

Exhibit 7

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Why won't Intellectual Ventures answer questions about its relationship with Lodsys?

Is ex-Microsoftie Nathan Myrhvold's company getting shell companies like Lodsys to demand payment for software patents? And is there any evidence those patents help innovation in software?

Charles Arthur

guardian.co.uk, Wednesday 27 July 2011 13:57 BST



Does Intellectual Ventures transfer its patents to separate companies – or shells? Photograph: Colin Campbell for the Guardian

When it comes to software patents, one company has recently become more and more noticeable for its position defending them: Intellectual Ventures, a company run by Nathan Myrhvold, who founded it in 2000 after leaving Microsoft, where he was chief technology officer.

It's a company which has received \$300m of funding from venture capitalists Charles River since 2006: "Nathan helped open my eyes to the notion that IP [intellectual property] is a very important market – it's actually a very big market in tech," Izhar Armony, a partner at Charles River Ventures, says in the linked interview from April. He thinks there's a \$6bn litigation market based on legal fees, and a \$50bn market in IP rights and licensing.

Here's the odd thing: Intellectual Ventures doesn't seem to be very good at exploiting patents it owns. In two cases it appears to have bought software patents that have value in the courts and then transferred them to little one-man bands who have abruptly realised their value and begun suing people for infringing them.

The two companies: Oasis Research and Lodsys. You may have heard of the latter: it is suing a number of app developers on the Android and Apple iOS platforms, claiming that they infringe patents that it owns, particularly covering in-app purchases. Despite attempts by Apple to intervene – because it says that it has licensed those patents – the cases seem to be going ahead. And its determination to prevail has, as we've written, led to some European app developers deciding that the US game isn't worth the candle.

In other words, software patents are doing the same to the US's standing as a centre for innovation and competition as the debt ceiling issue is doing to its financial standing: destroying it hour by hour. (The NPR program *This American Life* had an hour-long episode about "[invention peddlers](#)" which looks at this in detail.)

You don't have to look far to find venture capitalists who decry what Myhrvold represents. Paul Kedrosky [wrote on 19 July](#) that Myhrvold's arguments "veer from hysterical, to unsupportable, and back again", pointing to a [Myhrvold column at Bloomberg](#).

One key sentence from Kedrosky's denunciation: "There is no inconsistency in promoting innovation while attacking the software patent system. Most software companies, large and small, think the patent system is an obstacle to innovation given the prevalence of nonsensical blocking patents and patent trolls. I would hope that they attack it ... This is far, far from a disinterested observer of a fundamentally broken US software patent system. Let's end the deference."

Fred Wilson, principal of Union Square Ventures, who has backed a number of companies, including Twitter, said as long ago as 2009 that [patent trolls are a tax on innovation](#), after one of his funded companies spent \$500,000 defending itself against baseless patent claims.

But Intellectual Ventures stands – apparently – aloof from all this. It isn't, as far as I know, involved in any lawsuits where it is asserting any of the patents that it owns. For a company that has \$300m of venture capital funding, that seems odd – as does the seeming lack of nous about the value of the patents that it held but then transferred (it's not clear whether "sold" is the right phrase here) to those companies.

There's more, though. A research firm last year released a report claiming that Intellectual Ventures has as many as 1,100 shell companies which it uses to carry out patent "shakedowns": the front companies do the suing, and the parent reaps the benefits.

I contacted Intellectual Ventures on Tuesday evening, and spoke to a person to put a number of detail questions about its relationship with Oasis Research and Lodsys.

Here are the questions that I subsequently put via email (in time for them to be answered during the Seattle business day):

- Does Intellectual Ventures have any royalty or licensing agreement with Lodsys over the patents that it transferred to it? And when did it sell/transfer them?
- What form did the transfer of patents to Lodsys take: simple sale and complete title, or some other arrangement?
- Does Intellectual Ventures have any royalty or licensing agreement with Oasis Research over the patents that Intellectual Ventures transferred to it? And when did it sell/transfer them?
- What form did the transfer of patents to Oasis Research take?
- Has Intellectual Ventures made any investment in Lodsys?
- Are any of the staff or owners of Lodsys present or former staff or owners of Intellectual Ventures?
- Why would Intellectual Ventures, a considerably funded company with large resources, sell patents with clear value to apparently low-funded companies – Lodsys and Oasis Research?

