

# Patent Trolls VS OSS

Speech at the course “Il software libero”

Marco Leogrande

`marco.leogrande@polito.it`

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# Presentation overview

- 1 Introduction
  - Definitions
- 2 Patent trolls
  - A brand new business
  - Trolls VS OSS
  - Examples of patent trolls
- 3 Conclusions

# IANAL

To begin, a fair warning:

## I Am Not A Lawyer

The following slides represent only my understanding of the matter, as a OSS supporter. They might be **inaccurate**, **incomplete**, or just **plain wrong**.

# What is a troll?

- **Fantasy monsters**: large, ugly, strong, violent tendencies
- **Internet slang**: annoying participants in on-line discussions; deliberately **provoke** others by falsely claiming **controversial** or **ignorant** opinions
- Original troll meaning + **patent system** = ?



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# Trolling for money

**Formal name:** non-practicing entity (NPE)

- I still prefer **patent troll**

## Definition of a patent troll

A patent owner who **does not manufacture or use the patented invention**, but seeks to enforce its right through the negotiation of licenses and **litigation**.

A **successful business model** in the **US**:

- buy patents at very low price (i.e. from bankrupting firms)
- look for potentially infringing entities and **sue them**
  - in the US, you have **nothing to lose** when it comes to attorney's fees
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# Trolling the software world

The **software patents** topic is complicated and open to debates: **in re Bilski**, *United States Court of Appeals for the Federal Circuit*, 2008

- Can we patent a business method? **No**.
- Patent eligibility: **machine-or-transformation test?**
  - 1 the process is implemented with a **particular machine**, not conventional, not trivial;
  - 2 the process **transforms** an article from one thing or state to another.

At the moment it is **unclear** whether tying a process to a **general purpose computer** is enough to pass the machine-or-transformation test.

## This is serious – example

**2007, IP Innovation LLC** sues **Red Hat** and **Novell**, claiming a share of all the revenues that they make from their commercial Linux distributions.

### The claim

The “**workspace switching**” feature of Linux-based window managers infringes three software patents (dating back 1987, 1993, 1995).



**Happy ending:** in 2010 **Red Hat** and **Novell** won.  
**Not because there was no infringement**, but because “*the claimed invention is but one relatively small component of the accused operating systems*”.

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# Trolling OSS is easier

- The code is **visible to anyone**, easier to spot **potentially** infringing portions.
- OSS companies are *usually* **smaller**, **more fragmented** than the big companies that write closed software.
- **The jury might be confused** by the use of **technical terms** or **unfamiliar ideologies**:
  - in the previous case, IP Innovation LLC *“promoted the fallacy that **open source distributors unfairly take the property of others** and thereby unfairly profit” and that “Red Hat’s public criticisms of the U.S. patent system [...] was **un-American** and indicated a **secret fondness for the writings of Karl Marx**”.* **No kidding.**

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## Trolling, the subtle way: FUD

Excerpt from the **Microsoft - Novell** joint letter to the Open Source Community (2006)

Microsoft announced today that **it will not assert its patents** against individual, non-commercial developers. Novell has secured an irrevocable promise from Microsoft to allow individual and non-commercial contributors the freedom to continue open source development, **free from any concern of Microsoft patent lawsuits.**



## Trolling, the hard way

**Recent news** (*April 2011*): **Bedrock Computer Technologies** against **Google** and others (*Yahoo, MySpace, Amazon, PayPal*)

Excerpt from the allegedly infringed patent

[...] storing and retrieving information records using a **linked list** to store and provide access to the records, at least some of the records automatically expiring [...]

- **Obvious technique?** (*machine-or-transformation test*)
- **Linux** is said to infringe the patent inside its implementation of the IPv4 routing table.  
*Even on this very machine!*

**Bad ending:** **Google** found **guilty** for 5 million USD

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## What to do, then?

- The **software patent ecosystem** is a **mess**
- Patent trolls attack the “*big fishes*”, from which they can **reap a lot of money**
- **Pay** or **fight** in court?

When it's so little money [4,2 million USD], at some point, bluntly, **it's better to settle than fight these things out.**

*Jim Whitehurst, Red Hat CEO*

