

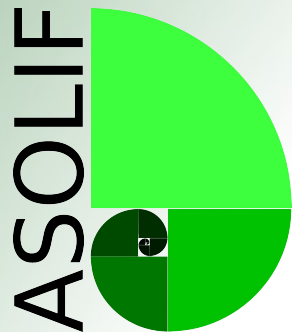
Software Patents: Assets or Bubble?

by

Alberto Barrionuevo

President of AndaLibre (ASOLIF)

CEO of OPENTIA



Asociaciones Empresariales de Software Libre Federadas

Edificio GENATIC

C/ Vistahermosa, 1, 3ª

06200 - Almendralejo – Badajoz – Spain

www.asolif.org



ANDALIBRE

Asociación de Empresas de
Software Libre de Andalucía

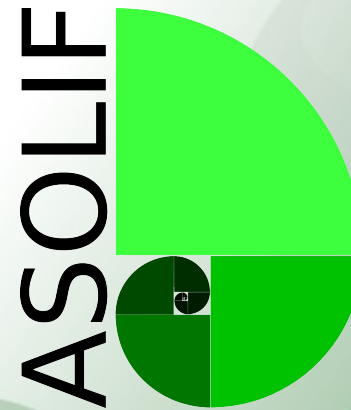
Av. Juan López Peñalver, 21
Technological Park of Andalusia
29590 - Malaga - Spain

www.andalibre.org

Who we are?

“The Open Source Business”

- Mission: “promotion of the Libre Software and Open Standards business and technologies”



Companies	26	146
Workers	~700	~4,000
Constitution	May '08	Feb '08
Website	www.andalibre.org	www.asolif.org

As example

- **OPENTIA** is a SME dedicated to
 - Consulting, auditing and development on:
 - Interoperability
 - Open Source
 - Supercomputing and virtualization
 - Migrations to 'Libre' Software
- ~250k EUR rev. for 2008 (est.)

www.opentia.com

Clarification (I)

- In many countries The Law differentiate between:

Intellectual Property

(author rights: copyright, etc)

Industrial Property

(patents, trademarks, designs, etc.)

This is the right way to do...

Clarification (II)

“20% of the software developed in Europe is Open Source” - MERIT

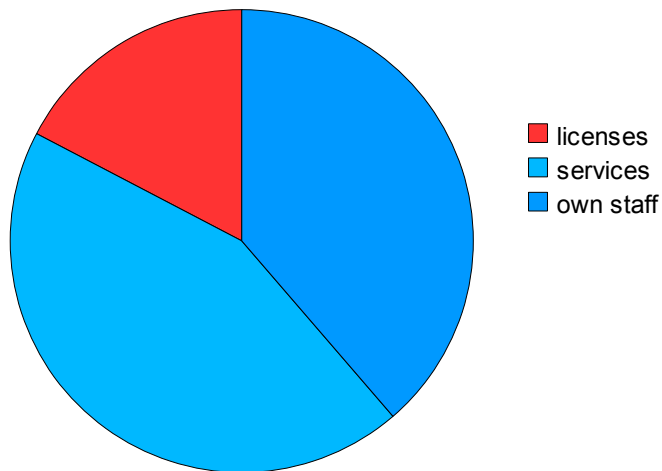
“Europe is the biggest developer of Open Source” - MERIT

“Internet core is Open Source”

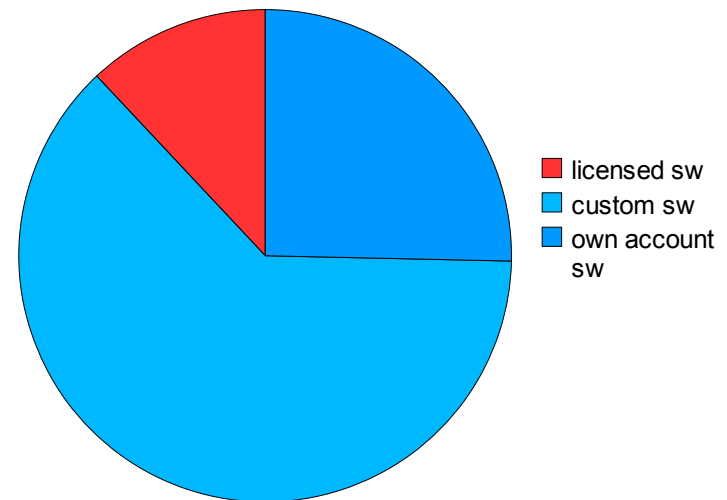
Clarification (III)

Investments in software industry (Services vs Products)

Software expenditures by
Government of Spain, 2006
Informe Reina 2007 - M.A.P.



