

BRING ON THE TROLLS

Dear Linux Magazine Reader,

I recall working for a search engine back in the early days of Internet search, before search was even an engine and was more like a giant index that people assembled manually by surfing around and checking out sites. I don't remember so much politics back then – not like now, where every extremist has a blog. Back then, you had to be at least a little bit of a techie even to have a website – or to even know about the web, for that matter. I remember running across lots of entrepreneurs with quirky, interesting products they seemed to have developed on their own. I emerged from that era with a new-found appreciation for how fuzzy the line is between what is patentable and what isn't. Along with these interesting, quirky products were some very abstract and conceptual "good ideas" or, in some cases, pretty ordinary ideas that someone out there was pretty sure he had invented.

A lot of small software companies back then patented their ideas, and some later sold their patents to companies that we now call trolls. A classic patent troll doesn't bother to implement a patent – it just licenses the use and sues whoever doesn't buy a license. It is really a house full of lawyers, and the decisions on when to sue, when to settle, and when to mettle are made for purely legal reasons.

Just recently, a company called Lodsys sent a letter to several iOS developers telling them they'd better pay money to Lodsys if they want to put a button in an iPhone app that lets a user upgrade from the Lite version to the full version. Lodsys, it seems, holds a patent for in-app upgrade buttons. By now, people are so inured to the nonsensical nature of software patents that they tend to jump ahead to the details without keening at the gateway of disbelief. I think we should take the trouble to be alarmed all over again every time one of these stories reaches the news. It doesn't matter that this is the third one in six weeks. Given that no one owns buttons, and no one owns upgrades, it really is kind of silly that anyone owns the right to launch an upgrade within an app with a button, and yet, according to Lodsys, the patent office really has assigned them this right through patent 7222078, which has the very technical title "Methods and Systems for Gathering Information from Units of a Commodity across a Network."

Some good news this Spring (maybe) is that the US government, a big, bad patent enabler by most accounts, is actually poised to pass some kind of patent reform. A reform bill has already passed the senate by a vote of 95-5. A similar bill is now making its way through the House of Representatives, and if a final bill passes, President Obama, who campaigned for patent reform, will likely sign it. Of course, what the Congress calls reform is not what many reformers call reform. The current bill has a couple of controversial provisions. In particular, the bill would move from the current "first-to-invent" system, in which

a patent is awarded to the first inventor who creates the product, to a "first-to-file" system, in which whoever files for the patent first receives it. Many believe the new approach, which is used in several other countries, will streamline the system and prevent abuses, but many smaller businesses have denounced the plan, which they say will shut down small-time inventors and give the advantage to huge companies who can act quickly to secure their property rights.

Other provisions, however, will probably help improve the patent system, such as increased opportunities for third-party input. In my opinion, one of the most promising provisions of the bill allows the patent office to set its own fees and stops the government from skimming money from the patent system for the general budget. The patent office has been underfunded and understaffed for years because of congressional budgetary grandstanding; even if nothing else changes, at least maybe the patent office will get some more time to think before they stamp.

Joe

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