

RED HAT :: SAN DIEGO :: 2007

SUMMIT



The Software Industry's Patent Problem

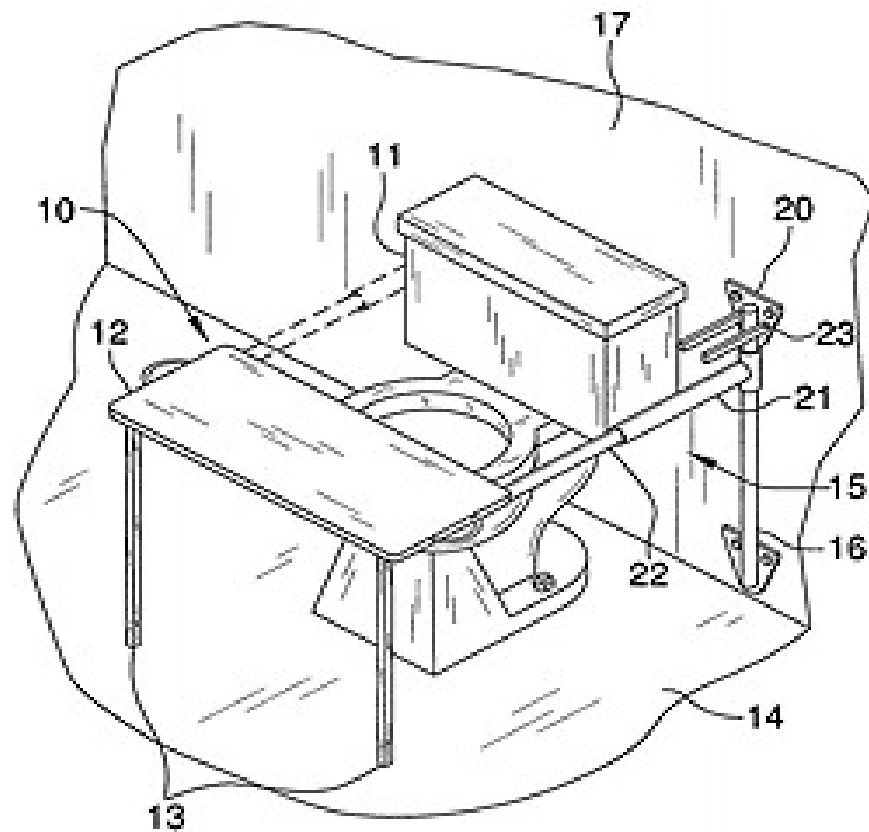
David Levine and Rick Statile

May 9, 2007

But does it run Linux?

Retractable Table Top for a Toilet

Patent #6,983,493



Has Donald Trump licensed this patent?



FIG. 1



FIG. 2

Method of Concealing Partial Baldness

Patent #4,022,227

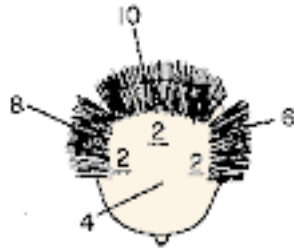


FIG. 3



FIG. 5



FIG. 4



FIG. 6



Software Patent System?

It's Broken . . .



Key Points . . .

- **Main Legal Threat**
- **Lots of Problems . . .
Little Benefit**
- **We Can Help Ourselves**



The Charge:

**“Linux
Violates
Our
Intellectual
Property”**



Trade Secret



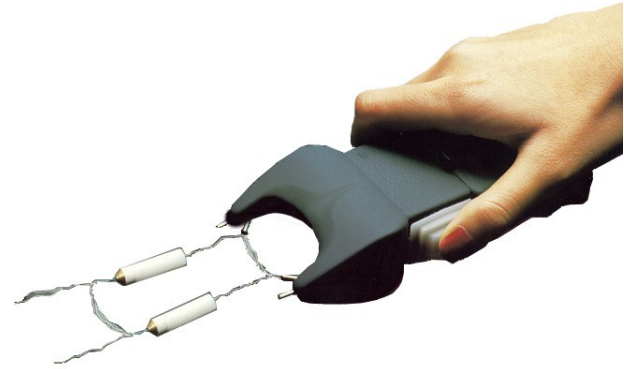
Think:

Coca-Cola Formula



Trademark

Think:



Lindows vs. Windows



Copyright

Think:



SCO v. IBM



Patent

Think:



Alcatel v. Microsoft

NTP v. RIM (Blackberry)



When is Something Patentable?

