

FTISA Discussion of Software and Business Method Patents
January 19, 2007

Software Patents in Different Jurisdictions

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Overview

Objective Data of the U.S. Software Patent Situation

Subjective Opinion Depends on Who You Ask

Most Software Technologists Agree System is Broken

Fixing System is Difficult Because of Other Interests

Relationship to South Africa

Thoughts for the Future

SOFTWARE PATENTS IN DIFFERENT JURISDICTIONS

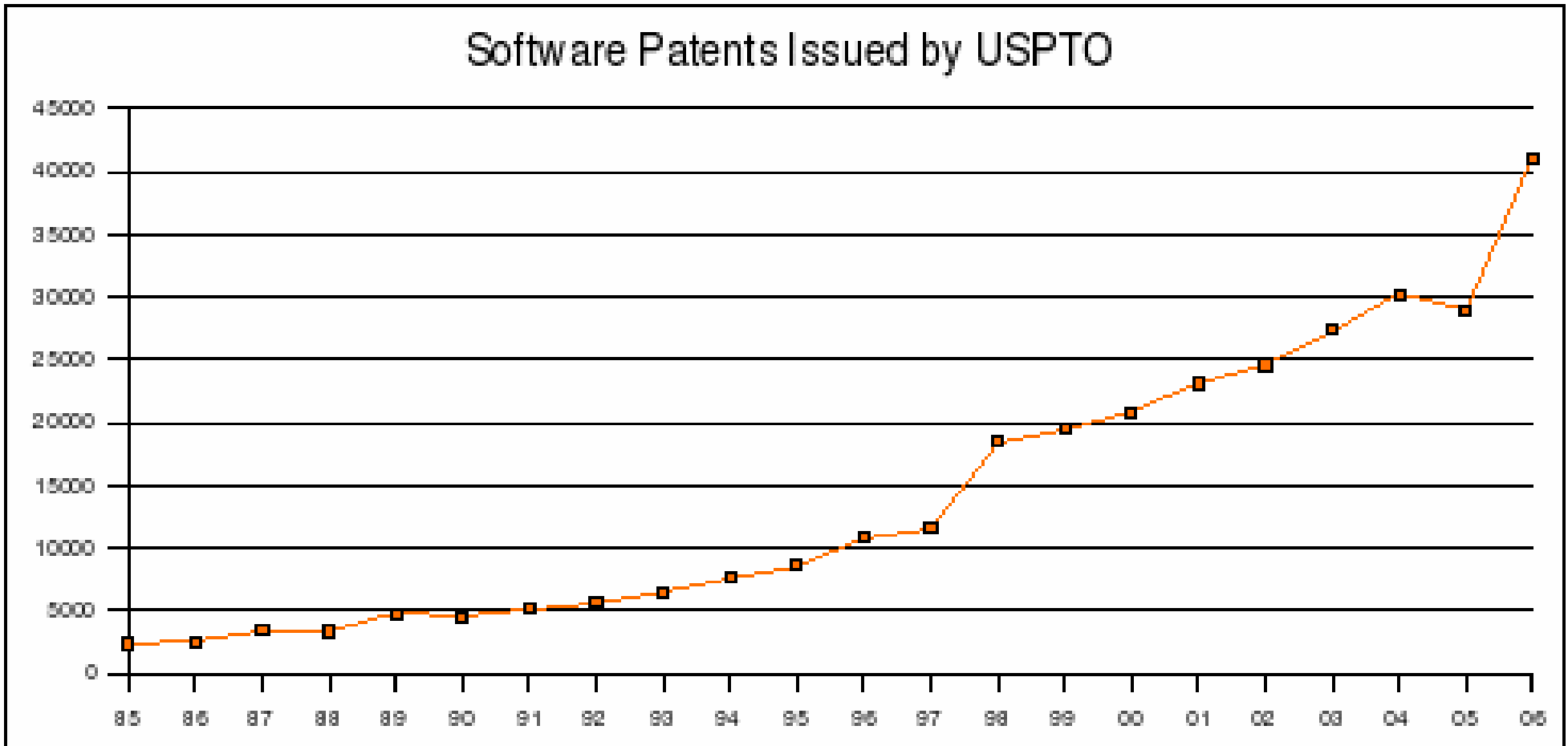
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Objective Data of the U.S. Software Patent Situation

