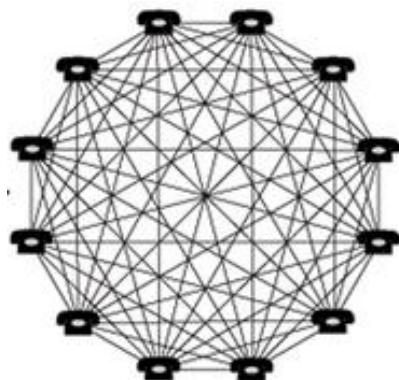


The Defensive Patent License: A new approach to protecting open innovation

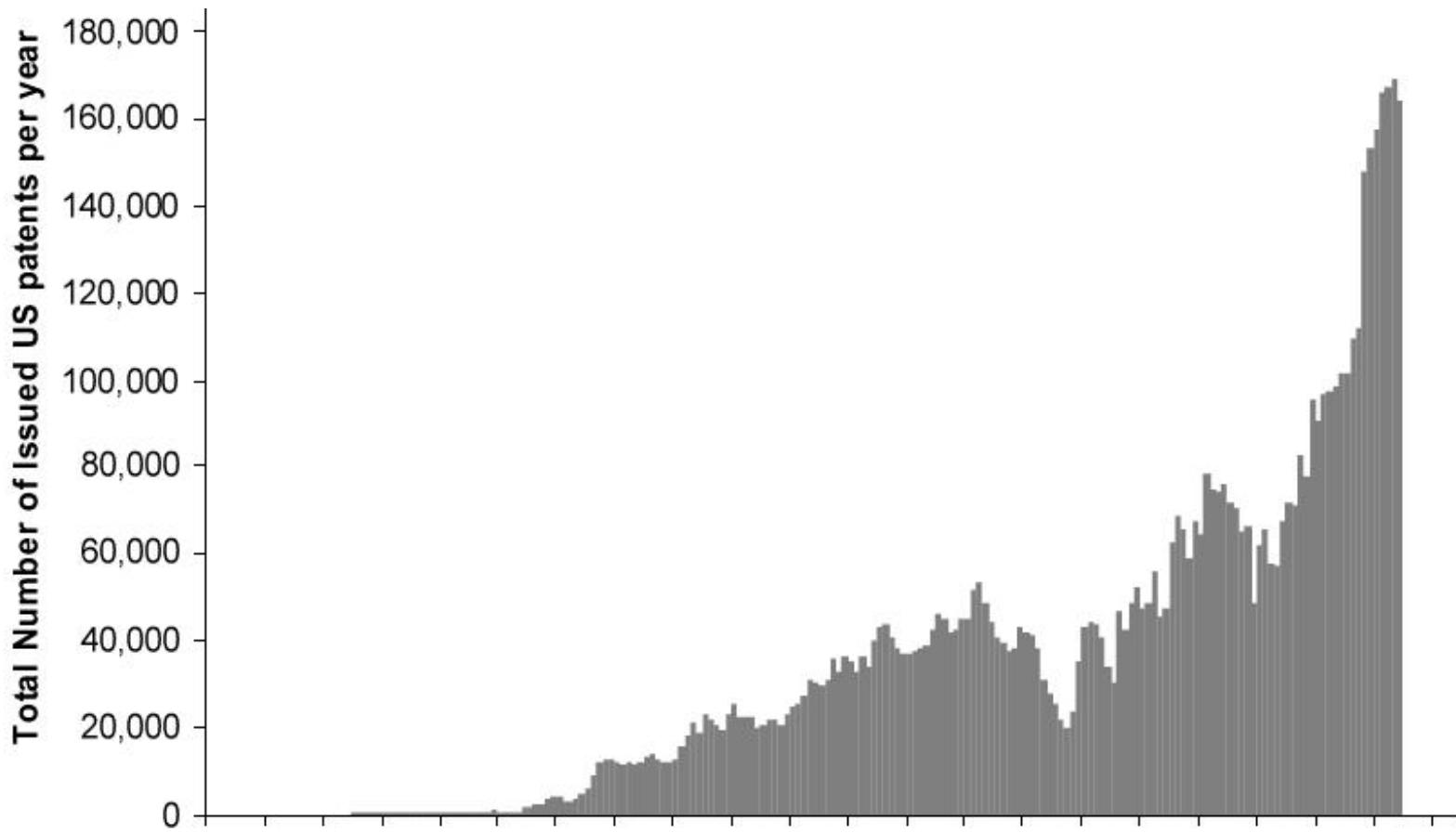


Jason M. Schultz
Berkeley Law

GUIRR-NAS Meeting
February 12, 2013



The Patent Problem?



The Patent Problem?

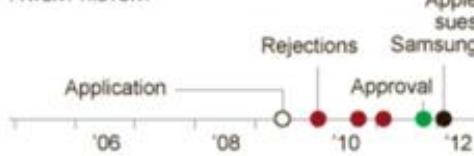


PATENT #8,046,721

⌚ Slide to Unlock

Unlocking a device by performing gestures on an unlock image.

