Software patents are evil

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I was planning to write about software patent trolls [1] and was entering "software patents" in my search engine when it offered the suggestion "are evil" to complete the phrase. I'll buy that. So to encourage more traffic here, that is the title of this post. Yes. I have been blogging for quite some time.

From the above link:

> *... patent trolls are a huge tax on innovation and add nothing valuable to the marketplace. A study out of Boston University estimates the direct economic damage that patent trolls cause to be around $29 billion a year, and this doesn't account for hush-hush, off-the-record settlements. But the bigger problem, says Samuels, is the patent system itself.*
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> "*You can't separate the problem with the patent troll from the problem with software patents," says Samuels. "There are hundreds of thousands of software patents floating around that are really broad, that are really vague ... and a lot of them are bought up by patent trolls.*"

I remember when the idea of software patents were first litigated in the US [2]. It seemed like a bad idea to me to be able to take a mathematical formula or the series of steps used to compute that formula and turn it into a patentable object. A specific piece of hardware to solve a specific problem I could get. A multiplier, say. But a general purpose bunch of hardware that is easily configured to do anything where the algorithm in question is transient? It seems wrong. Are you violating the patent if you use the algorithm in your own brain to solve the problem? Of course not. But if you use it in a computer, you are in trouble if the trolls even get a hint of it. What happens down the road when computers may be good enough to figure out the algorithms on their own? Trouble. Very big trouble.

Let's go through why software patents are a bad idea in some more detail. First off, patents are supposed to reward innovation. But suppose you solve problems everyday for a living (write software) and fail to patent your ideas? The troll can

come along, claim infringement, and then it is settle (usually for a little less than fighting the suit) or fight. Given that the costs are set so it is cheaper to settle, what is your accountant going to tell you to do? Lie back and enjoy it as best as you can. It is just another cost of doing business. [3]

Drew Curtis [3] in a TED video explains how he beat a patent on e-mailing news releases. Seven minutes of your time and not a wasted moment. Entertaining and informative. His bottom line advice? "Do not negotiate with terrorists."

There is help available from the Electronic Frontier Foundation [4].

> *Once it has identified some of the worst offenders, EFF will begin filing challenges to each in the form of a "re-examination request" to the U.S. Patent and Trademark Office. These requests create a forum to affirmatively invalidate patents rather than forcing technology users to await the threat of suit. Under this procedure, EFF can choose particularly egregious patents, submit the prior art it has collected, and argue that the patent should be revoked. EFF will collaborate with members of the software and Internet communities as well as legal clinics and pro bono cooperating attorneys to help in these efforts.*

They give the name of the attorney to contact at the bottom of the page. Keep in mind that patent trolls attack startups first. Why? Because resources are most constrained in a startup.

But there is something more fundamental going on [5]. And that is that the record shows that patents retard innovation.

> *During the period of Watt's patents the United Kingdom added about 750 horsepower of steam engines per year. In the thirty years following Watt's patents, additional horsepower was added at a rate of more than 4,000 per year. Moreover, the fuel efficiency of steam engines changed little during the period of Watt's patent; while between 1810 and 1835 it is estimated to have increased by a factor of five.[4]*
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> *After the expiration of Watt's patents, not only was there an explosion in the production and efficiency of engines, but steam power came into its own as the driving force of the Industrial Revolution. Over a thirty year period steam engines were modified and improved as crucial innovations such as the steam train, the steamboat and the steam jenny came into wide usage. The key innovation was the high-pressure steam engine — development of which had been blocked by Watt's strategic use of his patent.*

There is much more at the link about how Watt himself was thwarted by patents.

What is the answer? Well, I'd say that all patents and especially software patents should be eliminated. The question then is how do you reward innovation? By the

only thing that makes innovation useful — manufacturing.

Don Lancaster makes the case against patents [6] for small operations. He advises publishing everything you know about what you intend to sell. Why? Most companies will not get involved in an area of business where entry is easy. Well, what does the inventor gain if he cannot manufacture? A reputation as an expert in the field. If the field gets large, the small guy who started it can get hired as a consultant to help others implement the "invention". With the costs of publishing so low these days (roughly zero), that seems like good advice. No lawyers to pay and only upside potential. Especially given that most inventions never turn a dime. They only generate expenses.

M. Simon's e-mail can be found on the sidebar at Space-Time Productions [7].

Engineering is the art of making what you want from what you can get at a profit.

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