Software Patents Issued by USPTO



SOFTWARE PATENTS IN DIFFERENT JURISDICTIONS

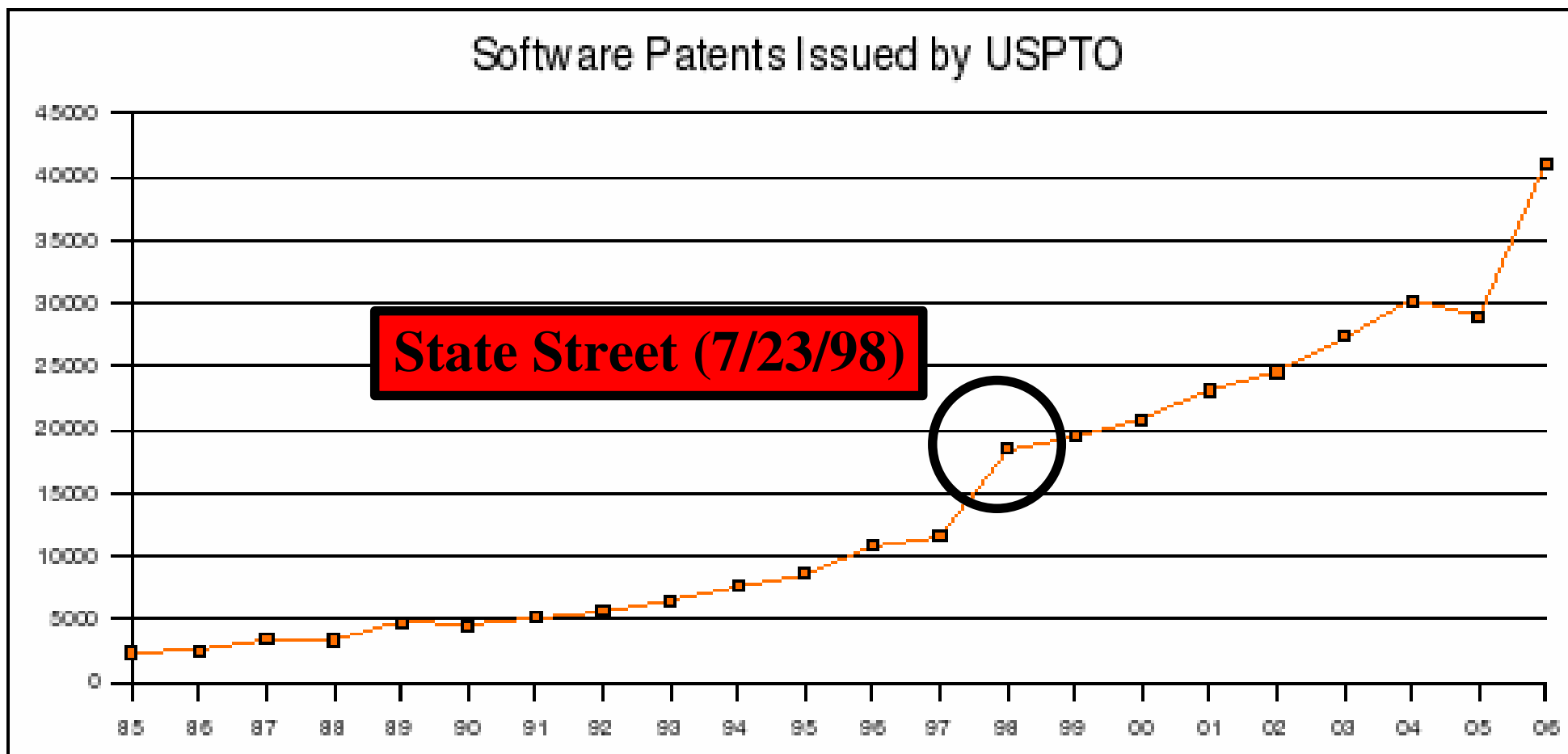