PATENT HISTORY

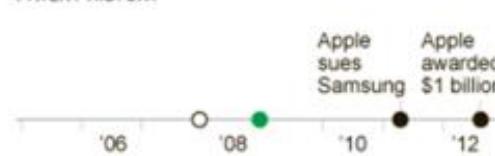


PATENT #7,469,381

⌚ Rubber-banding

List scrolling and document translation, scaling, and rotation on a touch-screen display.

PATENT HISTORY

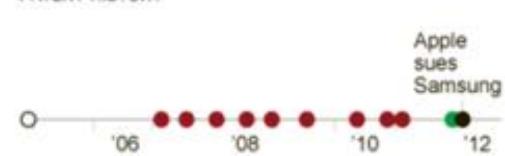


PATENT #8,086,604

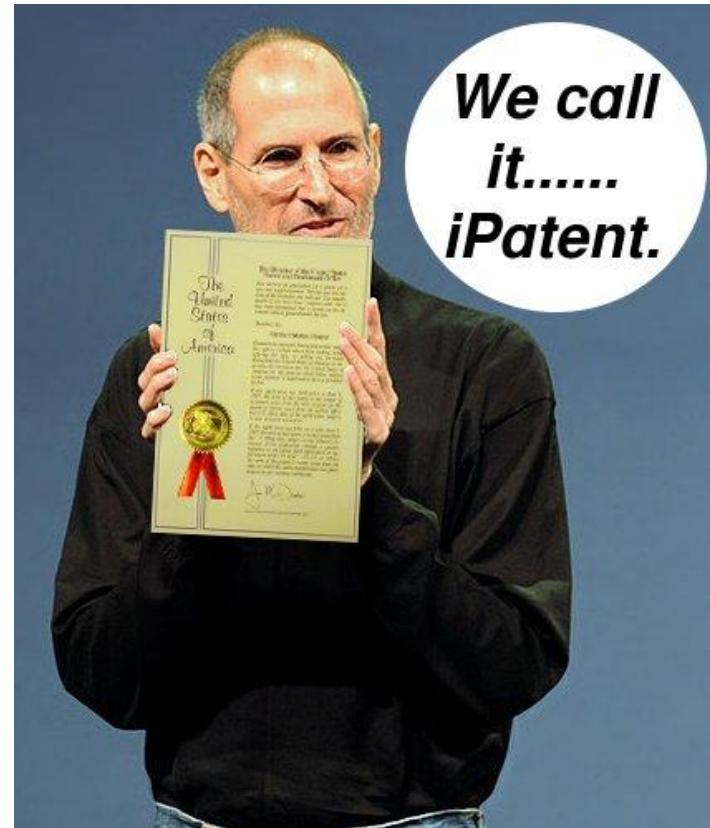
⌚ Siri

A universal interface for retrieval of information in a computer system.

PATENT HISTORY



The Patent Problem?

