

Engineers Allege Hiring Collusion in Silicon Valley

By [DAVID STREITFELD](#)

SAN FRANCISCO — Tech companies love new ideas, unless they belong to someone else. Then any breakthroughs must be neutralized or bought. Silicon Valley executives know all too well that a competitor’s unchecked innovation can quickly topple the mightiest tech titan.

Just how far Silicon Valley will go to remove such risks is at the heart of [a class-action lawsuit](#) that accuses industry executives of agreeing between 2005 and 2009 not to poach one another’s employees. Headed to trial in San Jose this spring, the case involves 64,000 programmers and seeks billions of dollars in damages. Its mastermind, court papers say, was the executive who was the most successful, most innovative and most concerned about competition of all — [Steve Jobs](#).

The suit shows how more than two years after his death, Mr. Jobs still casts a long shadow. It also offers a portrait of Silicon Valley engineers that differs sharply from their current caricature as [well-paid villains](#) who are driving up the price of real estate in San Francisco and making the city unbearable for others.

Instead, the court documents portray the engineers as “victims of a conspiracy” who were cheated by their bosses, said Joseph R. Saveri, a lawyer for the plaintiffs.

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“These are the engineers building the hardware and software that are the lifeblood of the technology industry,” Mr. Saveri said. “But they were prevented from being able to freely negotiate what their skills are worth.”

The actions described in the suit were first uncovered in an investigation by the Justice Department, which concluded with an antitrust complaint against a half-dozen companies. In a simultaneous settlement, the companies [agreed to drop](#) the no-poaching practice. The settlement did not preclude the programmers from pursuing their own case against the companies, and the class-action lawsuit quotes emails and other communications from some of Silicon Valley’s biggest names.

Mr. Jobs was particularly worried about [Google](#), which was hiring rapidly and expanding into areas where [Apple](#) had an interest. In 2005, for instance, Google’s co-founder, [Sergey Brin](#), tried to hire from Apple’s browser team. “If you hire a single one of these people that means war,” Mr. Jobs warned in an email, according to court papers.

Mr. Brin backed off, and Google and Mr. Jobs soon came to an informal agreement not to solicit each other’s employees. Apple made similar deals with other companies. So did Google.

Photo



From left, Sergey Brin and Eric Schmidt, of Google, and Steve Jobs, of Apple, in 2008. Credit Paul Sakuma/Associated Press

By 2007, when a Google recruiter slipped up and contacted an Apple engineer, Mr. Jobs immediately complained. To appease the Apple chief, Google fired the recruiter within an hour. Mr. Jobs's control extended even to former Apple engineers. When Google wanted to hire some, the suit says, Mr. Jobs vetoed the idea.

Google declined to comment for this article. Apple did not respond to requests for comment.

Alan Hyde, a Rutgers professor who wrote "Working in Silicon Valley: Economic and Legal Analysis of a High-Velocity Labor Market," said the no-poaching accusations go contrary to what has made the valley so successful: job-hopping.

"There is a fair amount of research that tech companies, particularly in California, have distinctive personnel practices," he said. "They hire for short tenures and keep ties with former employees so there can be an exchange of information across company lines. The companies in this suit might have been killing the golden goose."

They certainly tried to keep their practices quiet. [Eric E. Schmidt](#), then Google's chief executive, said he preferred that the company's Do Not Call list be shared orally, according to court papers, "since I don't want to create a paper trail over which we can be sued later."

In a similar vein, an [Intel](#) recruiter asked Paul S. Otellini, the company's chief executive, about a hands-off deal with Google.

"We have nothing signed," Mr. Otellini responded in an email. "We have a handshake 'no recruit' between Eric and myself. I would not like this broadly known."

The origins of the conspiracy, according to the lawsuit, date back to the 1980s, when the filmmaker George Lucas sold part of his company to Mr. Jobs.

"We cannot get into a bidding war with other companies because we don't have the margins for that sort of thing," Mr. Lucas is quoted as saying in the court papers. So Lucasfilm and what was to become Pixar made a deal that there would be no cold-calling, that they would notify each other when offering a job to an employee and that any offer was final and would not be improved in response to a counteroffer.

What worked for Pixar would work for Apple, Mr. Jobs decided.

The Justice Department inquiry that brought the anticompetitive deals to light [concluded in 2010](#) with an antitrust complaint against Apple, Google, Intel, Intuit, Adobe and Pixar. There were no financial sanctions.



Joseph Saveri is a lawyer for 64,000 engineers in a class-action suit. Credit Joseph Saveri Law Firm

Google [explained at the time](#) that it used no-poaching agreements “to maintain a good working relationship” with other companies, but said they did not affect wages or hiring. An Intel spokesman said the chip maker “denies that it violated any laws or engaged in any wrongdoing.” Adobe declined to comment.

The hands-off deals might have been more widespread than many in the valley assumed. The Justice Department is currently pursuing a case against eBay, accusing it of having an illegal no-poaching deal with Intuit. An eBay spokeswoman said the company was in settlement talks with the government.

Pixar (bought by Disney for \$7 billion in 2006) and Lucasfilm (bought by Disney for \$4 billion in 2012) have already settled the class-action suit, as has Intuit. The three companies agreed to pay a total of \$20 million.

The engineers will get their day in court to face the remaining defendants. Which does not mean they will get much sympathy.

“Santa Clara County, in the heart of Silicon Valley, has the highest average wage in the country,” said Stephen Levy, senior economist at the Center for

Continuing Study of the California Economy. “San Francisco and San Mateo are not far behind. It would be a mistake to think of these plaintiffs as an oppressed set of victims.”

Only one Silicon Valley executive appears to have resisted Mr. Jobs’s threats and blandishments.

In the summer of 2007, Palm Inc., a maker of hand-held devices, hired Jonathan J. Rubinstein, a highly respected former Apple executive who played a key role in developing the iPod. Apple engineers were clamoring to work with him.

Mr. Jobs proposed a no-poaching deal to Edward T. Colligan, Palm’s chief executive. Mr. Colligan responded that such a deal would be unfair to employees as well as “likely illegal.” Mr. Jobs then threatened to unleash Apple’s patent lawyers on Palm.

A patent suit “certainly had the potential for creating some havoc,” Mr. Colligan said in an interview. But he said he felt it was important not to bend.

“A lot of times you’re confronted with things that may be advantageous, but you have to make the critical decision that morally, it is not right,” he said, noting that Apple never did sue. “Unfortunately, this does not happen as often as it should.”

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