Novel

Useful

Nonobvious




So How Is the PTO Doing?


- **One Click Purchasing**
Amazon – Patent 5,960,411
- **Tabbing through links on a webpage**
Microsoft - Patent 6,785,865
- **Managing content in shared use environment**
Digital Vending Services – Patent 6,606,664
- **The Emoticon Application**
Microsoft Application 20050156873
- **The Anti-phishing Address Lookup Application**
Microsoft Application 20070039038



Parody Abounds . . .

APRIL 15, 2007 E-MAIL MOBILE

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SEARCH AV AT THE AV CLUB: CINEMA: DIS

Microsoft Patents Ones, Zeroes

MARCH 25, 1998 | ISSUE 33-11

REDMOND, WA—In what CEO Bill Gates called "an unfortunate but necessary step to protect our intellectual property from theft and exploitation by competitors," the Microsoft Corporation patented the numbers one and zero Monday.

[ENLARGE IMAGE](#)




At a press conference beamed live to Microsoft shareholders around the globe

With the patent, Microsoft's rivals are prohibited from manufacturing or selling products containing zeroes and ones—the mathematical building blocks of all computer languages and programs—unless a royalty fee of 10 cents per digit used is paid to the software giant.


"Microsoft has been using the binary system of ones and zeroes ever since its inception in 1975," Gates told reporters. "For years,

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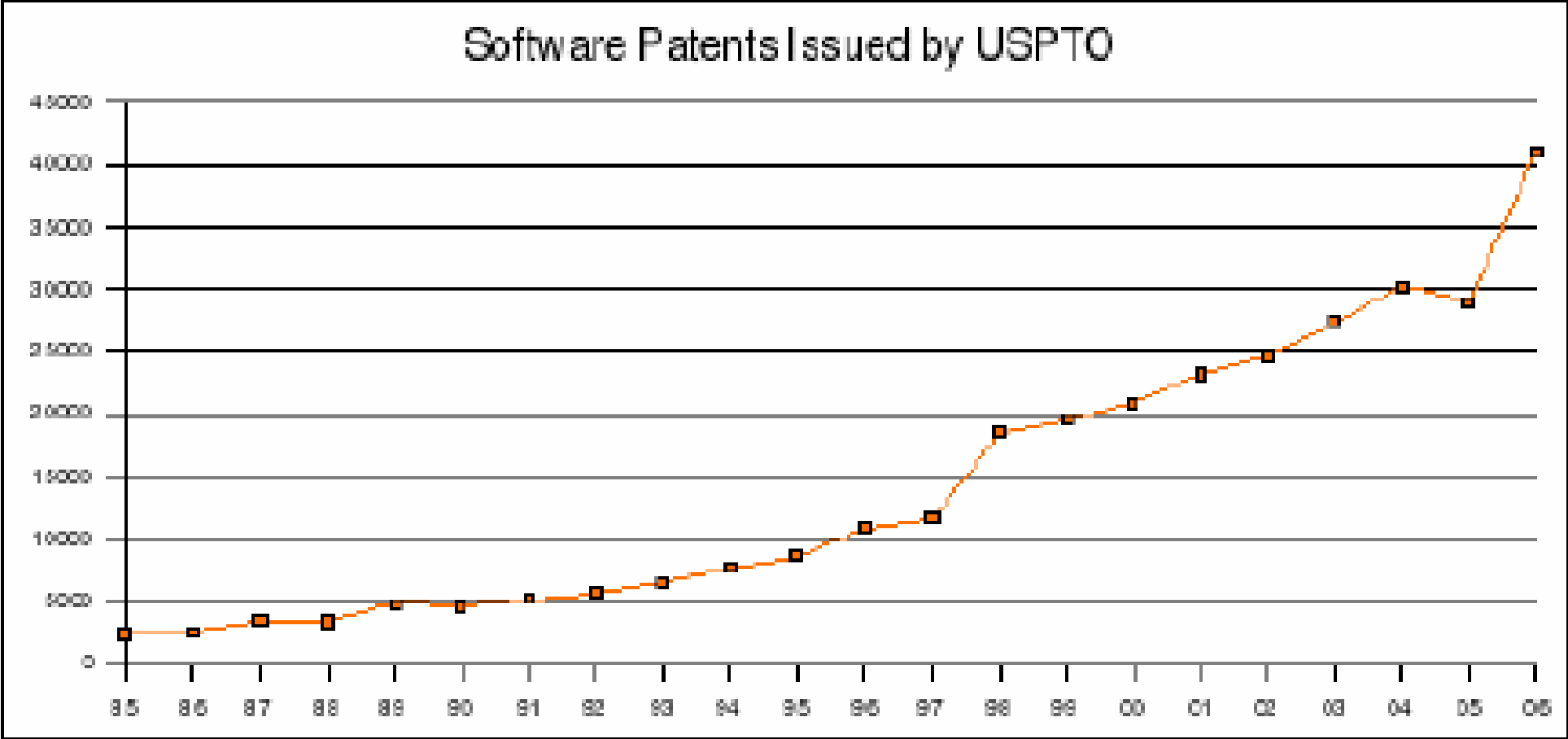
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Software Patents Issued