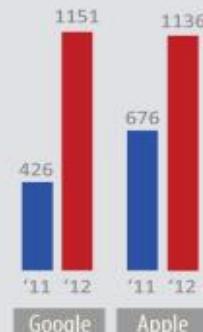


The Patent Problem?

TOP 20 US PATENT HOLDERS



IBM remains the top patent holder. Significant growth by Google and Apple in 2012 compared to 2011



2000

Top 20 USPTO patent holders in the year 2000



2012

Top 20 USPTO patent holders in 2012.



Trouble with Trolls

Patent trolls want \$1,000—for using scanners

An alphabet soup of patent trolls is threatening end users with lawsuits.

by Joe Mullin - Jan 2 2013, 9:30am EST

INTELLECTUAL PROPERTY | LAWSUITS | STARTUPS | 232



Trouble with Trolls



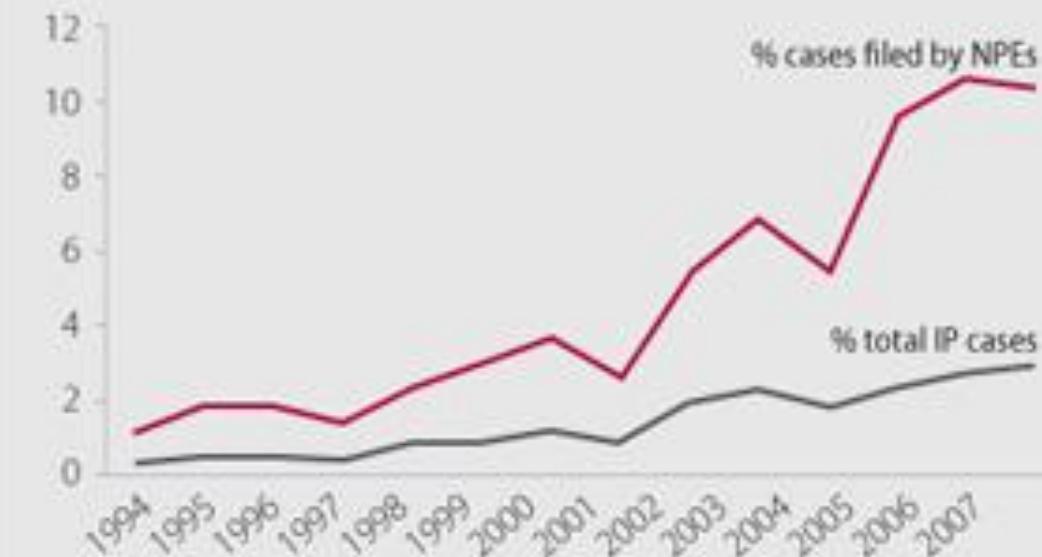
The Fremont Troll

<http://www.flickr.com/photos/thomwatson/>

FIGURE 1

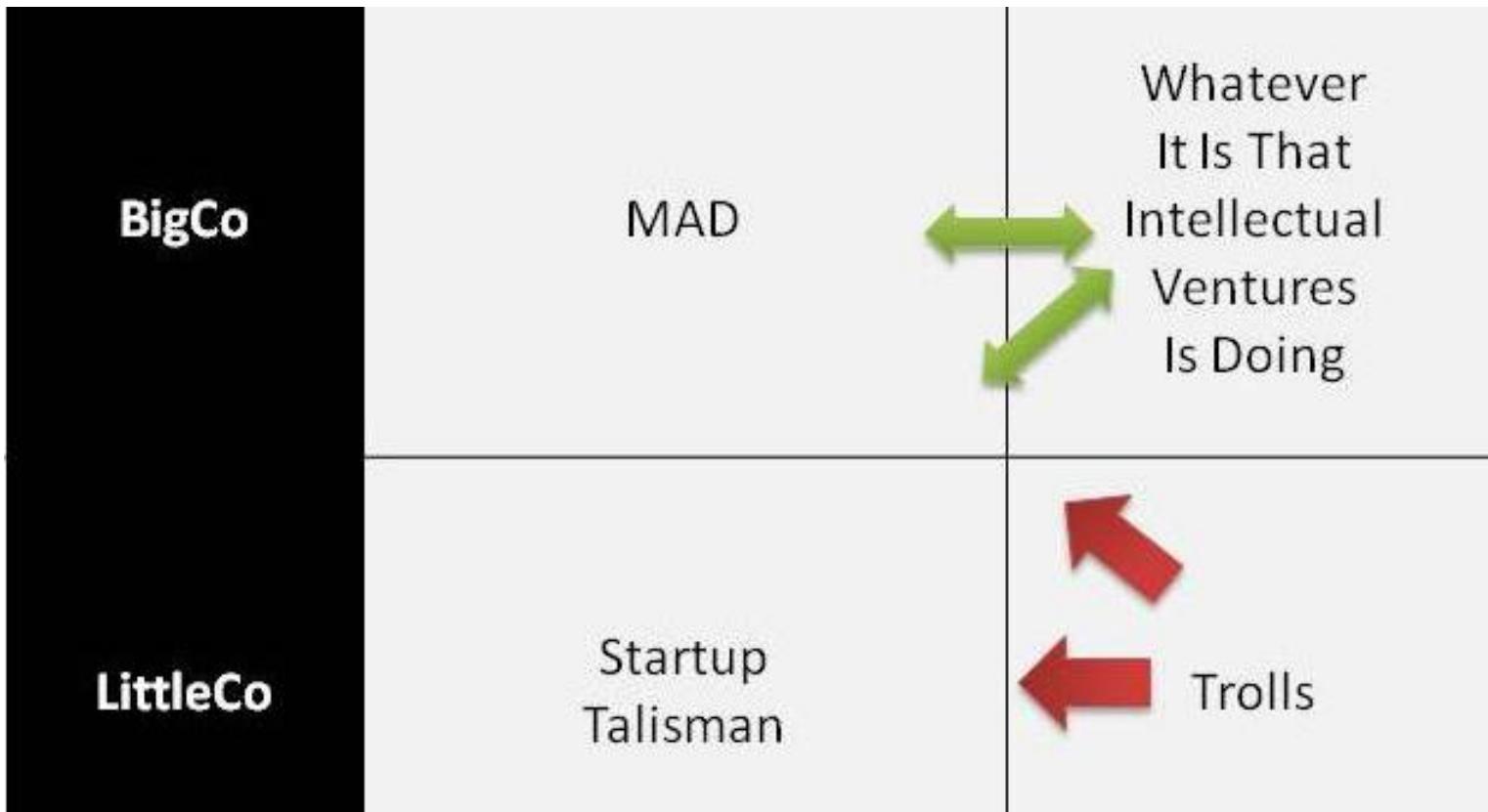
Lawsuits by patent trolls on the rise

Percentage of intellectual property-related lawsuits by non-practicing entities to total IP-related lawsuits