- Is Intellectual Ventures providing any funding or legal assistance for the legal actions being pursued by Lodsys and/or Oasis Research?

These seem fairly narrow questions – that is, they aren't asking for a long thoughtful post on the nature of patents. They're factual.

On Wednesday morning, five hours after I sent those questions, I received a response from Intellectual Ventures. It pointed to a blog post that the company had put up overnight – which is dealt with below – and had this response to my questions:

"Specific to your questions on divesting patents, as has been reported, when it makes sense for our business we sell patents – either to companies who can use them for defensive purposes or to buyers who monetise them. Sometimes based on the structure of the sale we have a financial interest in the outcome of those efforts, but we never have control over, or are involved in, the path to monetisation that these companies pursue once we sell the patent."

Note that this doesn't answer *a single one* of the specific questions about IV's involvement with Oasis Research or Lodsys (particularly about staff, investment, legal fees or form of transfer). It doesn't say whether it was a sale or other form of transfer – though it does talk about "structure" which could mean payback. It doesn't mention involvement. Simply, it's a non-answer. I've emailed back reiterating the specifics of the questions and asking for detailed responses.

Meanwhile, there is the [blogpost which appeared on IV's site](#). This says, in part:

"By definition, a disruptive innovation is a product or technology that, when introduced, either radically changes existing markets or creates wholly new ones, thereby disrupting companies and networks reliant on the status quo. In simpler terms, it signifies rapid and unexpected progress ... a change in context. Intellectual Ventures is a disruptive organisation, and like any other product or service which disrupts established markets, we've invited our share of controversy... We appreciate that patents are an emotionally charged issue that generates a lot of conversation and varying points of view, but we want to take a moment to provide our perspective on a recent characterisation.

"IV believes that inventors who invest all the time, money, and emotional resources that are required to protect their ideas with patents earn a right to recognise a return on their investments.

"IV is challenging the status quo by focusing its business solely on invention and investment in patents. But we think this disruption is an important and necessary step in the development of a fully functioning marketplace for ideas. Our ultimate value proposition is simple: we provide an efficient way for patent holders to get paid for the inventions they own, and in turn, for technology companies to gain easy access to the invention rights they need now or may need as they enter new markets."

None of this however answers the wider question: is the exercise of these patents actually stimulating innovation? Is it to the benefit of real inventors, if the patents are traded on? (The original inventor who was awarded the patents now owned by Lodsys is bemused by the attention paid to them. He has also had to suffer a fair deal of unwarranted abuse, since he's nothing to do with IV or Lodsys.)

We've seen nothing from Myhrvold indicating how it might. There is his quote in an [interview with Forbes](#) that "we want to build a portfolio just like those companies have, with licensing approaches broadly like they have ... I want to achieve what IBM has achieved [getting \$1bn per year from licensing patents]. That's my financial model. This is a play where I take portfolio theory and apply it to something illiquid to deliver a return for my investors. I don't see that as evil. I don't see that as particularly threatening."

The unanswered question remains, though: do software patents really spur innovation, or hold it back?

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Comments in chronological order (Total 28 comments)

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 Contributor



[ShockJockey](#)

27 July 2011 2:11PM

Is ex-Microsoftie Nathan Myrhvold's company getting shell companies like Lodsys to demand payment for software patents? **And** is there any evidence those patents help innovation in software?

Where did that "and" come out of? Is it Nathan Myrhvold's job to promote innovation in software, or can he just legally make money like everyone else who holds a patent?

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[ballymichael](#)

27 July 2011 3:10PM

Yes, that looks pretty fishy. It would actually make a lot of sense to do the shake-down via a "deniable" shell company. Given just how much that patent trolls are disliked.

