

THE FALLACY OF SOFTWARE PATENTS

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FALLACIES

THEORY: IT'S FOR NEW INVENTIONS

- Cannot be something trivial;

REALITY: "NEW INVENTIONS" \neq INNOVATIVE

- Many software patents in the US are clearly trivial and not inventive;
- e.g. Apple's slide-to-unlock (ruled invalid in Germany);
Amazon's one-click-purchase (invalid in Europe);
Microsoft's double-click; ...
- "Triviality" is subject to interpretation

THEORY: PATENTS ARE FOR SMALL BUSINESSES

- They can just patent all their inventions to protect their business;

REALITY: PATENTS ARE FOR SMALL BUSINESSES (WHO HAVE MONEY)

- Filing a patent is expensive!²
- Total cost in the USA **~20k USD**³
- Total cost in Europe **~30k EUR** (could be lower with the unitary system)⁴

THEORY: THE STARVING GENIUS⁵

- Patents protect a genius's invention;
- Without them, bigger competitors would just use those inventions instead of paying the genius for it;

REALITY: THE GENIUS STILL STARVES

- Bigger competitors have many more patents and it is easy for the genius to have unknowingly violated one;
- The competitors threat to sue and end up licensing the genius's patent at a low or no cost;

THEORY: NON-PRACTICING ENTITIES (NPEs) AKA PATENT TROLLS ARE THE ONLY CONCERN

- Maybe we should just make it difficult for NPEs to exist?

REALITY: NPEs ARE NOT THE ONLY PROBLEM

- e.g. Microsoft is not an NPE and it gets more money from Android vendors' licenses than from their own Windows phone OS sales;⁶

SO ARE SOFTWARE PATENTS REALLY PUSHING INNOVATION?

INNOVATION HAPPENS DESPITE OF SOFTWARE PATENTS, NOT BECAUSE OF THEM!

- Many new startups care little about patents other than for protection from patent law suits;⁷
- Innovation happens in Free and Open Source software without the need for patents;
- Lawyers, law firms, megacorporations and bureaucrats at the patent offices.⁸



NOW IMAGINE...

What if music was patentable?

(taken from the movie **Patent Absurdity**)

THANKS!

For reference:

- Patent Absurdity Movie: <http://patentabsurdity.com>
- Open Invention Network: <http://openinventionnetwork.com>
- Software patents – Obstacles to software development: <https://gnu.org/philosophy/software-patents.html>
- Software Patents in Europe: <https://fsfe.org/campaigns/swpat/swpat.en.html>
- ¹ <http://www.epo.org/news-issues/issues/software.html>
- ² <http://www.ipwatchdog.com/2011/01/28/the-cost-of-obtaining-patent>
- ³ <http://www.ipwatchdog.com/2013/03/07/the-unified-european-patent-what-it-means-for-international-enterprises-seeking-protection-on-the-continent>
- ⁴ <http://www.epo.org/law-practice/legal-texts/official-journal/2014/etc/se3/p1.html>
- ⁵ <https://www.gnu.org/philosophy/stallman-mec-india.html>
- ⁶ <http://www.zdnet.com/article/microsofts-most-profitable-mobile-operating-system-android/>
- ⁷ <http://techcrunch.com/2012/06/21/do-patents-really-matter-to-startups-new-data-reveals-shifting-habits/>
- ⁸ <http://www.epo.org/news-issues/news/2014/20140708.html>