Source: Public Patent Foundation



Why Should We Care?

- **Time and Money**
- **Fosters Fear, Uncertainty and Doubt (FUD)**
- **Particular Open Source Impact**



Why Hasn't the System Broken Down? Its MAD!

Mutual Assured Destruction

"[R]ational individuals... came this close to total destruction of their societies - and that danger exists today." Former US Secretary of Defense Robert McNamara



Why Allow Patents?

“To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

--U.S. Constitution, Article I



In Software?

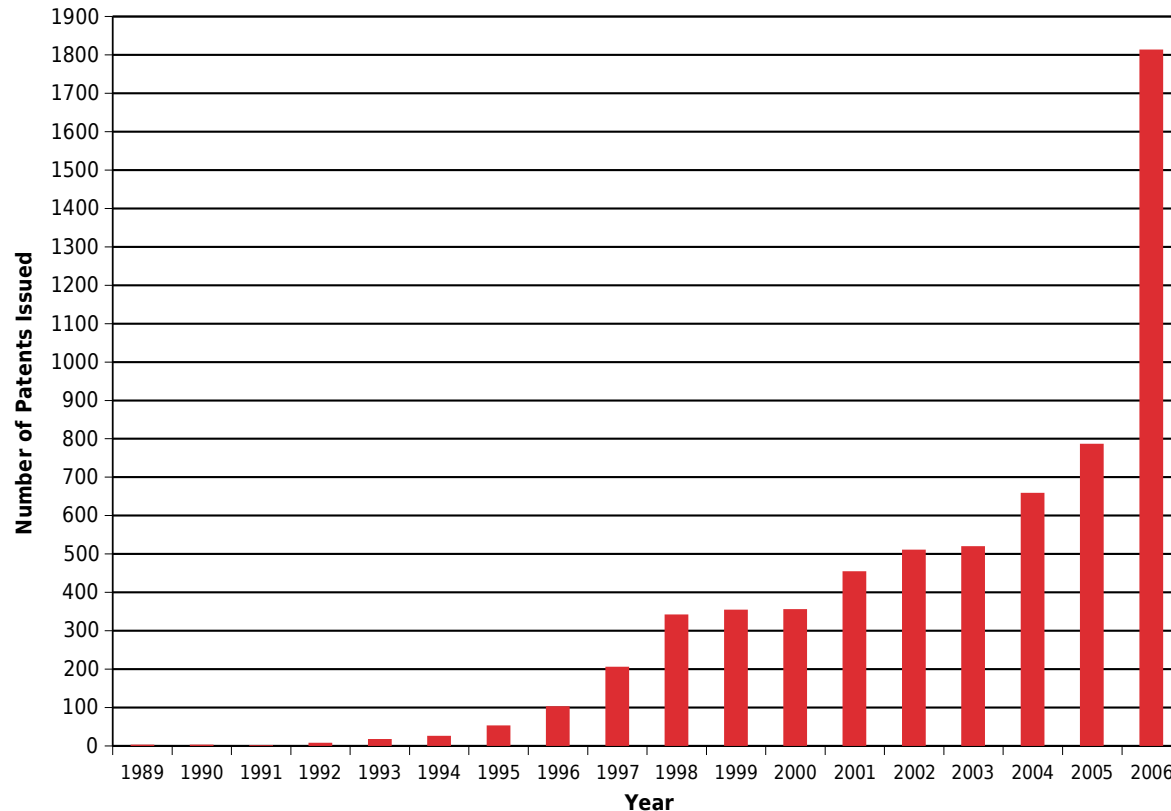
“ If people had understood how patents would be granted when most of today’s ideas were invented and had taken out patents, the industry would be at a complete stand-still today. . . . A future start-up with no patents of its own will be forced to pay whatever price the giants choose to impose. That price might be high: Established companies have an interest in excluding future competitors.”