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[Chronos](#)

27 July 2011 3:21PM

By involving shell companies they get to pretend that this patent trolling is actually to benefit the 'little guys' when it's nothing more than a massively wealthy business taxing innovation.

If their role was more obvious, IV might find the law changing in ways they don't like as people and legislators realise just how poisonous these businesses are.

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[Carniphage](#)

27 July 2011 3:55PM

I might well break the terms of service if I said what I think about Nathan Myrhvold. The patent system was devised to protect inventors and promote invention. But when companies specialise in purchasing a portfolio of patents and trading in them, the exact opposite happens.

Genuine innovators can be bullied by large entities with no interest in commercially exploiting the invention. Patents get turned into weapons in a seedy protection racket. The \$700 an hour cost of IP lawyers means that few small inventors can even consider fighting a lawsuit.

It should not be possible to transfer a patent to an entity which is not directly interested in directly exploiting the invention. A patent holder who ceases to exploit an invention should lose all rights.

C.

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[PaulNLondon](#)

27 July 2011 4:08PM

Interesting as to why you are attacking this company, Charles? Why not Apple? Or IBM? Or Oracle? Or Microsoft? They all do it, and have much bigger patent portfolios.

Basically technology is IP, and patents along with copyright are one of the ways to protect it and the investment people and firms make.

Whether a patent is a good one or not is up to the US patent office, and how long they should last is up to the US government.

It is these organisations you should be attacking if you think that the system is harmful to innovation. As you say

The unanswered question remains, though: do software patents really spur innovation, or hold it back?

Why don't you try and answer that question? It would be much more interesting.

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[roopman](#)

27 July 2011 4:11PM

@Carniphage

A patent holder who ceases to exploit an invention should lose all rights.

But then what about the little guy who has come up with some great new idea, finally managed to get it patented but can't come up with the funding to bring it to market or who has to give priority to a full-time job etc.

After what sort of timeframe does his patent become invalid? If its short then the big companies he's trying to bring on board to help fund his idea can just sit back and wait for the patent to expire.

If its long, then the consumer loses out again. Competitor products can eat up the

market share with inferior offerings, raise the barriers to entry and mean the small guy can't get it to market then either.

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[roopman](#)

27 July 2011 4:15PM

Interesting as to why you are attacking this company, Charles? Why not Apple? Or IBM? Or Oracle? Or Microsoft? They all do it, and have much bigger patent portfolios.

Because unlike this company, many of the patents that those company's own are for things they've made, researched or developed off their own back. This doesn't immunise them from criticism but does put them in another league from a company whose whole business model is to stifle innovation and make money from (by definition) the hard work of other people.

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[PaulNLondon](#)

27 July 2011 4:15PM

Carniphage

Selling patents is actually a way for the little guys and genuine inventors to be rewarded for their efforts.

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[Carniphage](#)

27 July 2011 4:18PM

But then what about the little guy who has come up with some great new idea, finally managed to get it patented but can't come up with the funding to bring it to market or who has to give priority to a full-time job etc.

I didn't say he could not sell it to a manufacturer interested in exploiting the invention.

I said..

It should not be possible to transfer a patent to an entity which is not directly interested in directly exploiting the invention.

I think there is a moral difference between holding a patent of an invention you are using.... and holding a patent purely to collect licensing revenues.

It's like the difference between a farmer owning a shotgun, and a gang-member owning a shotgun.

C.

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[PaulNLondon](#)

27 July 2011 4:19PM

Roopman

a company whose whole business model is to stifle innovation and make money from (by definition) the hard work of other people

So the only people that can profit from their inventions and patents are the mega corporations then?

As I said in my earlier post swelling patents is actually a way for the little guys and genuine inventors to be rewarded for their efforts

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[Carniphage](#)

27 July 2011 4:24PM

As I said in my earlier post swelling patents is actually a way for the little guys and genuine inventors to be rewarded for their efforts

Nothing wrong with selling patents.

But sell them to manufacturers - not the mafia.

C.

