



OSS Military Health System:
Intellectual Property Management
to Foster Collaboration

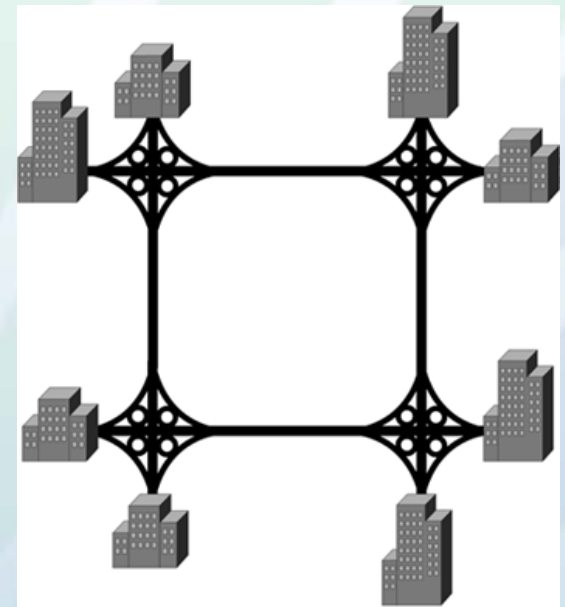
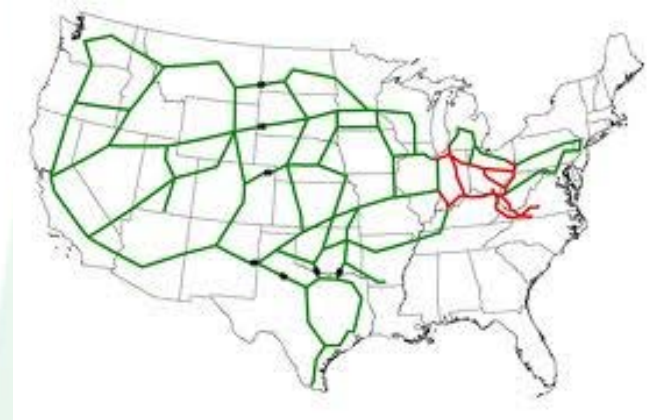
Dr. William J. Schroeder, President & CEO
Kitware, Inc.
September 22, 2011

Agenda

- Origins
- Implications
- Recommendations

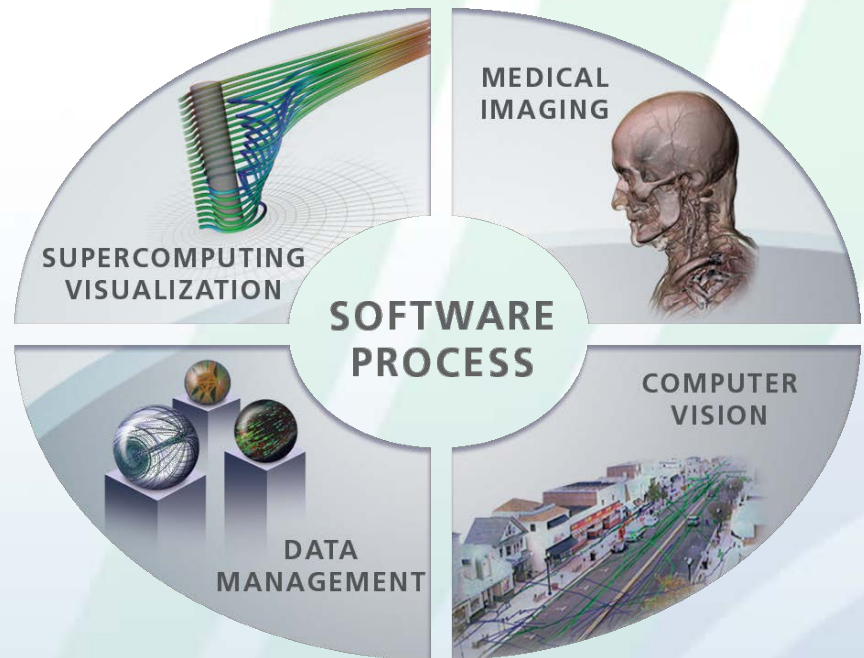
Goal

- Develop open infrastructure for
 - Government
 - Science
 - Commerce
- Fostering
 - Agility
 - Speed
 - Cost effectiveness
 - Innovation



Kitware, Inc.

- Business model
 - Support
 - Collaborative R&D
 - Technology Integration
- Software business is a Service Business
 - Services 2-10x bigger than sales/licensing
 - E.g., IBM, Red Hat, etc.



