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Writing #3

September 24, 2007

Intellectual Property Rights

In November 2004, Matthew Katzer, the owner of a software company in Portland, Oregon, filed a patent for a digitally controlled model railroad [1]. He then began to bill the operators of JMRI, the Java Model Railroad Interface, monthly, for each download of their open source software suite. At contention was the fact that Katzer claimed that JMRI infringed his patent and owed him royalties for each download of their free software. JMRI disputed this, claiming that, had their software been submitted with Katzer's patent application as "prior art", his patent would never have been granted (the JMRI group has been distributing their software since at least 2001) [2].

JMRI also has provided strong evidence that not only did Katzer not invent the model railroad technology at issue, but that he blatantly copied and redistributed their source code, for profit, without attributing them [3]. This ongoing dispute has left a large trail of legal battles and proceedings that continue to this day. Largely, the matter remains unsettled, and it appears that JMRI is still collecting prior art before challenging Katzer's patent. Meanwhile, this case has caught the eye of open-source enthusiasts around the globe (see [4]), and has raised the question – does software that is given away for free have the same enforceable rights as software that is sold? This document will attempt to analyze the claims of these two parties and evaluate possible resolutions in terms of consequences, obligations and rights, and virtuous behavior.

This dispute is being very closely watched because of the possible consequences it could have on open-source developers everywhere. Not only could a ruling against the JMRI project make it impossible for them to enforce their license and copyright, but the precedent set by the case could make it impossible for all open-source developers to protect their intellectual property as well. This could result in groups like the JMRI project not receiving proper credit for their work, while individuals like Matthew Katzer profit off of the work of others. In addition, if Katzer's patent were to be upheld, he would be able to charge the developers of the software he patented for infringements against the patent. Obviously, a win for Katzer would create a very unfortunate situation for the JMRI group and open-source developers, while creating a situation for devious individuals, such as Katzer, to gain notoriety and wealth. In addition, the global educational and computing community would suffer, as control of benevolent, open-source projects was removed from those projects and given to the first company to market a platform based on the project.

Having looked at the parties that could be affected by the outcome of this dispute, the question must be asked as to what duties and rights the parties involved have. According to the IEEE Code of Ethics, IEEE members are to "... avoid injuring others, their property, reputation, or employment by false or malicious action." The Code of Ethics also states that members are to "... credit properly the contributions of others" [5]. While I do not know if Katzer is an IEEE member, this code, accepted as a professional standard by the largest technical organization in the world, bears a lot of weight in determining how software engineers should act, member or not. Clearly, this code implies that copying work from another project without attributing them is contrary to the common standard held by professionals, and the JMRI project has a right to be credited for their work. In addition, filing a patent for technology you are clearly aware of (since

it was included in your own work), without mentioning that work as prior art in your application, is also contrary to the IEEE Code of Ethics, injuring the property and reputation of the JMRI project by trying to gain money from them off of a product they created.

The IEEE Code of Ethics, in its requirement for proper attribution for work, would also seem to imply that the open-source software community has the right to demand that proper credit be given when derivatory works are created from a project. Since the intrinsic worth of intellectual property is in the work that went into developing the ideas behind it, open-source software would seem to have the same rights as that which is not open-source, in the eyes of the IEEE. Developers of both types of software have the right to be credited properly, and the extension of this logic would imply that "proper credit" would mean respecting their wishes in the use of their work.

In the face of this dispute, it is commendable (one could say virtuous) that the JMRI group continues to fight to protect their intellectual property. In this clash, they are definitely "the little guy." As an open-source project, they receive funding only through donations, and that is the only way they continue this fight that is of such important precedence for many similar groups and projects. It would have been virtuous of Katzer to respect their wishes regarding the use of their work, and to cooperate with them on patenting their technology, rather than using it against them.

Even though both parties are not taking the virtuous road, some solutions could have prevented this dispute or successfully resolved it. An obvious solution would be for the United States Patent and Trademark Office to conduct more extensive research on prior art before issuing a patent, or enforce larger penalties for knowingly withholding prior art.

Another solution would be for Katzer to work with JMRI, properly credit their contribution to his product, and help the project with feedback from customers. This would also require that Katzer's patent be revoked or sold to JMRI for next-to-nothing. This would benefit both parties, and the community of developers and users around them.

Even if an amicable solution such as the one previously discussed were to be reached, my "gut feeling" would still demand more legal rights for open-source developers, and more consequences for those that abuse open-source licenses. The case that JMRI presents against Katzer is very convincing – so much so that I debated whether or not it would leave enough room for discussion in this paper. Unfortunately, the courts seem slightly confused as to what rights a non-exclusive license has and can enforce [6], and that is where I tried to focus this paper. I am very disturbed by this case and shocked that it would be so easy for someone to use this country's system for protecting intellectual property against the actual creators of said property. I believe it is an area where some serious review is probably required, by more capable individuals than me, but where no easy answers will ever be found.

you're right I can't believe the case (patent) wasn't thrown out immediately!

In the meantime, the action I would recommend to protect open-source groups can only be that the United States Patent and Trademark Office devote more resources to researching software patents. It is difficult for groups that operate without any funding to collect and write-up prior art and submit it effectively enough to get a patent revoked. It would therefore be much easier for invalid patents to not be granted in the first place. This will take an increase in manpower, but I believe it is justified – as our world becomes more computer-dependent, the United States must do more and more to compete in these areas. This includes protecting those who are doing the development.

References

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