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[roopman](#)

27 July 2011 4:34PM

I didn't say he could not sell it to a manufacturer interested in exploiting the invention

But would they give him a fair price if they know his patent will expire? It would come down to a choice of receiving a bit of money and watching other people get rich, or receiving nothing and watching other people get rich.

I think there is a moral difference between holding a patent of an invention you are using.... and holding a patent purely to collect licensing revenues.

Agreed. A massive difference. I just think there is an inherent difficulty in legislating against it.

LodSys could argue that they have been looking at ways to commercially exploit the technology but have so far been unsuccessful. Meanwhile they are legally obligated to pursue challenges to their patent in the courts or it really will become invalidated under US law.

At what point do they lose the patent? 1 year after purchase? 2? 3? Some patented tech will take years to implement into a production version.

They could argue that they've been looking at ways of implementing this for ages, and now other people have got the jump on them. Should they be penalised for being rubbish?

If so, this goes against the little guy again who can't hope to compete with MS et al for getting a product to market.

I do agree with the sentiment that patent trolls like LodSys are self-serving scum, harmful to consumer choice, anathema to innovation.

I just can't see a way of getting rid of them without hurting genuine innovators.

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[roopman](#)

27 July 2011 4:39PM

So the only people that can profit from their inventions and patents are the mega corporations then?

This isn't what I was saying. At the moment, anyone can make a buck from holding a patent. The little guy, the patent troll, the mega corp.

In that mix, two of the three have come up with their own IP. The patent troll hasn't. That's why they are being criticised in the article and MS, Apple, Oracle etc. aren't.

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[Carniphage](#)

27 July 2011 4:56PM

But would they give him a fair price if they know his patent will expire?

I think expiration of a patent (due to non exploitation) should apply to a purchaser. Not sure it should apply to the inventor.

If an invention has genuine value, then it should be exploited. It's reasonable to declare patents that never see the light of day as invalid.

To summarise, if an onus is placed on patent holders to demonstrate worth in the patent by exploiting it. Then the frivolous use of patents to extort money would be curtailed.

And the patent system would do what it was intended to do; support and protect invention.

And perhaps Mr. Myrhvold could focus on his cooking.

C.

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[Chronos](#)

27 July 2011 5:29PM

I think expiration of a patent (due to non exploitation) should apply to a purchaser. Not sure it should apply to the inventor.

That's a good idea. If you go to the trouble of buying a patent, you must either be intending to develop it immediately or you want to sit on it and troll everyone else.

After all, if it's not remotely feasible with current technology, why not just wait until the tech is available and the original patent has expired?

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[roopman](#)

27 July 2011 5:30PM

@Carniphage

If an invention has genuine value, then it should be exploited. It's reasonable to declare patents that never see the light of day as invalid.

How long is 'never' though? If I invent a teleportation device in my garage, patent it and spend the next 20 years ironing out the kinks and trying to make it work, have I lost the invention?

Its difficult to prove that a company hasn't actively been seeking to do something with a patent. And even harder to say how quickly they should be doing this and how long is a reasonable time frame.

All of this could probably be established in court with a judge who could arbitrate on the specifics of the patent in question. But that's not exactly a break away from the current litigious system that we're all moaning about.

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[JorgeTorres](#)

27 July 2011 5:54PM

The interesting thing about Nortel and all the attention patent trolling has been receiving of late is that it may make the business of patent licensing and enforcement less profitable over the long term. There's good reason to believe that valuations in the patent secondaries market are too high right now to achieve the returns private equity investors demand of firms like IV. I wrote about this recently at my blog, [nonbillabl.es](#), albeit in the context of Carl Icahn's widely reported interest in having one of his companies sell into the market.

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[Amtiskaw](#)

27 July 2011 6:40PM

A very important point, one that is made strongly in the NPR programme mentioned in the article, is that a very large number of the patents, especially software patents, granted in the US are simply junk. They are either too-obvious, overly broad, reinvent existing practices using different terminology, or are simply meaningless nonsense.