Does Intellectual Property exist?

- Copyright
- Trademarks
- Intellectual Property
- Trade Secrets

Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

Origins

- Copyright, Patents
 - Article I, Section 8, Clause 8 of the US Constitution
“To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”
- Trademarks
 - Commerce Clause
“[The Congress shall have Power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes

Origins (2)

- Trade Secrets
 - Confidentiality Common Law
 - Dating from Roman Laws intended to prevent spying via slaves

Copyright

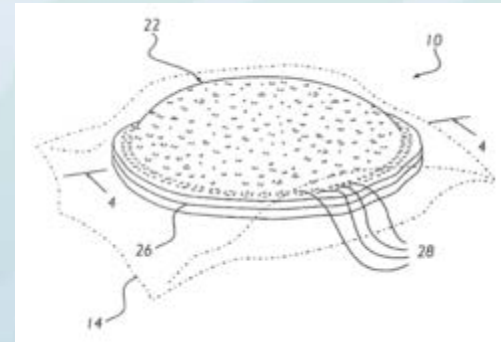


- Protects original works of authorship
- Is automatic
- An expression of ideas
- Duration
 - lifetime plus 75 years (individuals) – (initially only 7 years)
 - 95 years for corporations
 - 120 years for unpublished works by corporations
- Fair Use (Education & Public Discourse)

Patents

- Protects inventions or discoveries
- Useful, New, Non-Obvious
- 20 years duration
- National jurisdiction
- Independent invention is not excluded
- Math is excluded

PBJ Patent



Trademarks

- Protects words, phrases, symbols, or designs identifying the source of the goods or services
Intended to prevent confusion in the market place
- Protect the reputation of companies
- Protect consumers



Apple versus Apple



Snooki versus Snooky

Is “Intellectual Property” Property?

- Limited monopoly granted to serve a **purpose**
 - Promote the **Arts and Sciences**
 - For a **Limited Time**
 - Intended to return to the **Public Domain**
 - Ensure innovation and vitality
- **Some Claim: Not property but a “right”**
 - Data Rights (Federal Term)
 - Intellectual Rights
- A **monopoly** that can be revoked
 - NIH intervened with Jackson Lab (genetics/mouse strain)

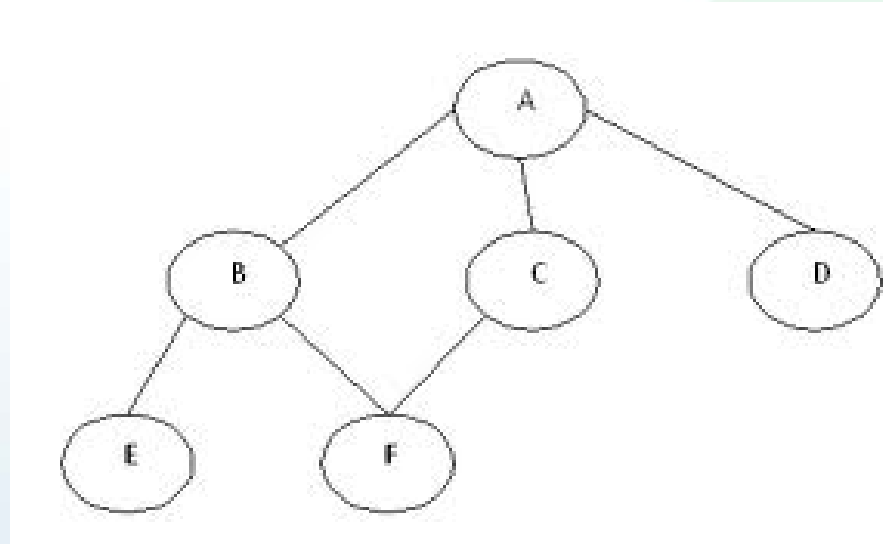


Property But Not Property

- Tangible Property
 - Rival Good (Single Use)
 - Right to use and exclude (affirmative right)
 - Perpetual rights (life of property)
- Intangible Property
 - Non-Rival (Multiple Use)
 - Right to exclude
 - Limited duration (20 yrs)
 - Acquisition: first to patent require grant from PTO

Dangerous to use analogous comparisons

Right to Exclude (but not use)