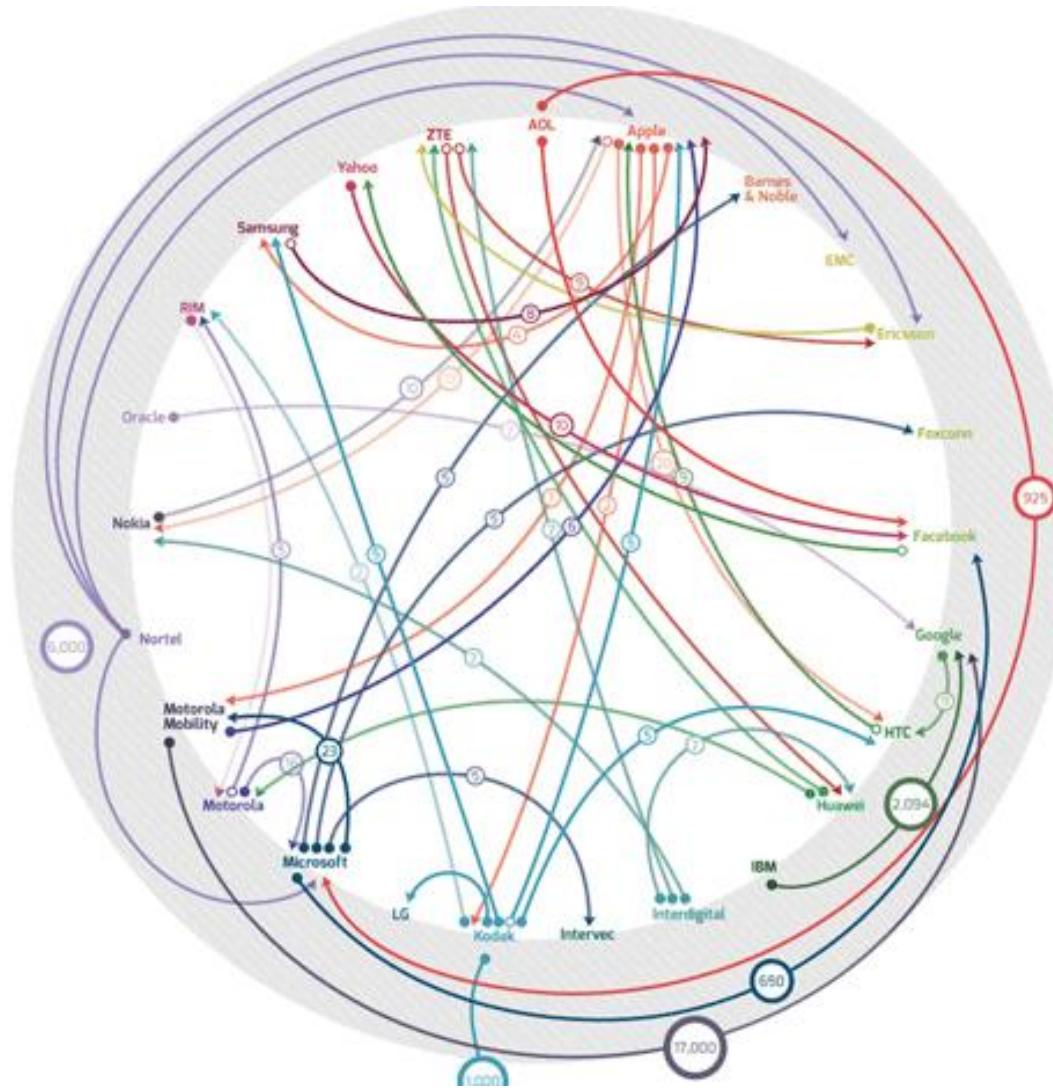


Source: PatentFreedom ©2008; Data Captured as of November 2008.