Defending companies like Intellectual Ventures on the grounds that they are protecting innovation and the rights of inventors is rather difficult when it's clear there is little real innovation to defend in the first place. Instead there is just an arms race between all parties to file or purchase as many patents as possible.

The real losers in this are the real inventors. Any invention, regardless of how novel, will inevitably require supporting technology and infrastructure that already exists, and in bringing it to market the inventory will expose themselves to patent claims on these other parts of their offering.

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[InMyHumbleEtc](#)

28 July 2011 8:16AM

The unanswered question remains, though: do software patents really spur innovation, or hold it back?

That isn't an unanswered question. They impede innovation. The insane US patenting of software ideas rather than coding, particularly so.

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[UriTalo](#)

28 July 2011 10:06AM

Reading the comment here make me foretaste.

People here are repeating this false argument that software patent encourage innovation.

Well the true is that anyone that is going to open a startup company is far more likely to be sued for patent infringe than to have his idea stolen.

You don't get it, there are thousands software patents, you can not open any startup company without violating some patent.

Software patent are not protection but an attack against the small companies.

And while this article criticise Lodsys, he fail to grasp that Apple do the same, Oracle do the same, M\$.

Just because they produce real product should not remove the patent trolling label from them.

It is not about protecting invest, it is about using the patent system to knock down competitor.

People here maybe don't know that but both M\$ and Apple were founded before the software patent, so you see there was no need for that system to stimulate innovation.

Evidences now show that the biggest obstacle for innovation in software is patent, yet you still see people defending them.

I can not understand that.

But worse than that, there is an attempt by some lobbies to import the American software patent system to Europe.

Now I do think that patent system is very good for many part of industries, like research in medicine.

but as I developer, I think **software** patent do no good and in fact are very harmful.

It will be wrong to totally remove the patent system, it work so good in the case of medicine.

It will be damn right to remove the software patent system.

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[UriTalo](#)

28 July 2011 10:07AM

The unanswered question remains, though: do software patents really spur innovation, or hold it back?

Because anyone with innovative idea that open startup to implement that idea is going to be sued.

Very soon, only the big companies will be able to play the game.

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[AlanR](#)

28 July 2011 12:14PM

As for developers "Despite attempts by Apple to intervene â€œ because it says that it has licensed those patents " reads like "You Are On Your Own Mate".

So just empty words so far from Apple.

Whilst Apple will certainly not answer questions, will 'developers' get some action to their prayers?

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[gotet](#)

28 July 2011 12:18PM

@Carniphage A patent holder who ceases to exploit an invention should lose all rights.

Further to roopman's comments - there are often other patents, which you may not own, which might prevent you from exploiting your own invention (so-called "umbrella" patents). So it may not be legally possible to exploit your own invention.

do software patents really spur innovation, or hold it back?

Impossible to answer, but look at it from the point of a potential investor...

An inventor comes to my office, with a great product, which I am sure will sell like hot cakes and earn lots of money.

There are a few "buts"...

i. The product took many years and Â£Â£Â£s of investment to produce, and any money I invest will first of all go into paying off the debts of the inventor, before I (and the inventor) can start earning money.

ii. The product is extremely simple to analyse and copy, and copies can be distributed widely, across national borders, will little control.

(for "product" read "software")

What motivation is there for me to invest? Unless we can (at least hypothetically) exclude the competition from the market for a period of time, there is no way I can make my money back...

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[UriTalo](#)

28 July 2011 1:07PM

i. The product took many years and Ã¢Ã¢Ã¢s of investment to produce, and any money I invest will first of all go into paying off the debts of the inventor, before I (and the inventor) can start earning money.

ii. The product is extremely simple to analyse and copy, and copies can be distributed widely, across national borders, will little control.

How come your product is extremely simple to analyse and at the same time it took many years and money to program it?
You don't make any sense.
Do you think that by reverse engineering you can copy M\$ office, a program that its code is more complicated than the Boeing sketch.
You have a great idea of software, you but few computers and the programming language and develop it.
After half of a year you sell your product via the internet or some app stores like android market.
Unless someone go and sue you for litigation of patent.
Because this is exactly what happened to the developer of angry Birds.
By the way M\$ and Apple existed before software patent and they made a lot of money back then.