***Patenting F does to give you the right to use
A, B, C***

Open Source Copyright Licenses

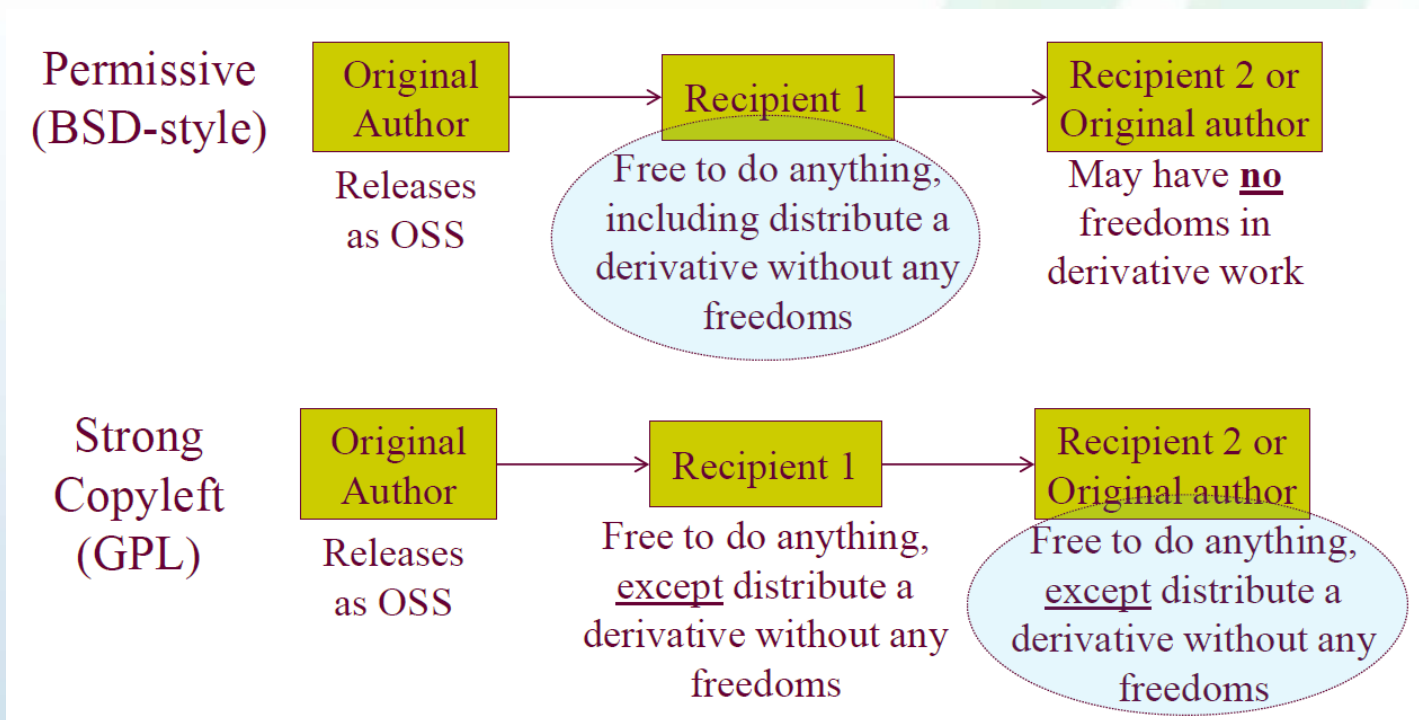
- Permissive
 - BSD-style, Apache
 - Simple, clean
 - Few restrictions
 - Business friendly
- Viral, reciprocal, Copyleft
 - GPL
 - FUD effect
 - Derivatives require same license (rights preserved)
 - Business cautious



Not all OS licenses are compatible

Copyright & Licensing

- Choose the license to drive the innovation you want



*Dr. David Wheeler, IDA, Military OSS 2011 Conference
“Why the GPL might not Destroy the Universe”*

Aside: Use OSI-Compliant License (Don't roll your own.)

- <http://www.opensource.org/licenses/alphabetical>
- Apache
- BSD
- Eclipse
- GPL
- LGPL
- MIT
- MPL
- LaTeX LPPL
- Microsoft Public License Ms-PL
- Nokia
- NASA
- PHP
- Sun Public License
-etc.....

Copyright Transfer

- Example Contributor License Agreement

(Android) Corporate Contributor License Agreement

In order to clarify the intellectual property license granted with Contributions from any person or entity, the Android Open Source Project (the "Project") must have a Contributor License Grant ("Grant") on file that has been signed by each Contributor, indicating agreement to the license terms below. This license is for your protection as a Contributor as well as the protection of the Project and the Android Open Source Project Leads (the "Project Leads"); it does not change your rights to use your own Contributions for any other purpose.

This version of the Grant allows an entity (the "Corporation") to submit Contributions to the Project Leads, to authorize Contributions submitted by its designated employees to the Project Leads, and to grant copyright and patent licenses thereto. If you have not already done so, please complete and send an original signed Grant to

Google Inc.

