

Software Patents

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Copyright Term Extension Act

- ▶ CTEA of 1998
 - ▶ Created prior to 1978: 95 year protection
 - ▶ Created after 1978: lifetime of the author plus 70 years
 - ▶ Challenged on grounds of
 - ▶ Copyright Clause – "limited Times"
 - ▶ The First Amendment
 - ▶ The public trust doctrine
 - ▶ Upheld in *Eldred v. Ashcroft* by SCOTUS (January 15th, 2003)

Diamond v. Diehr (1981)

- ▶ Prior to 1981 software was effectively not patentable
- ▶ Mathematical formulas in the abstract are not eligible for patent protection
- ▶ However, a physical machine or process which makes use of a mathematical algorithm is different from an invention which claims the algorithm in the abstract
- ▶ Hence software is deemed patentable as it's an implementation of an algorithm

Amazon One-Click Patent

A method and system for placing an order to purchase an item via the Internet. The order is placed by a purchaser at a client system and received by a server system. The server system receives purchaser information including identification of the purchaser, payment information, and shipment information from the client system. The server system then assigns a client identifier to the client system and associates the assigned client identifier with the received purchaser information. The server system sends to the client system the assigned client identifier and an HTML document identifying the item and including an order button. The client system receives and stores the assigned client identifier and receives and displays the HTML document. In response to the selection of the order button, the client system sends to the server system a request to purchase the identified item. The server system receives the request and combines the purchaser information associated with the client identifier of the client system to generate an order to purchase the item in accordance with the billing and shipment information whereby the purchaser effects the ordering of the product by selection of the order button.

U.S. Patent

Sep. 28, 1999

Sheet 9 of 11

5,960,411

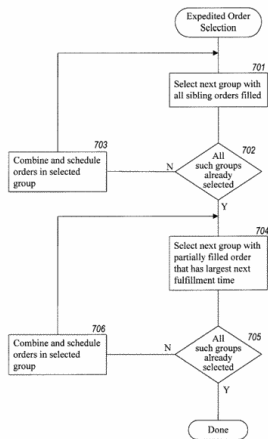


Fig. 7

Why does open source coexist?

- ▶ control over product performance
- ▶ hobbyists/enthusiasts
- ▶ display of skill/resume padding
 - ▶ Hall et. al
- ▶ competitive rents (Boldrin & Levine)
 - ▶ Which model version fits?
 - ▶ What can we say about the implications?

The evidence (and the common sense of anyone involved with OS software) shows that the source of competitive rents is the complementary sale of expertise.

...only small rents can be obtained through the sale of copies. [Purchasers] also have a demand for services, ranging from support and consulting to customization. They naturally prefer to hire the creators of the programs who in the process of writing the software have developed specialized expertise that is not easily matched by imitators.

- Boldrine & Levine (2009)

Boldrin & Levine

Boldrin & Levine: alternate notation

Table : Alternate Notation

BL		New
δ	\longrightarrow	β
β	\longrightarrow	λ
ζ	\longrightarrow	$1 - \delta$

Boldrin & Levine: General Model Revisited

- ▶ Distinguish between productive input and consumption good: $\{k, c\}$
- ▶ $c_t = F(k_t^c, l_t^c)$, $x_t = G(k_t^k, l_t^k)$
- ▶ Agent solves $\sum_{t=0}^{\infty} \beta^t [u(c_t) - wL_t]$
 - ▶ λk_t units available tomorrow without allocating resources for production: $k_{t+1} = \lambda k_t + x_t$
 - ▶ $\lambda > 1$ gives us the 24/7 case

- ▶ Given $\{k_t, x_t, L_t\}$, the solution $c_t = T(k_t, x_t, L_t)$ traces a production possibility frontier graph here
- ▶ L_t solves $\max_{L_t} u[T(k_t, x_t, L_t)] - wL_t$
- ▶ The problem restated:

$$\begin{aligned} \nu(k_0) &= \max_{\{k_t\}_{t=1}^{\infty}} \sum_{t=0}^{\infty} \beta^t V(k_t, k_{t+1} - \lambda k_t) \\ \text{s.t. } &\lambda k_t + \bar{x}(k_t) \geq k_{t+1} \geq \lambda k_t \end{aligned}$$

- ▶ As before, $q_0 = \nu'(k_0) > 0$ yields positive competitive rents