

Is patent law compatible with open source innovation?

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Starting point: “open source”
is a licensing model - an open
source license may or may
not fit with a certain “open”
innovation model as well

Open source ≠ patent royalties

- Most open source licenses have termination clauses: it is not possible to ask patent royalties for open source and continue development
- “7. If, as a consequence [...] of patent infringement [...] conditions are imposed on you [...] that contradict the conditions of this License, they do not excuse you from the conditions of this License. If you cannot distribute so as to satisfy simultaneously your obligations under this License and any other pertinent obligations, then **as a consequence you may not distribute the Program at all**. For example, if a patent license would not permit royalty-free redistribution of the Program by all those who receive copies directly or indirectly through you, then the only way you could satisfy both it and this License would be to refrain entirely from distribution of the Program. [...]”

Patent law > licenses

- Assume you want patents:
 - You can patent inventions in open source
 - You can guarantee your open source users that you are not charging royalties or setting any other conditions upon them
 - You can even license the patents to those who are not open source distributors

Open source end-users?

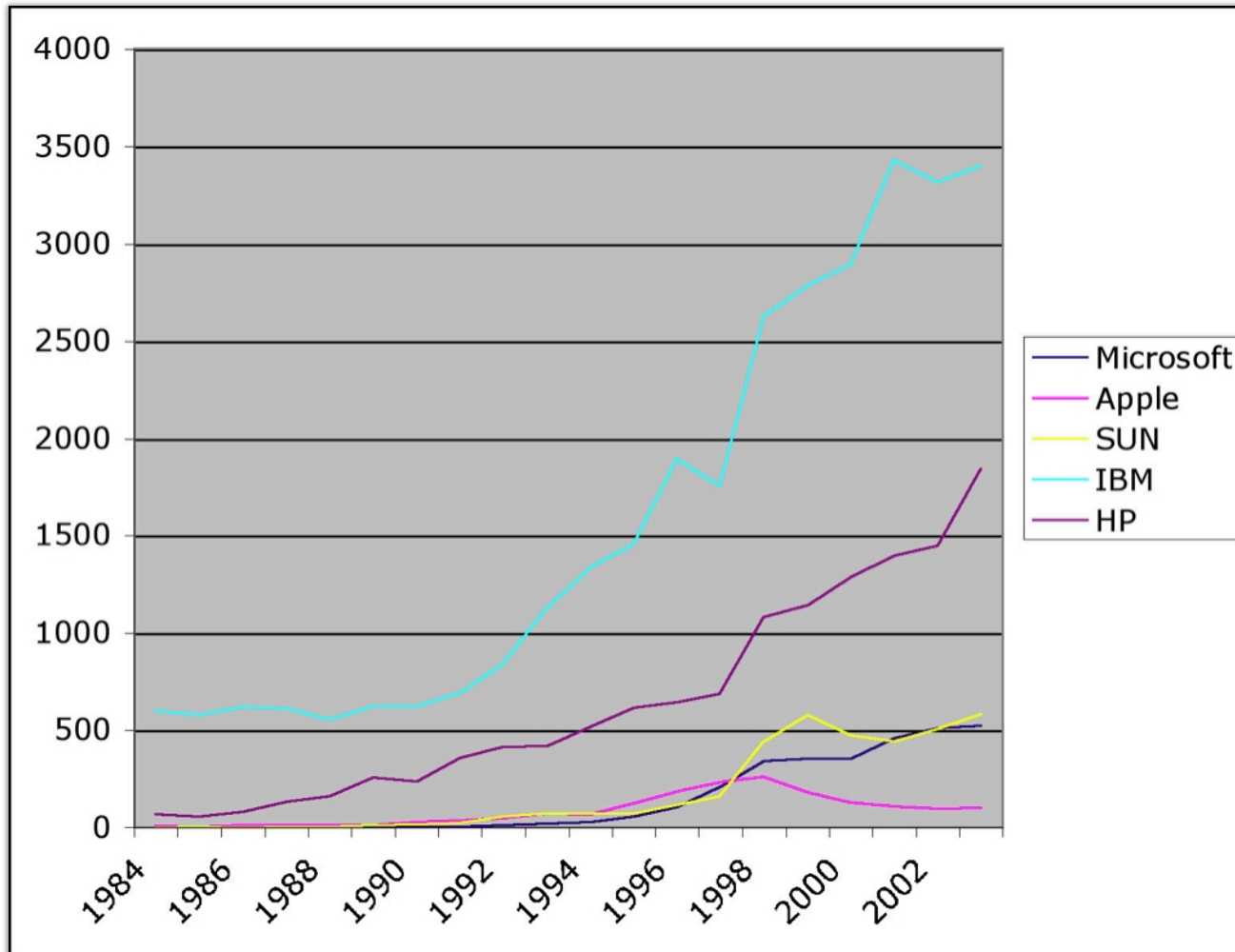
- “Finally, any free program is threatened constantly by software patents. We wish to avoid the danger that *redistributors* of a free program will individually obtain patent licenses, in effect making the program proprietary. To prevent this, we have made it clear that any patent must be licensed for everyone’s free use or not licensed at all.” - GPL preamble

A potential biz model

- “5. You are not required to accept this License, since you have not signed it.”
 - End-users could eat royalty charges and continue use?
- “If push comes to shove, would Microsoft sue its customers for royalties, the way the record industry has? “That’s not a bridge we’ve crossed,” says CEO Ballmer, “and not a bridge I want to cross today on the phone with you.” - Fortune continues...