--Bill Gates, 1991



Case Study: Microsoft

Patents Issued to Microsoft



2007:
Microsoft has applications for over 9,000 patents pending

Major Developments

Prior to Patents:

BASIC
XENIX OS
MS-DOS
Word
Multiplan Spreadsheet
Windows 1.0
Works
Windows 2.0
Excel
SQL Server

1989-1995

Office
Windows 3.0
VisualBasic
Windows 3.1
Access
Windows NT
Windows 95
Project

1996-2000

Office 97
IntExplorer 4.0
WindowsCE
Windows 98
Windows 2000
Office 2000
.NET
WindowsME

2001-2007

Windows XP
Office XP
Xbox
Xbox360
Zune
Windows Vista



Software Patents are a Problem for Everyone

Microsoft Patent Cases

- Alacritech (2005)
- **Alcatel/Lucent (2007)**
- Amado (2005)
- American Video Graphics (2004)
- Anascape (2006)
- Arendi Holdings (2004)
- AT&T (Settled 2004)
- BTG International (2004)
- Burst (2002)
- Computer Acceleration Corporation (2006)
- **Eolas (1999)**
- E-Data (2003)
- E-Pass (2005)
- Forgent (2005)
- Goldtouch (1998)
- Hyperphase (2003)
- i4i (2007)
- Intertrust (2004)
- Network Commerce (2002)
- Paltalk (2006)
- Priceline (1999)
- **Stac Electronics (1994)**
- Typeright Keyboard Corp (2004)
- TV Interactive Data (2004)
- VirnitX (2007)
- Visto (2005)
- Wang (1993)



How Does the Open Source Community Address Software Patents?

- **Development model = DECENTRALIZED**
- **Innovation = DRIVEN BY USER COLLABORATION**
- **Collaborative, decentralized open source innovation = NOT NATURALLY SUSCEPTIBLE TO PATENT PROTECTION**



How Does the Open Source Community Address Software Patents?

1. Eliminate Software Patents

- Great long term goal, but
- “. . . in the long run we are all dead.”*

John Maynard Keynes (1883–1946), British economist.
A Tract on Monetary Reform, ch. 3 (1923).



How Does the Open Source Community Address Software Patents?

2. Play the MAD Game on Open Source's Behalf.

- **Defensive Patent Portfolio + Open Source Patent Promise**
- **Open Source Patent Commons**

“Discourage litigation. Persuade your neighbors to compromise whenever you can. As a peacemaker the lawyer has superior opportunity of being a good man. There will still be business enough.” Abraham Lincoln (1809 - 1865)



