

Patent Risks in Open Source – Lesson's from Google's Story

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Risks inherent in use of open source software from patents have finally seen the light of the day. Patent risks in use of open source software came to be a reality with filing of patent suits by companies like Firestar, Microsoft and so on against open source businesses and users. However, none of the cases went the full distance earlier as they were settled out of court. The story is however different in the case filed by Bedrock Technologies against Google. Bedrock sued Google for patent infringement with respect to use of Linux by Google. The company filed the case in a Texas Court in June, 2009, alleging that Google's use of Linux violates its patent relating to an apparatus for information storage and retrieval (US 5,893,120). After hearing the parties, the Jury held Google liable for patent infringement and granted damages to the tune of five (5) million US dollars to Bedrock. In addition to Google, Bedrock also sued companies like Yahoo, Amazon, PayPal and so on.

This is a landmark decision with respect to open source just because it was the first to grant damages to the patent holder against an open source user. The decision elucidates the risks to open source based businesses from patents. More often than not, companies discount the patent risks inherent in use of open source software based on wide adoption by various companies and do not generally carry out patent due diligence. By hitting at the most widely adopted open source software in the world, Linux, the case has shown that no software, either managed by Free Software Foundation or any other entity, is free from patent risks.

Combating and mitigating patent risks is a very important step for every company using open source software, especially if the software is playing a critical role in the company's products. While, on one hand patent holders are going against open source users, open source users are building strategic positions to combat patent risks. The recent development from this perspective is Facebook and HP's membership of the Open Invention Network (OIN), whose membership has now gone to 334. It seems that joining OIN is a logical solution to all open source based businesses.

It is time for companies in India to wake up and take note of open source risks and adopt appropriate measures to mitigate them.

Authored by Dr. Kalyan Kankanala C.

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