Software Investment in Japan
- Motohashi [2002]



“Open Source just does NOT resell licenses”

“70% of software is never sold” – Bruce Perens

Clarification (IV)

Open Source Business is based on:

- **Intellectual Property**

- Author rights: **YES!**

- **Industrial Property**

- Patents **NO!**
- Trademarks **YES!**

- **Industrial secrecy** **YES!**

- **Trade secrecy** **YES!**

The key clarification

“Software is NOT Pharma”

***“Technology products typically consist
of hundreds or thousands of patented
components.”***

–Business Software Alliance
Amicus Brief to the Supreme Court in eBay Vs MercExchange

Patents vs. software

*“The current ‘patent thicket,’ in which **anyone who writes a successful software programme is sued for alleged patent infringement**, highlights the current IP system’s failure to encourage innovation”*

— Pr Joseph Stiglitz
Nobel Laureate in Economics, IP-Watch

“Small enterprises generally adopt a rather negative position towards the current increasing granting of patents for software and algorithms because they fear that these will hamper or eventually even impede their work (more than 85%).”

— German Federal Ministry of Education and Research (BMBF)
Study of the Innovation Performance of German Software Companies, 2006, pag. 86

Software Patents

Assets or Bubble of Liabilities?

Crisis has come...

Summary of current **financial crisis:**

- Absurd valuation of assets
- Inflation via low interest rates of central banks
- Bubble via derivative finance products

Crisis on the road...

Summary of next **patent crisis:**

- Absurd valuation of portfolios
- Inflation via low quality grantings of patent offices
- Bubble via derivative license programs and litigation threats

“Three crisis on the way:

- 1) Consumer debt
- 2) Mortgage debt
- 3) Patent debt”

*“The patent offices will not go unrewarded for helping to create another Great Depression, **by printing trillions of Euro worth of funny money.**”*

— Dr David E. Martin
CEO M·CAM

Predicted in May 2007

“More patents” = “more innovation” ???!

EUPACO2, Brussels May 2007



“So we have this giant conundrum of **“we don't have the data, we don't understand the research, we don't understand the economic consequences of intellectual property”, however, we're going to have the incentive to understand it [smile]. And the incentive is: the illiquidity of our banking system.**

Now, you came here to talk about patents, and you came here to talk about patent quality and you came here to talk about patent economics. I'm here to tell you that the day has come when we actually have to pay the piper. And what we have to do is we have to agree that we can't keep arguing this wonderful esoteric feel-good arguments about whether the patents are good or bad. Because at the end of the day it doesn't matter. When capital resources dry out, not in the SME market but in all the markets, because credit costs go up by a 125%, I can assure you that the incentive to talk about reform is changing remarkably. It's changing in some very dramatic fashions. And if you don't believe me, ask why I was as an economist, why **I was the only economist to talk about the globalised mortgage allegation failure of the economy before it happened.** And then ask yourself, might I be onto something with this whole Basel II thing. I would suggest that **rather than talking about reforming the patent system and optimising the patent system, we actually talk about the accountability for the innovation system at large.** And we talk about the fact that we need to do a better job with understanding the economic consequence for a system which is out of control.”

— Dr David E. Martin
CEO M·CAM

Effects of monopolies

Fuelling the
European IP Economy



“[...] a patent may look like an asset in your hands, but it is a liability, present or potential, to everybody else.”

— Dr Brian Kahin
University of Michigan

Control of inflation

Would you allow that the
Central European Bank,
who controls the inflation and
economy growth in the
EURO, would be a foreign
institution to the EU?

Control of inflation

Why do you allow the

European Patent Office

to control the patent inflation
and innovation of the EU,
being a foreign institution to
the EU?

Crisis is coming!

***“Banks are looking for
patent experts...”***

- David Yukerwich, CRA International
Dec. 4th, Brussels IP Summit 2008

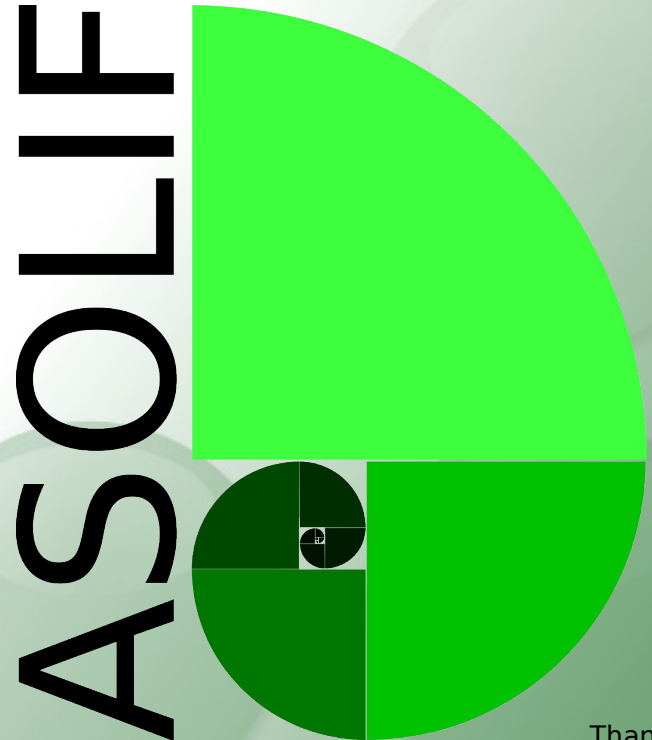
Urgent patent system reform

(for the good of all us here... and outside here)

Thanks! (...or sorry...)

Alberto Barrionuevo
abarrio@andalibre.org

More info at Article
“[Patentes Subprime](#)” by the author



Thanks Ben ;-)