Answer: patent law can not be said to be “incompatible” with open source licenses; even patent royalties are a clear problem only for developers and distributors

A threat to innovation?



Patents in the US

Microsoft takes on the free world

Microsoft claims that free software like Linux, which runs a big chunk of corporate America, violates 235 of its patents. It wants royalties from distributors and users. Users like you, maybe. Fortune's Roger Parloff reports.

By [Roger Parloff](#), Fortune senior editor

May 14 2007: 9:35 AM EDT

FORTUNE

What the hell..?

- “Gutierrez refuses to identify specific patents or explain how they’re being infringed, lest FOSS advocates start filing challenges to them.” - Fortune magazine, same article
- “The term ‘patent’ originates from the Latin word *patere* which means ‘to lay open’ (i.e., make available for public inspection) - says Wikipedia

Nuclear Weapons Proliferation



-  **KNOWN**
-  **POSSIBLE**
-  **POSSIBLY RESEARCHING**

Peace sells but who's buying?

- Microsoft - Novell deal: MS assures it won't sue Novell's Linux customers for patent infringement
- "... its appeal is that it provides peace of mind about Microsoft's patent claims. In the first six months, such marquee clients as *Credit Suisse, Deutsche Bank, AIG Technologies, HSBC, Wal-Mart, Dell* and *Reed Elsevier* have all acquired Novell Linux coupons from Microsoft."

Innovation happens elsewhere

- Patent law is technology and business neutral; it makes sense to select non-innovative deep pockets (without own patents or challenge possibilities) for royalty charges
- Patents have not been used against individual developers or communities; or can you name a case?
 - Bad publicity problem, potential patent challenges etc.

Conclusion: patent
warheads are not targeted
at innovation but money

Active licensors also
known to some as trolls

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Invention Research & Development

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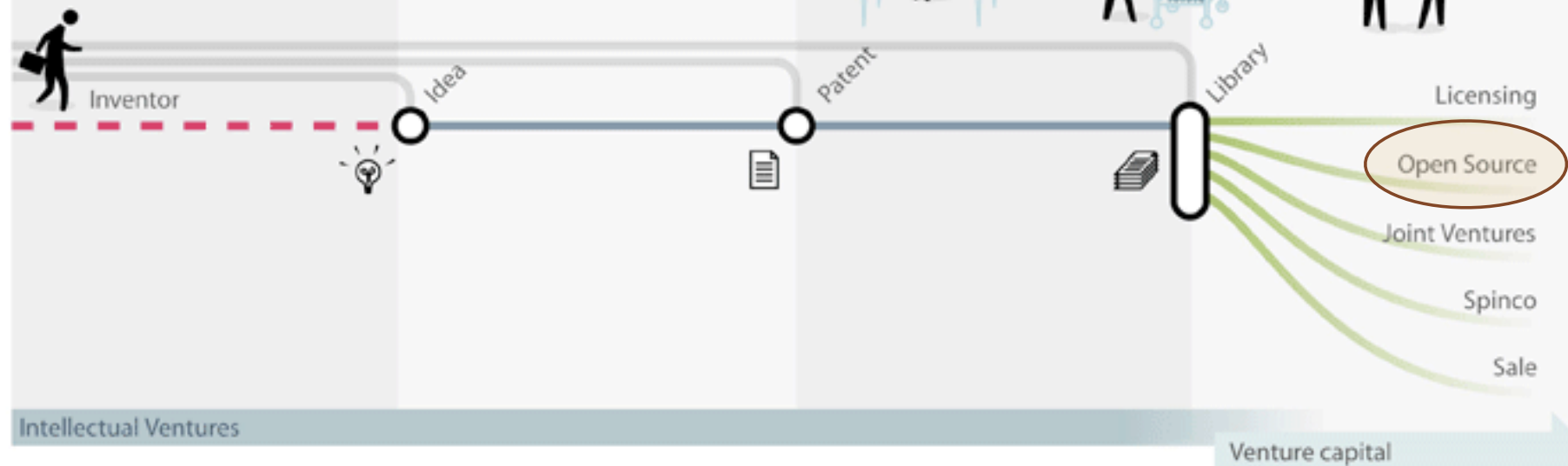
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Even trolls can be
“compatible” with open
source although they may
not subscribe to an open
innovation model