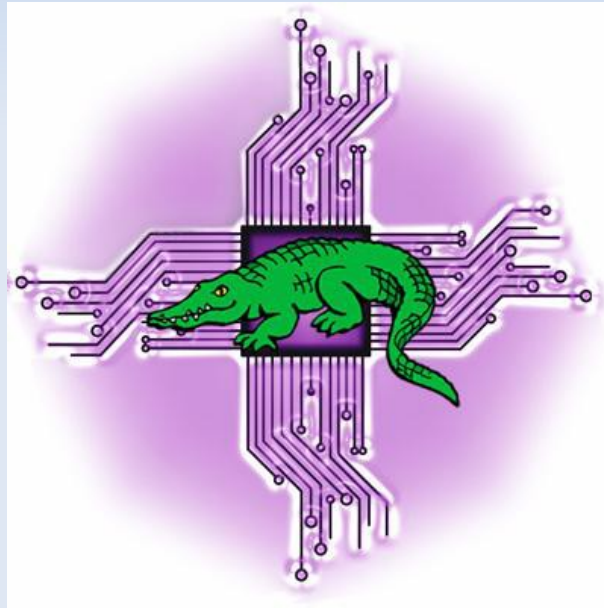


Innovation Patents and Software

Presentation to Linux Users of Victoria, Inc.



July 1st, 2014

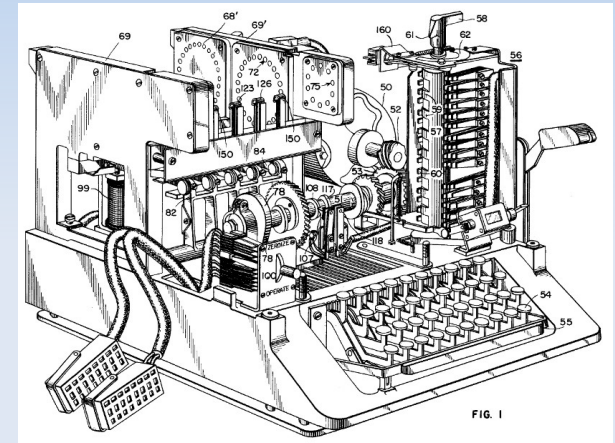
<http://levlafayette.com>

About Patents

A definition : "A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem." (WIPO)

The TRIPS agreement says patents should be for any invention for at least twenty years. But there are many exceptions – and computer programs fall into an undecided category.

The argument for patents is broadly similar to that of other forms of "intellectual property".



Australia and Innovation Patents

The legal basis for the Australian patent system is Section 51 (xviii) which empowers the government to make laws in respect to "copyrights, patents of inventions and designs, and trade marks".

The chief bureaucracy is the Australian Patent Office (APO, established in 1904), itself a division of IP Australia, which is an agency of the Australian Department of Innovation, Industry, Science and Research.

In 2001 APO introduced an Innovation Patent system in which immediate grant occurred for applications which pass a formalities test. Innovation patents are aimed at providing protection for short market life products.

Most Famous Innovation Patent

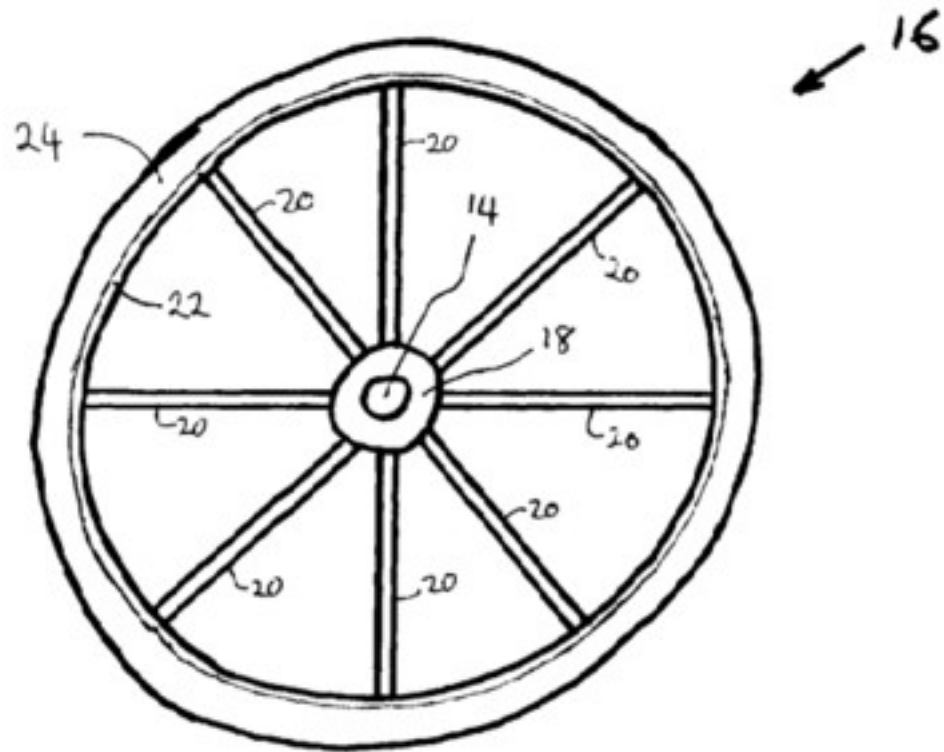


FIGURE 2

Patents and Software : A Bad Combination

Patents are usually applied to the physical embodiment of processes. However in a number of jurisdictions they can also be applied to software.

The main problem with software patents is that they restrict, in software, the implementation of a process, method, or idea. The distinction between copyright in software and the patent of software needs to be emphasised.

Often software patents have been granted for existing and obvious technologies, or 'strategic patents' have been put in place, or 'evergreening'.

The Innovation Patent and the Review Process

In February 2011, the Minister for Innovation, Industry, Science and Research asked the Advisory Council on Intellectual Property (ACIP) to review the innovation patent system. Issues paper released in September 2011, roundtable meetings held, IP Australia consultation paper in September 2012, Verve Economics paper March 2013, ACIP Options paper late 2013, final report May 2014.

From the start of the Innovation Patents in 2001, over 15000 applications had been submitted, with just under a quarter from foreign applicants, rising from around 15% in 2001 to 35% in 2011. In 2011, approximately one in seven Innovation Patents were in Information Technology. The single largest applicant was Apple, Inc.



LUV's Contribution

LUV members made submissions to the Issues Paper and attended roundtable meetings. LUV, as an organisation, contributed to the Options paper.

LUV's core proposition was that standard patents, and especially Innovation Patents, attenuate innovation in software. Especially hard for SME and individual developers, and for FOSS.



Examples from audio development, graphics, compression algorithms, and compiler suites.

There is no clear boundary between mathematical algorithms and software

The Report and Future Actions

Recommendation 5 of the Review states: "Amend subsections 18(3) and 18(4) of the Patents Act 1990 (Cth) to provide that, for the purposes of innovation patents, no method, process or system shall be patentable." This means that that there will be no Innovation software patents.

The report is a recommendation. It has to be accepted by the relevant Minister, and the legislation has to be put to parliament and passed. Further, the scope of the review is only for Innovation Patents. Nevertheless, the same logic applies for standard patents as well. The important action at this stage requires lobbying the relevant politicians to (a) act on the recommendation and (b) extend the recommendation to standard patents.