



SOFTWARE PATENTS AND REALITY

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Software Patents and the Software Industry

– The Problem

Too Many Software Patents

- 200,000 issued software patents in the U.S. today
- 15-20,000 new software patents being issued each year
- Software is complex technology
 - Software patents typically cover components
 - Typically 100s if not 1,000s of components in a single software application
- Software patents are usually:
 - Vague in what they cover
 - Minor extensions of prior technology
 - Method patents that do not require product marking

Software Patents and the Software Industry

– The Problem

Patent Clearance Is Not Economically Feasible

- 200,000+ software patents to clear for any application
- Cost of clearance runs at least \$5,000 per patent
- This is a \$1 billion problem for any software application
- As a consequence, **no** software company clears its applications completely
- At any point in time Microsoft is defending about 40 patent infringement claims

Software Patents and the Software Industry

– The Problem

Poor Patent Quality Invites Litigation

- Vague and ambiguous claims do not provide clear boundaries
 - Think of the disputes that would arise in your residential area if there were no land surveys
- Many of these poor quality patents were bought up following the dot-com bust
- Now must deal with patent trolls
- Problem is so immeasurable that commercial underwriters will not provide insurance coverage
- Due to interpretation of Sec. 271(f) of patent act, reach of U.S. software patents is worldwide against U.S. software companies

Software Patents and the Software Industry

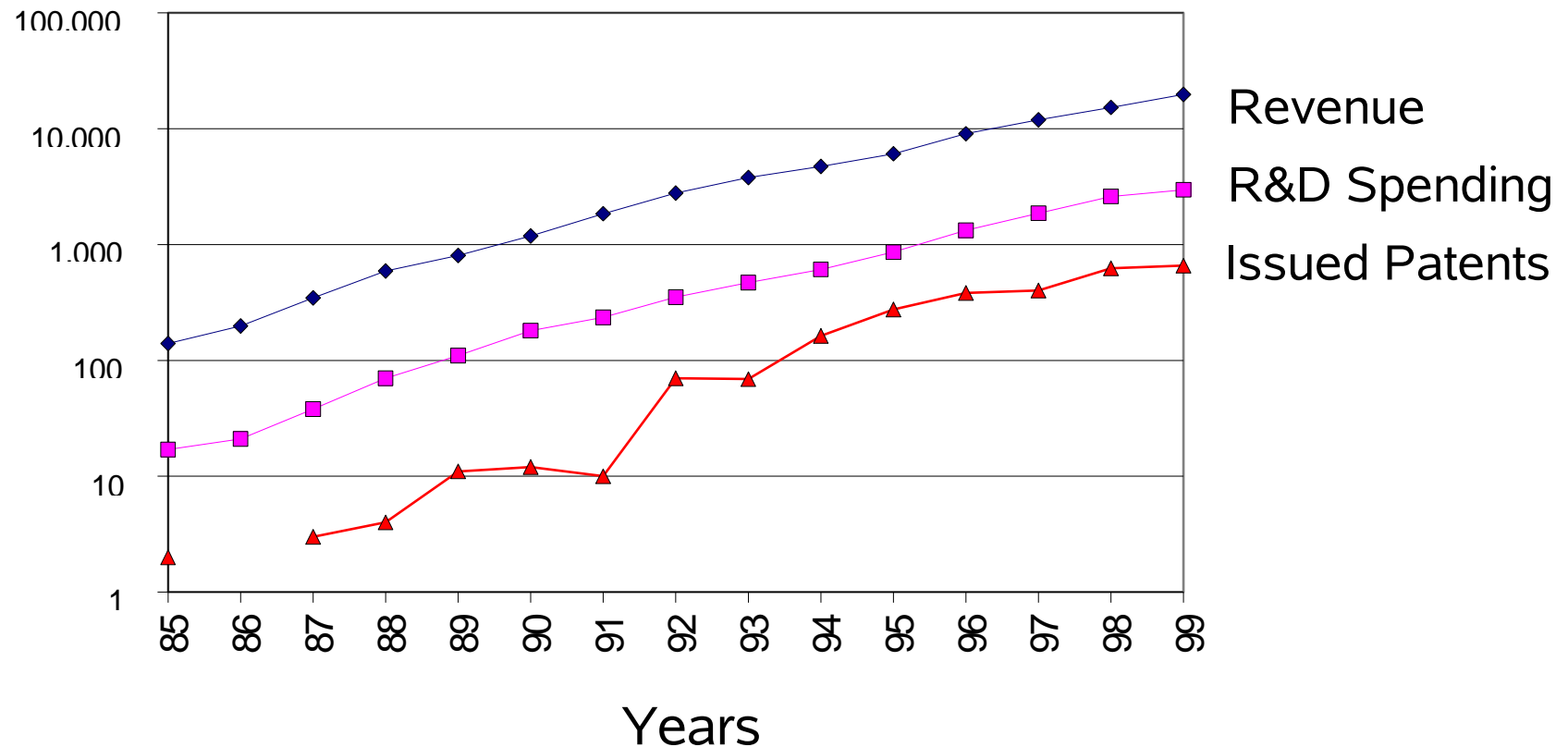
– The Problem

Patents Are Not Critical and Likely Inhibit Innovation

- No objective study has established a correlation between software patents and innovation in the software industry
- Typically, the cost of obtaining a software patents exceeds the cost of any R&D associated with the invention
- The patent term of 20 years far exceeds the useful life of most software innovations (typically 5-7 years)

Have Software Patents Been Critical to the Development of the Software Industry

Microsoft Patents vs. Innovation



Have Software Patents Been Critical to the Development of the Software Industry – Pt II

Of 12 of the largest pure software companies around today (Microsoft, Oracle, Adobe, SAP, Computer Associates, Intuit, BMC, Symantec, Verisign, Citrix, Novell, and McAfee),

1995 – 153 software patents

Today - 7,945 software patents

That is a 50X increase

And yet, these same companies have almost never asserted these patents against any other party.

Software Patents – Reform

Improve Patent Quality

- USPTO already acting by constraining application continuations
- Pilot program on Peer Review of patent applications will begin next year

Legislative Reform of Patent Act

- Lower the threshold for obviousness by abolish the “suggestion test”
- Change standard for validity challenges to “preponderance of evidence”
- Apportion damages based on patent contribution to entire product
- Provide for two windows for post-grant review
- Authorize other Courts of Appeal to hear patent cases