Attn: Open Source Program Office

1600 Amphitheatre Pkwy

Building 43

Mountain View, CA 94043

U.S.A. Scanned agreements may also be emailed in PDF form to cla-submissions@google.com.

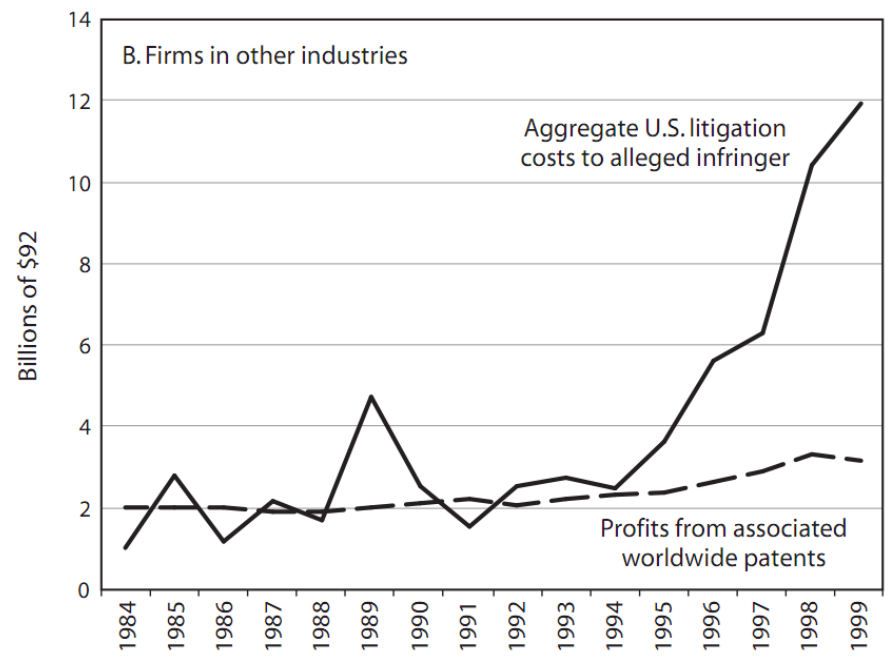
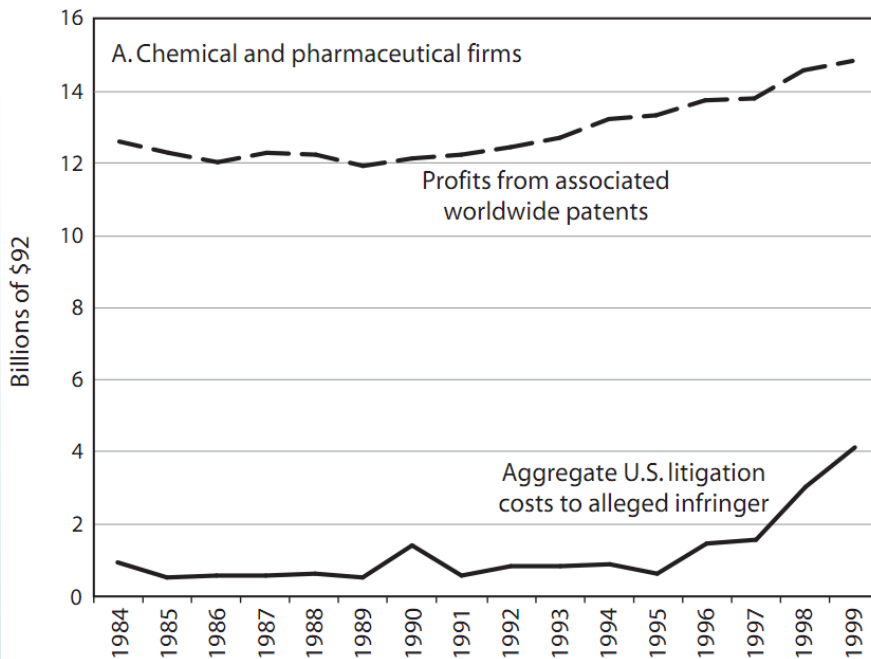
The Trouble with Patents

- Too many obvious patents
- Abstract
- Fuzzy Boundaries (The Notice Problem)