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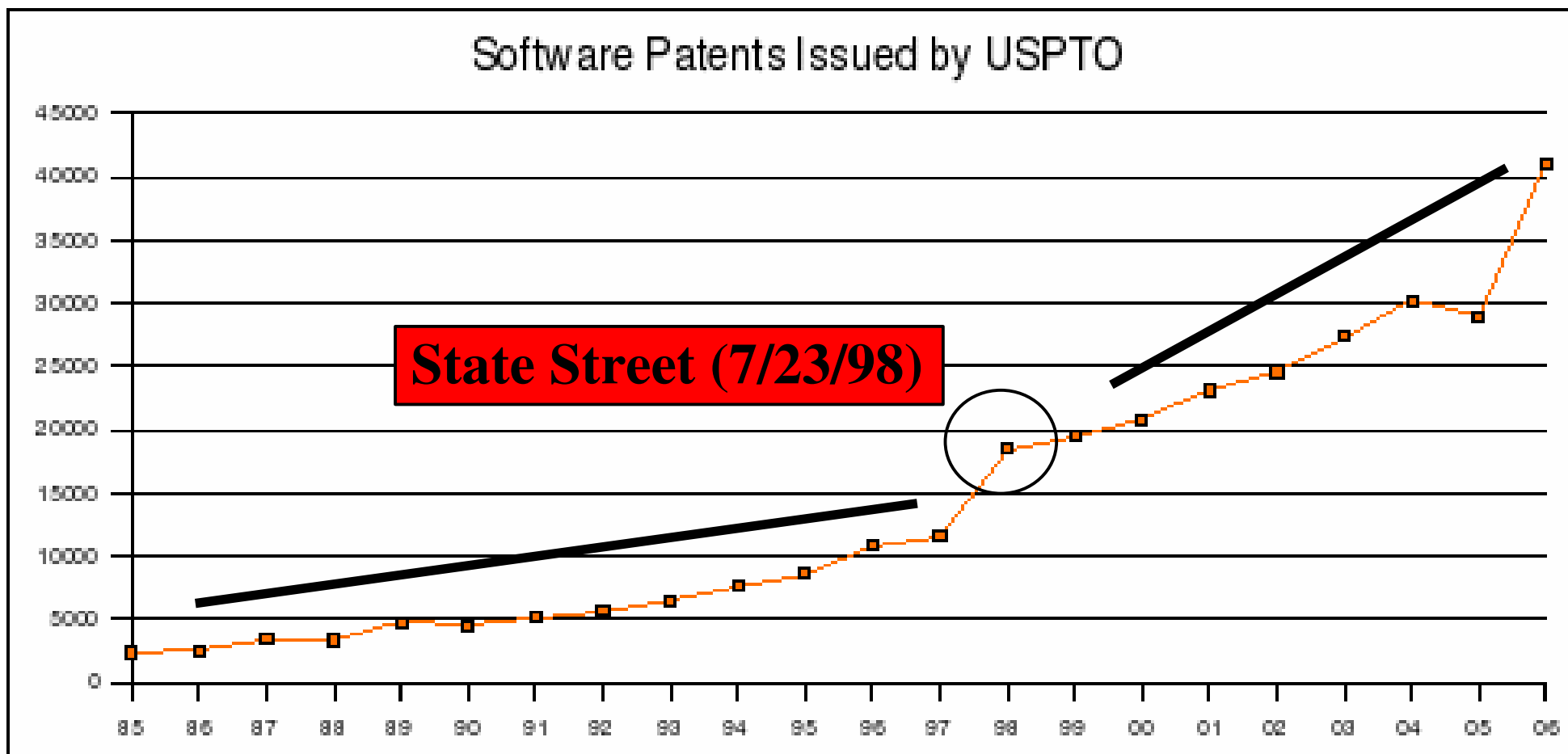
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