



## ***Open Source and Software Patents: A Community Call to Ensure Future Freedom of Action***



## Open Invention Network's Role

- **OIN** – Industrial Firms Committed to Open Source and Linux and Engaged in Purchasing/Licensing of Patents & Parallel External Actions to Create a Patent “No Fly Zone” around Linux –  
**LIMITING THE THREAT**
- 

### Key Observations –

Patent Skirmishes increasingly common as the secondary market for patents continues to attract ‘patent speculators’ – **MOST ACTIVE ASSERTIONS/LITIGATION UNRELATED TO LINUX BUT INSTEAD CONCERN APPLICATIONS AGNOSTIC TO UNDERLYING LINUX DISTRIBUTION/OS**

All Litigation that alleges infringement related to a Linux Distribution/OS is not necessarily Linux-related (e.g. Apple) Though Some May be Positioned as Such (e.g. Bedrock)

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### What We Do

- **Patent Acquisitions** (past and current inventions)
  - Patents that Enable Linux
  - Defensive Deterrent Discouraging Patent Aggression
  - Selective Troll Interdiction – e.g. PHP Patents, Biometric Patents

**> 300 Patents & Applications**

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### What We Do

- **Royalty Free License to ALL Entities Seeking a License Under OIN owned and granted-back patents**

#### **Consideration For License –**

- 1) **Grant Back of Nonexclusive License** to All Licensee-owned patents that read on Linux System Definition
- 2) **Forbearance of Right to Use licensee-owned patents to Sue on Linux** (as defined by the Linux System Definition) – This does not preclude a company from suing for patent infringement related to proprietary technology outside the scope of the Linux System

**> 350 Licensees and counting... (250 in last 12 Months)**

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### What We Do

- **Directed Invention** (Universities, Individual Inventors, Acquired Patent-Centric SMEs)
  - Patents
  - Defensive Publications
  - Patents w/Defensive Publications

> 150 Linux-Related Defensive Publications BUT Community Participation Needed

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### What We Do

- **Linux Defenders**
  - **OS Peer to Patent** – Ensuring Prior Art Relevant to Current Patent Applications is Known so Poor Quality Applications can be Rejected
  - **OS Post-Issue Peer to Patent** – Ensuring Prior Art Relevant to Previously Issued Patents is Identified and Poor Quality Patents Can be Invalidated
  - Ensure that “**Defensive Publications**” are Produced and Available to Patent Examiners to Serve as Prior Art that Limits Future Marginal Quality Patenting in Linux and Ensures “Freedom of Action”

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### What We Do

- Linux Defenders' Defensive Publications Program Enables the Community to Codify Inventions in a Format that Can Serve as Effective Prior Art – The Birth of the “Anti-Patent” <http://linuxdefenders.org/>

**Unless and Until Code is Searchable Defensive Publications Represent the Only Reliable Vehicle to Ensure OSS/Linux Inventions are Useful in Limiting Future Software Patenting**

## Other OIN Initiatives/Community Support

OIN Designation as “**Patent Management Organization**” for purposes of Bayh-Dole – Facilitating University Patent Acquisitions

**Distinguished Inventors** Patent Acquisition Program – Backlash Against Patent Aggregation/Trolls e.g. PHP Patents

**VC/Private Equity Acquisitions** Initiative (acquiring patent rich VC/PEG sponsored companies) e.g. Availigent (Virtualization)

**Project Code Cataloguing/Search** Program – e.g. X Windows

**OIN Support for Community-Led** Initiatives – e.g. CPTN





## Conclusions...

- **Linux Defenders** is part of Global Market-Led Patent and IAM reform that has application in the new context of **Linux/OSS Innovation** across technologies
- **Linux/OSS Community** has a vehicle in **Defensive Publications** to codify what is known so that others do not later secure patents on these ideas
- **Linux/OSS Community** cannot count on Legislative, Regulatory and Judicial Reform to Ensure **Freedom of Action in Linux/OSS**
- **Participation is Vital** to Limit the Negative Effects of Existing and Future Software Patents - **Prior Art Identification** and the **Production of Defensive Publications**



**TY PJ**

open**invention***network*<sup>SM</sup>