

**From:** Jacob Silterra [e-mail redacted]  
**Sent:** Monday, September 27, 2010 3:36 PM  
**To:** Bilski\_Guidance  
**Cc:** [e-mail redacted]  
**Subject:** How Software Patents Hurt Everybody

Hello,

Some words from the experts at Oracle Corporation, circa 1994 (source):

-"[Oracle] believes that existing copyright law and available trade secret protections, as opposed to patent law, are better suited to protecting computer software developments."

-"New developments influential to the software industry frequently emanate from individuals and small companies that lack substantial resources. "

-"Software, especially a complex program, seldom includes substantial leaps in technology, but rather consists of adept combinations of many ideas. Whether a software program is a good one does not generally depend as much on the newness of a specific technique, but instead depends on the unique combination of known algorithms and methods. Patents should not protect such methods of innovation. "

Oracle is a particularly compelling mouthpiece, considering they are currently suing Google for patent violations regarding Android and Java. 16 years ago, when Oracle was experiencing massive growth and had roughly \$1 billion in revenue, they were opposed to software patents. Now that they have a market cap of \$150 billion and revenues ~\$27 billion, they are a corporate giant, and like nothing more than to block competition through legal action rather than product improvement.

It should also be noted that the patents in question were granted to Sun, and only received by Oracle through acquisition. Sun didn't need patent protection on its products, but acquired it for defensive purposes as so many companies are forced to. Large companies would end up saving greatly on their legal bills if they weren't constantly defending against lawsuits and filing endless patents, but that is the legal reality we live in today. The cost for established firms is likely offset by creating an enormous barrier to entry to startups, preserving their profits at the expense of consumers receiving high quality software.

A common activity, known frequently as "patent trolling", is acquiring patents for technology which is already in widespread use and suing the users. This should be blocked by the "prior art" requirement for patents, but as a practical matter the USPTO cannot adequately review the torrent of patent applications it receives. One case is *Monkey Media vs Apple* (CIVIL ACTION NO.1: 1 O-cv-003 19), in which the plaintiff asserts that Apple violates its patents for de-emphasizing non-salient information. In other words, if the user doesn't need to see it, don't show it to them. I'm having a hard time thinking of something more obvious, but the patent exists ( 6,177,938 ; 6,219,052 ; 6,335,730 ; 5,623,588 ; 6,215,491).

By far the largest harm is the uncertainty that every developer has when writing a program. In a world where sudo, page up/down , and the linked list are patented, how can

anyone make something without infringing on somebody's patent? These techniques were all in use decades before being patented, and yet anyone who writes a program that uses them without license is violating patent law. This discourages many developers, financially ruins some, and makes everyone worse off.

Thank you,  
-Jacob Silterra