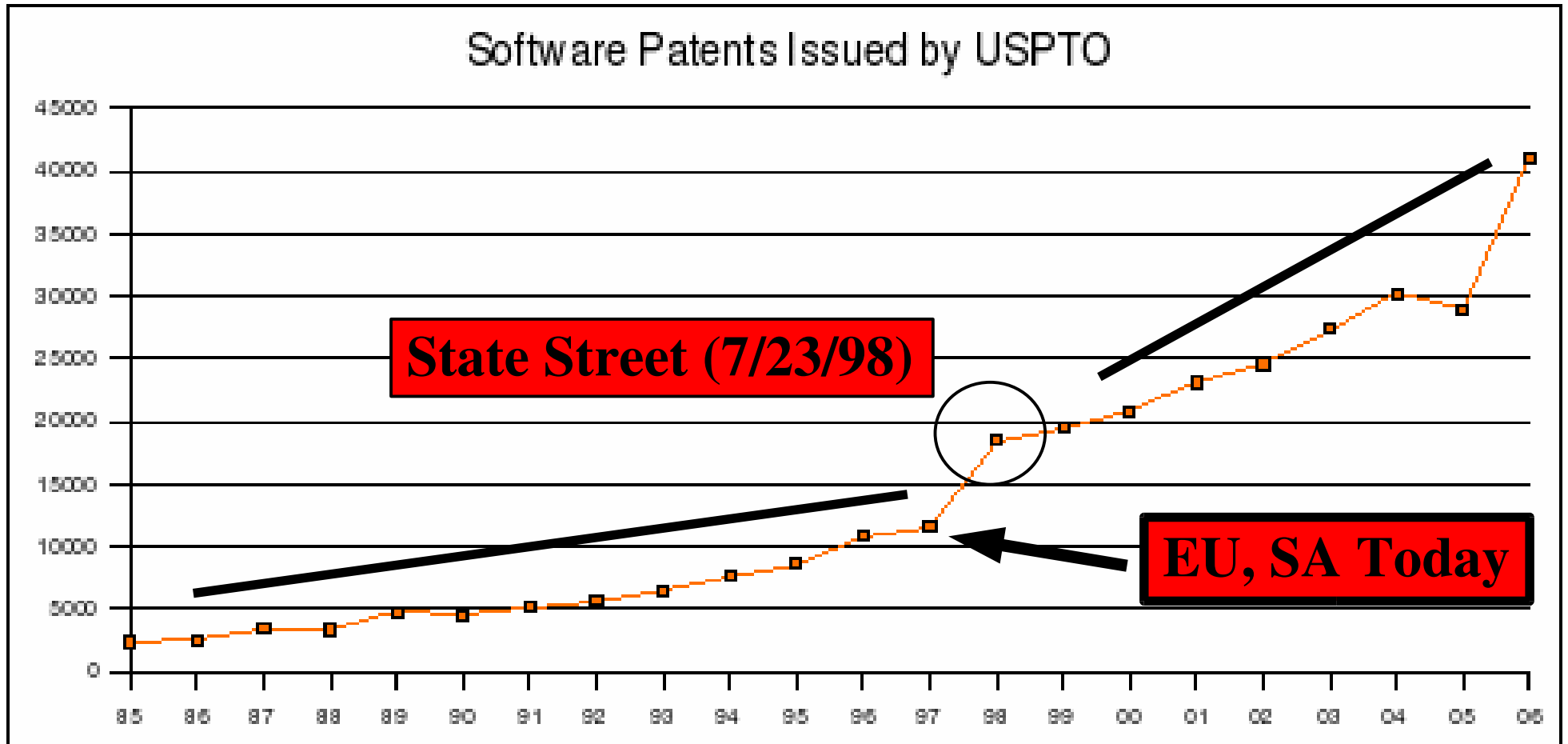
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Objective Data of the U.S. Software Patent Situation