Open Source Safe Harbors – Open Source Patent Promises

Red Hat's Patent Promise

http://www.redhat.com/legal/patent_policy.html



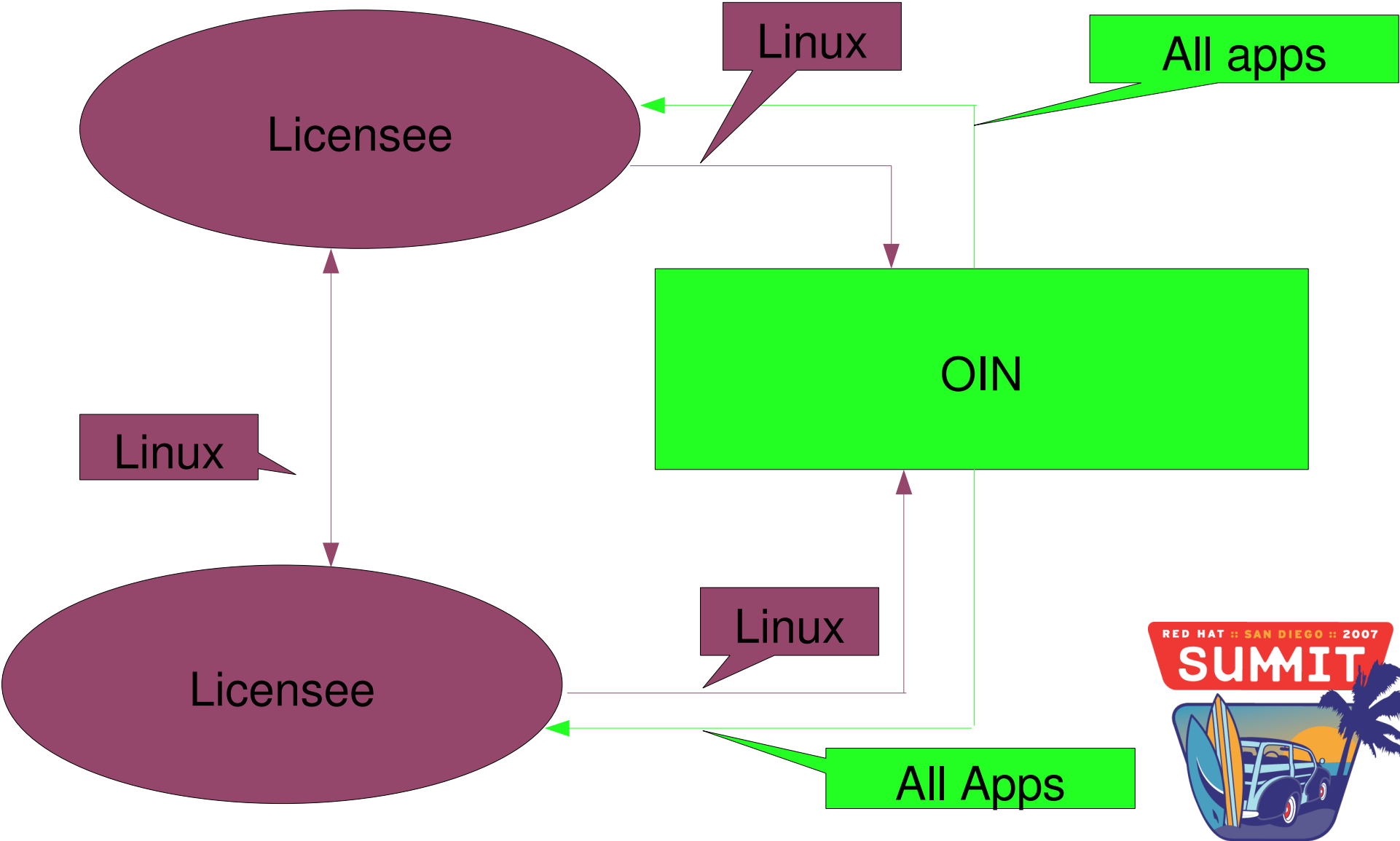
Open Source Safe Harbors – Open Source Patent Commons

Open Invention Network

<http://www.openinventionnetwork.com/>



OIN Patent Licenses



How Does the Open Source Community Address Software Patents?

3. Improve the Patent System

- Apply Open Source Principles
- Leverage the Wisdom of Experts
- Peer Review*

***“Reviewing has one advantage over suicide: in suicide you take it out on yourself; in reviewing you take it out on other people.”**

George Bernard Shaw (1856 - 1950)



Improve the Patent System – Apply Open Source Principles

Community Patent Review

<http://dotank.nyls.edu/communitypatent/>



How Does the Open Source Community Address Software Patents?

“...And I've looked over, and I've seen the promised land. I may not get there with you, but I want you to know tonight that we as a people will get to the promised land.”

Martin Luther King Jr. (1929 - 1968), Speech in Memphis, April 3, 1968, the day before King was assassinated

Will you help us?



Which Way Will You Swing?

US0006368227B1

(12) **United States Patent**
Olson

(10) Patent No.: **US 6,368,227 B1**
(45) Date of Patent: **Apr. 9, 2002**

(54) **METHOD OF SWINGING ON A SWING** 5,913,248 A * 5,198 French 248-228

(70) Inventor: **Steven Olson, 357 Uils. Av., St. Paul, MN (US) 55104** * cited by examiner

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **089715198**

(22) Filed: **Nov. 17, 2000**

(51) Int. Cl. **A63G 9/00**

(52) U.S. Cl. **472/118**

(58) Field of Search **472/118, 119, 472/120, 121, 122, 123, 125**

(57) **ABSTRACT**
A method of swing on a swing is disclosed, in which a user positioned on a standard swing suspended by two chains from a substantially horizontal tree branch (instead of side to side motion) by pulling alternately on one chain and then the other.