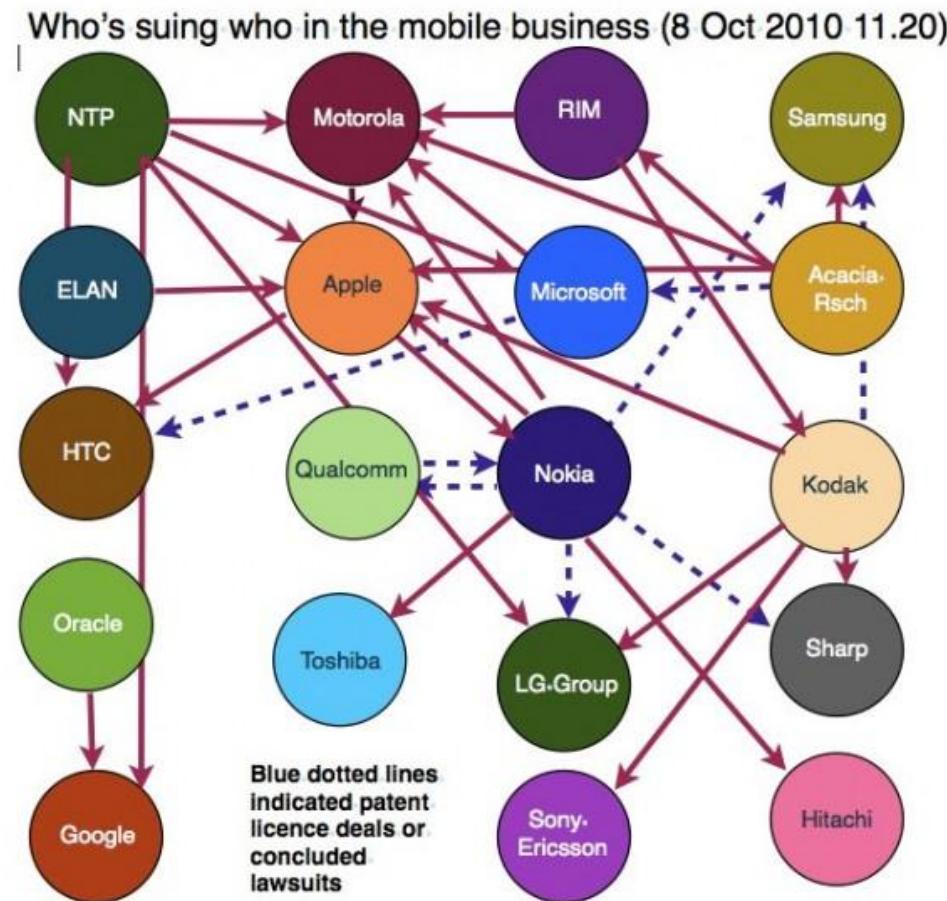
The Patent Problem?



