

Patently Obvious

The year the lawyers came to FOSS

Neil McGovern, Executive Director, GNOME Foundation

A long time ago in a galaxy far,
far away...

(Thessaloniki, Greece - August 2019)





Dj Walker-Morgan

@Codepope

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I suspect we'll hear a lot more of this ...
GNOME Foundation is being sued over
patent infringements in Shotwell -
insight.rpxcorp.com/litigation_doc... - the
patent in play
freepatentsonline.com/9936086.html

5:40 am - 29 Aug 2019

Background

- Rothschild Patent Imaging - Leigh Rothschild
- Suit filed August 28th, 2019 - Northern California. 5 other companies sued at the same time
- U.S. Patent No. 9,936,086 - Filed 2017
 - directed to the basic idea of filtering pictures from a camera

Initial response



Shearman

SHEARMAN & STERLING

Initial response

- This isn't just about GNOME
- Concern about the case being dropped
- Send a message that this isn't going to be easy
- “Served” on August 30th
- Pro-bono assessment & litigation holds

Initial response

- First settlement offer
- Initial statement September 25th, 2019
- OIN

Going public

Going public

- First filing of our response - October 21st, 2019
 - an Answer the Complaint,
 - a Counterclaim for declaratory judgment that the '086 patent is invalid, and
 - a Motion to Dismiss the Complaint on the basis that the '086 patent is ineligible for patent protection under Section 101.
 - Public statement, call for funds
- Second settlement offer

Pre-litigation

Pre-litigation

- October 2019 - February 2020
- Identified 38 pieces of prior art, which include patents and patent applications, academic papers, and products available before the 2017
 - Including Shotwell and gThumb!
- Identified a license for the patent
- Depositions
- Third settlement offer, counter offer
- February 27, 2020 at 2:00 p.m - First hearing

The settlement

The Settlement

- February 2020 - May 2020
- Key red lines:
 - Must be able to say we didn't pay them anything
 - Must be able to prove what we obtained
 - Must apply to all FOSS
 - Must follow the patents if sold
 - Must cover all of Leigh Rothschild portfolio
 - Must cover any future patent acquired
- Missing tracked changes, confusion, a return to litigation and a final agreement
- Net effect:
 - protection for all of FOSS for > 100 patents
 - PAE removed from ability to sue FOSS
 - American Lawyers - Litigators of the Week



Thank you!

@nmcgovern