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Objective Data of the U.S. Software Patent Situation

Software Patents Issued Every Week?

Patent Lawsuits Filed Every Week?

Defending Self from One Suit?

Sending a Patent Threat (“Notification”) Letter?

Getting Required Opinion After Receiving Letter?

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Objective Data of the U.S. Software Patent Situation

Software Patents Issued Every Week ~ 750

Patent Lawsuits Filed Every Week?

Defending Self from One Suit?

Sending a Patent Threat (“Notification”) Letter?

Getting Required Opinion After Receiving Letter?

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Objective Data of the U.S. Software Patent Situation

Software Patents Issued Every Week ~ 750

Patent Lawsuits Filed Every Week ~ 55

Defending Self from One Suit?

Sending a Patent Threat (“Notification”) Letter?

Getting Required Opinion After Receiving Letter?

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Objective Data of the U.S. Software Patent Situation

Software Patents Issued Every Week ~ 750

Patent Lawsuits Filed Every Week ~ 55

Defending Self from One Suit ~ \$2 – 4M

Sending a Patent Threat (“Notification”) Letter?

Getting Required Opinion After Receiving Letter?

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Objective Data of the U.S. Software Patent Situation

Software Patents Issued Every Week ~ 750

Patent Lawsuits Filed Every Week ~ 55

Defending Self from One Suit ~ \$2 – 4M

Sending a Patent Threat (“Notification”) Letter = \$0.39

Getting Required Opinion After Receiving Letter?

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Objective Data of the U.S. Software Patent Situation

Software Patents Issued Every Week ~ 750

Patent Lawsuits Filed Every Week ~ 55

Defending Self from One Suit ~ \$2 – 4M

Sending a Patent Threat (“Notification”) Letter = \$0.39

Getting Required Opinion After Receiving Letter ~ \$40K

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Subjective Opinion Depends on Who You Ask

Large Software Companies

Small Software Companies

Patent Attorneys

Patent Lawmakers (Patent Office, Patent Court, Legislators)

“Patent Trolls”, Non-Producing Entities

Non – Patent Holding Public

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True or False?

Software patents incentivize innovation - ?

Software patents harm SME's - ?

U.S. patent law treats foreigners fairly - ?

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True or False?

Software patents incentivize innovation - FALSE
- Bessen & Hunt (2004)

Software patents harm SME's - ?

U.S. patent law treats foreigners fairly - ?

True or False?

Software patents incentivize innovation - FALSE

- Bessen & Hunt (2004)

Software patents harm SME's – DEPENDS

- Various conflicting sources

U.S. patent law treats foreigners fairly - ?

True or False?

Software patents incentivize innovation - FALSE

- Bessen & Hunt (2004)

Software patents harm SME's – DEPENDS

- Various conflicting sources

U.S. patent law treats foreigners fairly – FALSE

- Moore (2003)

Most Software Technologists Agree System is Broken

Poor Patent Quality

Patents Are Too Strong

Litigation Abuses

But Are There Actually Global / Systemic Flaws?

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Thoughts of Some Software Technologists

“If people had understood how patents would be granted when most of today's ideas were invented and had taken out patents, the industry would be at a complete standstill today. ... The solution is patenting as much as we can. A future startup with no patents of its own will be forced to pay whatever price the giants choose to impose. That price might be high. Established companies have an interest in excluding future competitors.”

- 1991 ???

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- 1991 Bill Gates, Microsoft

Thoughts of Some Software Technologists

“[???] Corporation opposes the patentability of software. The Company believes that existing copyright law and available trade secret protections, as opposed to patent law, are better suited to protecting computer software developments.

Patent law provides to inventors an exclusive right to new technology in return for publication of the technology. This is not appropriate for industries such as software development in which innovations occur rapidly, can be made without a substantial capital investment, and tend to be creative combinations of previously-known techniques. [...]

Unfortunately, as a defensive strategy, [the Company] has been forced to protect itself by selectively applying for patents which will present the best opportunities for cross-licensing between [the Company] and other companies who may allege patent infringement. ”

- 1994 ???