(50) **References Cited**
U.S. PATENT DOCUMENTS
242,941 A * 6,188 French 472/118

4 Claims, 3 Drawing Sheets

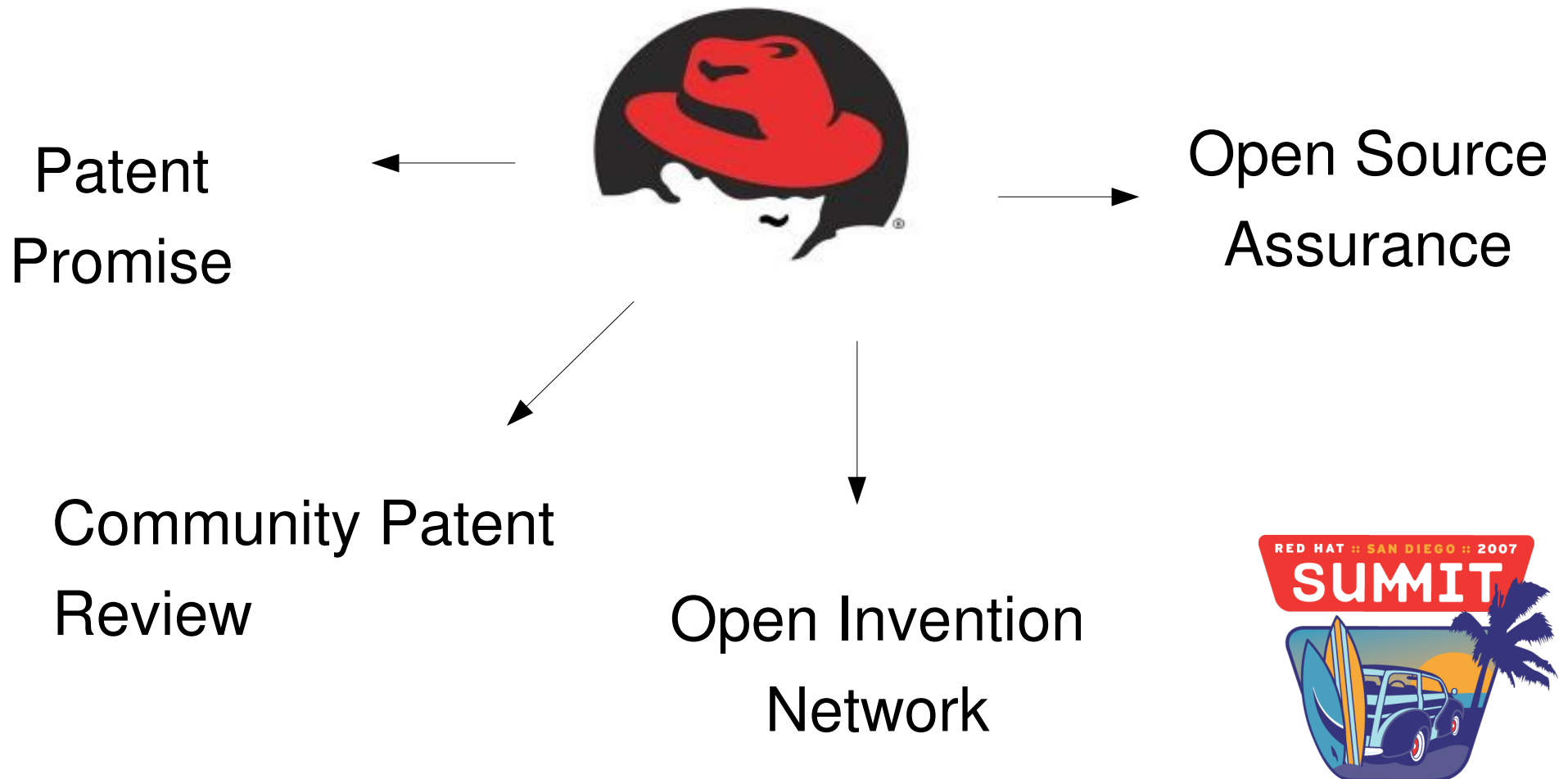
Method of Swinging Sideways on a Swing* *Patent #6,368,227*

**Issued to a six-year old.*



How Is Red Hat Addressing IP Issues?

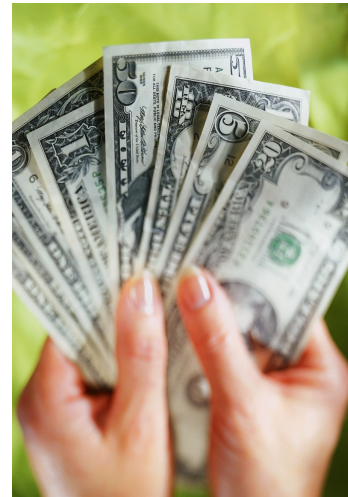
Red Hat Leadership



Red Hat's Open Source Assurance

“Repair or replace” remedy

**IP Infringement
Indemnification**



Indemnification – Industry Overview

- **Red Hat**
- **HP**
- **Novell**
- **Oracle**