Now M\$ spend billion of dollars to buy patent of Nortel, patent that M\$ has no need for, because M\$ had agreement with Nortel that protect M\$ from being sued by this patent. So M\$ spend billion of dollars (that could go for R&D instead) to prevent from a guy like you to sell program that can compete with them.
What you don't get is that you have far more chance to be sued than to have your idea stolen.
Beside since in the software world go so fast that if you are good enough, until he will copy you program you will have released a new version.
A direct copy of your program is of course illegal due to copy right violation.

By the way Red hat invest a lot of money in invest, Red Hat earn a lot of money, and they don't even use copy right to defend their source code(of course it because they have to, but the point is still valid)

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UriTalo

28 July 2011 1:08PM

correction

- i. The product took many years and investment to produce, and any money I invest will first of all go into paying off the debts of the inventor, before I (and the inventor) can start earning money.
- ii. The product is extremely simple to analyse and copy, and copies can be distributed widely, across national borders, will little control.

How come your product is extremely simple to analyse and at the same time it took many years and money to program it?
You don't make any sense.
Do you think that by reverse engineering you can copy M\$ office, a program that its code is more complicated than the Boeing sketch.
You have a great idea of software, you but few computers and the programming language and develop it.
After half of a year you sell your product via the internet or some app stores like android market.
Unless someone go and sue you for litigation of patent.
Because this is exactly what happened to the developer of angry Birds.
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[Wolfbone](#)

28 July 2011 1:21PM

I can not understand that

--UriTalo

I think I can because it's familiar territory for me. For various reasons most people are remarkably easily sucked into an [intellectual black hole](#). The economists who wrote the petition and critique I linked to elsewhere noted that: "unfortunately, many in Europe continue to be enthralled by the American mythology of patents", and I've always found the parallels with (beliefs in) pseudoscience and quackery striking.

The unanswered question remains, though: do software patents really spur innovation, or hold it back?

The right question to ask is, "do software patents spur innovation enough to justify them despite their negative effects?", and it was answered - correctly - long ago.

Unfortunately the quacks infiltrated and eventually took over the NHS anyway, so to speak.

Something I didn't know until now was just how serious the [negative effect](#) most directly linked to the ethical issues really is. It really is a scandal.

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[UriTalo](#)

28 July 2011 7:37PM

[Macs infringe S3 patents, could face U.S. import ban](#)

Just another example how the patent system work against innovation.

But I do NOT feel sorry for Apple, as they are themselves patent troll.

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[gopiballava](#)

30 July 2011 7:17AM

@Carniphage A patent holder who ceases to exploit an invention should lose all rights. While this sounds like a nice idea, in practice it has some practical and theoretical problems:

1. It is utterly trivial to game the system. Look at these patents. How long would it take somebody to implement a program using them, and offer it for sale? A day or two, if the program doesn't have to do anything very well. What will the courts do, decide if you're *really trying*?

1a. Even if you somehow manage to figure out how to define the difference between pretending to exploit an invention and really exploiting it, empowering every company with a legal department to shut down the competition with ridiculous lame and obvious patents isn't a very good situation to be in. I suppose the one benefit of that is that we can stop buying the products that patent trolls sell. Like that is going to happen.

2. If the patent is genuine and legitimate, why should this be a requirement? A patent is supposed to be something non-obvious and innovative. If we agree that cool data structures are patentable (And I don't agree they should be...) then why can't I sit around and write textbooks of patented algorithms that speed up calculations? What's wrong with me calling up Microsoft and saying, "guys, I have an $O(n)$ sorting function, do you want to smoke Oracle in some benchmarks?"

The problem is that so many of the software patents out there are ones that require damned near *zero* actual R&D. They require somebody thinking a bit about what people might do in the future when Moore's Law has improved things. As a fraction of the work needed to actually bring a product forward they are tiny. A huge percentage of people in the field would, when asked to solve the problem, would do it the same way in a very short period of time.

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