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- 1994 Oracle Corporation

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Thoughts of Some Software Technologists

“Let me make my position on the patentability of software clear. I believe that software per se should not be allowed patent protection. I take this position as the creator of software and as the beneficiary of the rewards that innovative software can bring in the marketplace. I do not take this position because I or my company are eager to steal the ideas of others in our industry. [My Company] has built its business by creating new markets with new software. We take this position because it is the best policy for maintaining a healthy software industry, where innovation can prosper. [...]

For example, when we at [My Company] founded a company on the concept of software to revolutionize the world of printing, we believed that there was no possibility of patenting our work. That belief did not stop us from creating that software, nor did it deter the savvy venture capitalists who helped us with the early investment. We have done very well despite our having no patents on our original work.

On the other hand, the emergence in recent years of patents on software has hurt [My Company] and the industry. A "patent litigation tax" is one impediment to our financial health that our industry can ill-afford. Resources that could have been used to further innovation have been diverted to the patent problem. Engineers and scientists such as myself who could have been creating new software instead are working on analyzing patents, applying for patents and preparing defenses. Revenues are being sunk into legal costs instead of into research and development. It is clear to me that the Constitutional mandate to promote progress in the useful arts is not served by the issuance of patents on software.”

- 1994 ???

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“Let me make my position on the patentability of software clear. I believe that software per se should not be allowed patent protection. I take this position as the creator of software and as the beneficiary of the rewards that innovative software can bring in the marketplace. I do not take this position because I or my company are eager to steal the ideas of others in our industry. Adobe has built its business by creating new markets with new software. We take this position because it is the best policy for maintaining a healthy software industry, where innovation can prosper. [...]

For example, when we at Adobe founded a company on the concept of software to revolutionize the world of printing, we believed that there was no possibility of patenting our work. That belief did not stop us from creating that software, nor did it deter the savvy venture capitalists who helped us with the early investment. We have done very well despite our having no patents on our original work.

On the other hand, the emergence in recent years of patents on software has hurt Adobe and the industry. A "patent litigation tax" is one impediment to our financial health that our industry can ill-afford. Resources that could have been used to further innovation have been diverted to the patent problem. Engineers and scientists such as myself who could have been creating new software instead are working on analyzing patents, applying for patents and preparing defenses. Revenues are being sunk into legal costs instead of into research and development. It is clear to me that the Constitutional mandate to promote progress in the useful arts is not served by the issuance of patents on software.”

- 1994 Douglas Brotz, Adobe

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Thoughts of Some Software Technologists

“My observation is that patents have not been a positive force in stimulating innovation at [???]. Competition has been the motivator; bringing new products to market in a timely manner is critical. Everything we have done to create new products would have been done even if we could not obtain patents on the innovations and inventions contained in these products. I know this because no one has ever asked me "can we patent this?" before deciding whether to invest time and resources into product development. [...]

The time and money we spend on patent filings, prosecution, and maintenance, litigation and licensing could be better spent on product development and research leading to more innovation. But we are filing hundreds of patents each year for reasons unrelated to promoting or protecting innovation.”

- 2002 ???

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Thoughts of Some Software Technologists

“My observation is that patents have not been a positive force in stimulating innovation at Cisco. Competition has been the motivator; bringing new products to market in a timely manner is critical. Everything we have done to create new products would have been done even if we could not obtain patents on the innovations and inventions contained in these products. I know this because no one has ever asked me "can we patent this?" before deciding whether to invest time and resources into product development. [...]

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- 2002 Robert Barr, CISCO

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Fixing System is Difficult Because of Other Interests

Pharmaceutical Industry

Patent Lawmakers (Patent Office, Patent Appeals
Court, Legislators)

Patent Practitioners

Relationship to South Africa: The Negative Externalities

- U.S. Driving “Harmonization” of Restrictive Regimes
 - International Treaties: TRIPS
 - Bilateral or Multilateral Agreements: FTA's
- Broad Jurisdiction of U.S. Courts
- U.S. Markets Attractive / Necessary: As Customer or Supplier
 - Direct
 - Indirect
 - Cumulative

Thoughts for the Future

Keep Eye on the Ball

Keep Eye on the Road

Keep Eye on Your Wallet

Keep Eye on the Prize

Questions and Comments Please

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