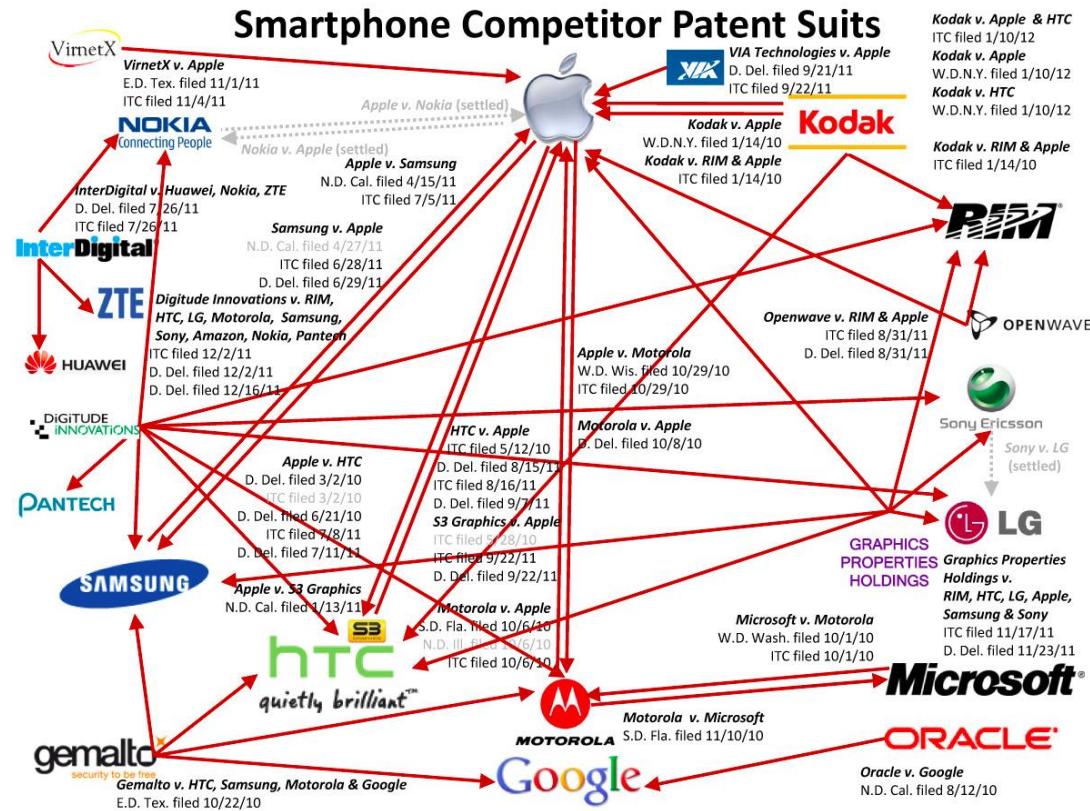
The Offensive Network



The Offensive Network



The Offensive Network

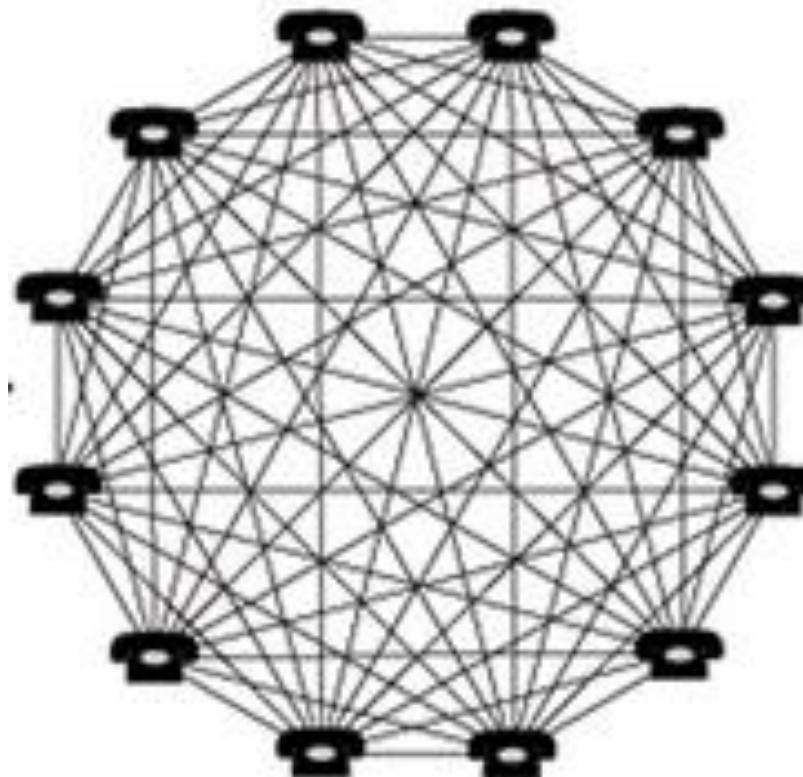


FOSS response to (c)

OSI Affiliates, June 18, 2012



So Why No Defensive Patent Network?



Why OICs don't patent



Why OICs don't patent

The cost of fighting a patent lawsuit

Planning to file a patent lawsuit or have to defend against one?

Your legal bills are going to add up fast.

How much could you lose?	2005	2011
Less than \$1 million at risk		
- End of discovery	\$350,000	\$350,000
- All costs	\$650,000	\$650,000
\$1 million to \$25 million at risk		
-End of discovery	\$1.25 million	\$1.5 million
-All costs	\$2 million	\$2.5 million
More than \$25 million at risk		
-End of discovery	\$3 million	\$3 million
-All costs	\$4.5 million	\$5 million

Source: Report of the Economic Survey 2011, American Intellectual Property Law Association

Why OICs don't patent



More than \$25 million at risk

-End of discovery	\$3 million	\$3 million
-All costs	\$4.5 million	\$5 million

Source: Report of the Economic Survey 2011, American Intellectual Property Law Association