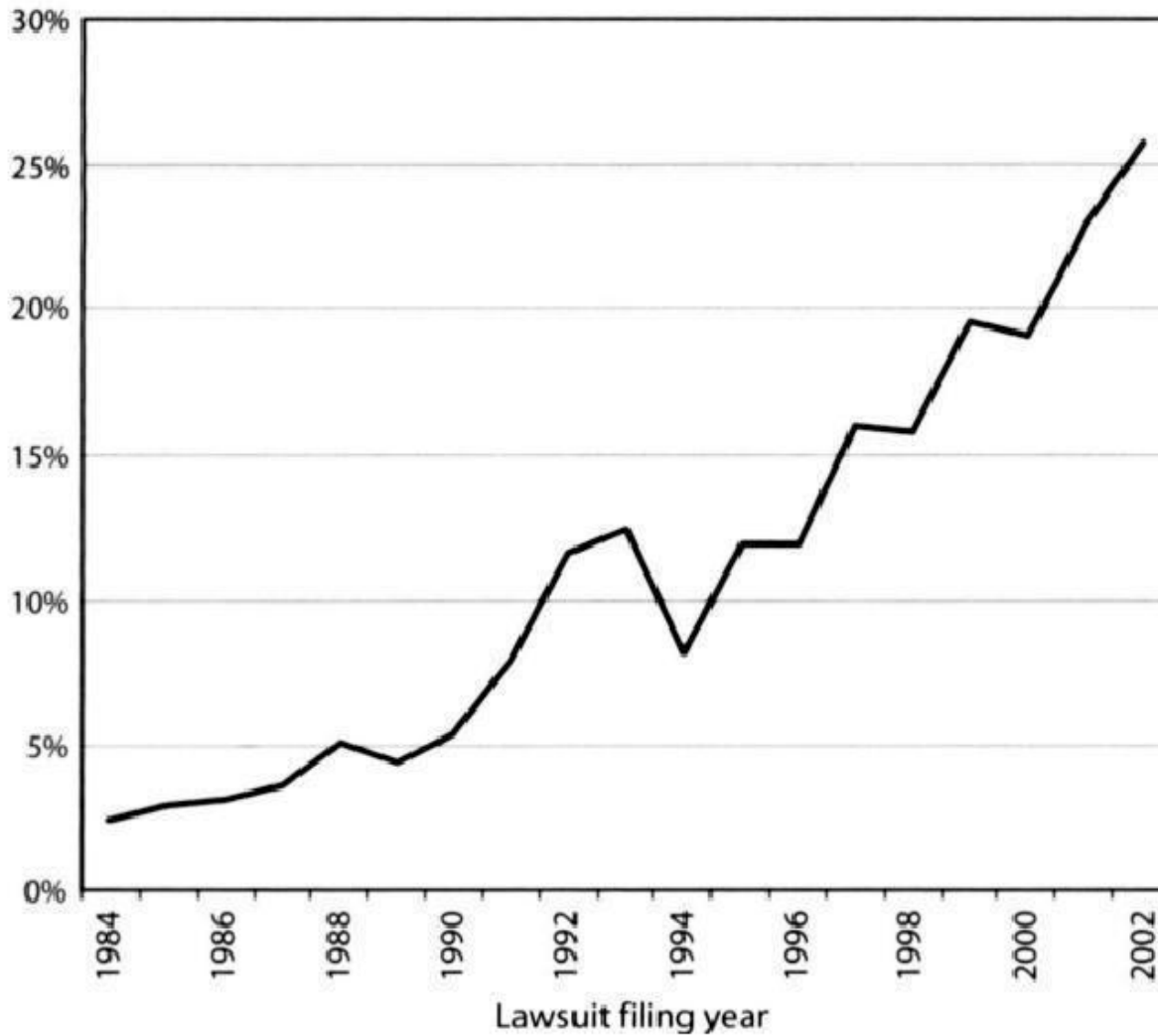


“IF YOU CAN'T TELL THE BOUNDARIES, IT AIN'T PROPERTY”

Patent Litigation



James Bessen & Michael J. Meurer: *Patent Failure*



Percentage of Patent Lawsuits
Involving Software Patents

A Cautionary Tale

- Manage IP to achieve effective
 - Collaboration
 - Commercialization
- Prevent “Poisoning of the Well”
 - Incompatible copyright licenses
 - Patents
 - Vendor lock-in
- Expect to defend yourselves
 - Patent trolls
 - Need advocacy, defender organization
 - The ability to revoke IP rights is possible

Resources

- Governing the Commons - Elinor Ostrom
- Innovation Happens Elsewhere - Goldman
- The Future of Ideas - Lawrence Lessig
- Open Source Software Licensing - Lawrence Rosen
- The Public Domain - James Boyle
- The Wealth of Networks - Yochai Benkler
- <http://mil-oss.org/>
 - List of DoD/Other government OSS projects