The decentralized information market

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Q: What do these software patent lawsuits have in common?

Global Patent Holdings vs Green Bay Packers, Caterpillar, Kraft Foods

Eon-net vs J Crew, Walgreen, Linens ’n’ Things

Card Activation vs McDonald’s

Antor Media vs Dole Food

Illinois Computer Research vs Oprah Winfrey

A: None of the defendants are software companies
Everybody produces software

- Software innovation is not centered at Microsoft, IBM, or Red Hat
- Brookings has a full floor dedicated to information tech
- J Crew and Oprah’s IT departments did something innovative enough to run into a patent.
Industry size matters

- Percent of US businesses implementing pharma methods: 0% (≈ 1,000)
- Percent of US businesses implementing business methods: 100% (≈ 25 million)
- Percent of US businesses processing information: 100%
- The fundamental difference: information is universal; physical endeavors are not.
- The rest is commentary.
The patent gnome

One who unfairly takes advantage of informational asymmetries by suing agents who are ignorant of the field of patents in which the gnome works.

The procedure:

1. Get patent on information processing method

2. Wait for someone to independently re-invent
   a. Easy for information
   b. Impossible for pharma

3. Profit!!
The syllogism

- Independent invention is not a valid defense against claims of infringement.
- Millions of businesses are independently inventing methods for information processing.
- ∴ Patents on information will always create problems.
Questions

• Plain logistics:
  – How can we get 186,727,854 web sites\(^*\) in compliance?
  – Does clearing a site or business become a burden when millions of agents need to track millions of other agents?

• How does the standard patent cost/benefit analysis change. . .
  – . . . when there are millions who could invent a given concept?
  – . . . when there are millions who could be sued after a patent is granted?

\(^*\)Netraft.com, December 2008
Questions, II

• What about Copyright?
  – Allows broad protection (derivative works)
  – Allows independent authorship.
  – Does the added power of patent law provide sufficient added benefit?
Conclusion

- Patents fundamentally don’t work for decentralized industries.

- Information processing is as decentralized as it gets.

- Patent law serves the economy, not patent-holders.

- We need a law that excludes information from patentability, but allows physical, centralized invention.

- It’s better to grapple with the difficult question of drawing the line than having no line at all.