Trial and Appeal Board (PTAB) ruled that the patent at the heart of the case was invalid. It was an odd decision. A federal jury had already decided that Apple had wilfully infringed Racz’s patents, and awarded him damages. The PTAB is a separate forum conceived as an alternative to litigating patent disputes, not one to unwind decisions of other courts.

The PTAB, though, is a unique organisation. To hear cases, it assembles panels of judges drawn from a pool of more than 200, all of whom are political appointees. Among the judges was Rama Elluru, a former lawyer from Fish & Richardson, a firm that had done work for Apple and Samsung. In an unredacted email from November 2014,

Elluru wrote that one judge was removed from the panel on the Smartflash case because he had found against Apple in previous cases. In a court filing, Racz's lawyers wrote that the message "appears to indicate that the PTAB sought to have its panels stacked with [judges] that were sympathetic to petitioners seeking to cancel issued patents". Elluru did not respond to requests for comment.

Also on the panel was Matt Clements, a lawyer who had previously worked with Apple when he was at the legal firm Ropes & Gray. He left the patent court in 2019 after nearly six years to join Apple's litigation practice, where he remains.

Clements was in breach of no ethical rules, but the optics in such cases caught the attention of Supreme Court justice Neil Gorsuch, who in a 2021 brief on a different case slammed the PTAB for the "revolving door" through which judges circulate between high-powered special interests and the court.

"Just consider the tale of a patent attorney at one of the world's largest technology companies who left the company to become an administrative patent judge [APJ]," Gorsuch wrote. "This private advocate turned APJ presided over dozens of [patent challenges] brought by his former company. In those proceedings, the company prevailed in its efforts to cancel patents damaging to its private economic interests 96 per cent of the time. After six years of work, the APJ decided he had done enough, resigned, and (yes) returned to the company."

The PTAB decision was a huge blow to Racz's case. Because at the same time that Apple was attempting to nullify his patents at the PTAB, it had also launched an appeal in a federal court. The arguments had been heard by a three-judge panel. Racz was feeling confident. Just before a judgment was set to be issued, however, the panel was swapped wholesale. Three new judges took over the case at the final furlong and, relying on the PTAB finding, overturned Racz's award.

Subsequent appeals have failed, but Racz has continued to gather evidence to prove what he claims is a "massive miscarriage of justice. I'm not giving up on this," he said. "I'm not allowing Apple to get away with this. This is my legacy."

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