Why OICs Don't Patent



Why OICs Don't Patent



Why OICs Don't Patent



Why OICs Don't Patent



Why OICs Don't Patent



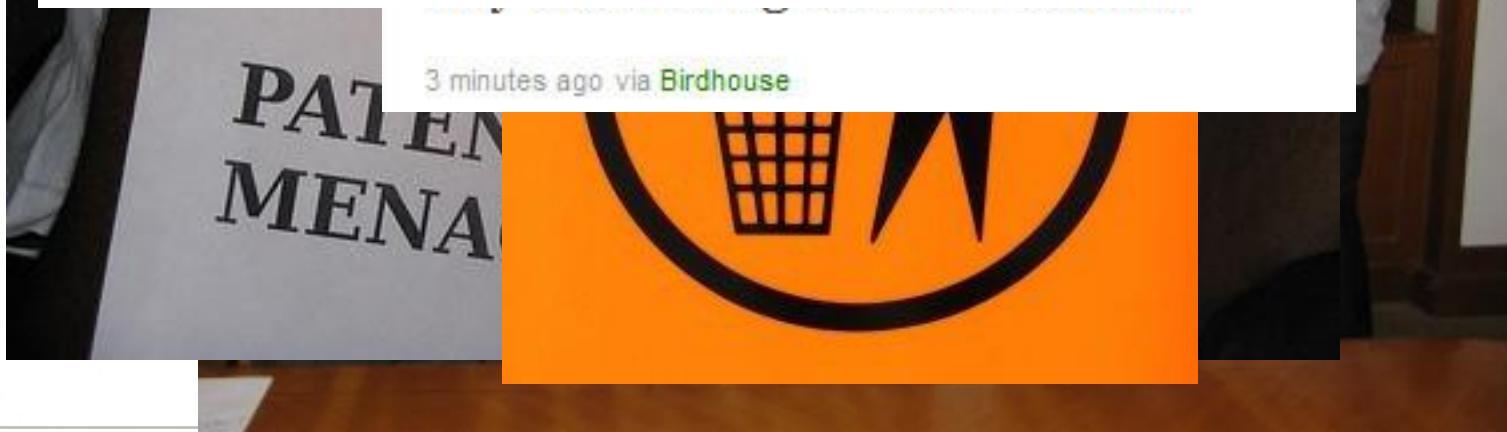
@simonmaddox

Simon Maddox

All my apps removed from US app stores (all platforms). 0.575% of total revenue put in a spare bank account. Screw you, Lodsys.

13 Jul via Twitter for Mac

3 minutes ago via Birdhouse



Why OICs don't patent

BUSINESS

wiredopinion

codeword

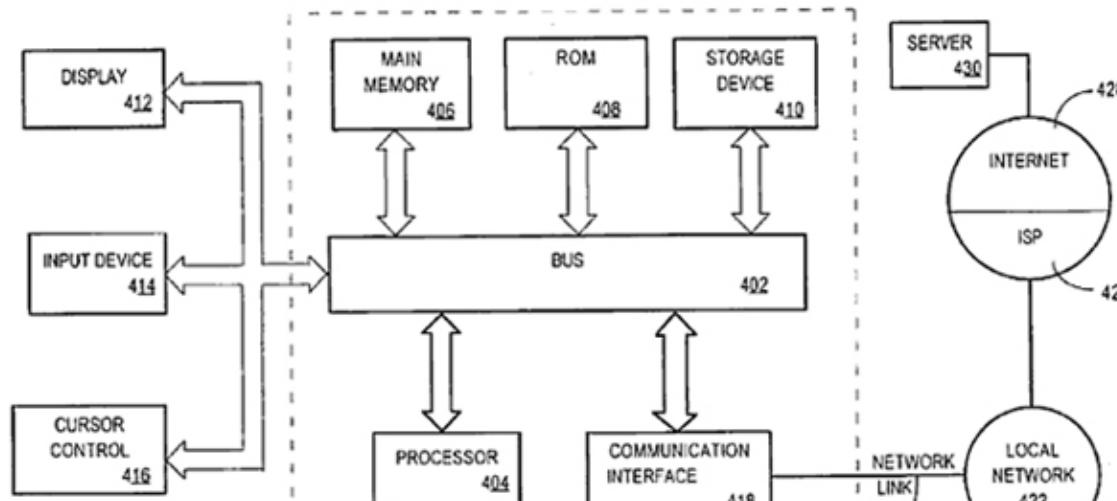
A Patent Lie: How Yahoo Weaponized My Work

BY ANDY BAIO 03.13.12 3:44 PM

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FIG. 4



Why OICs don't patent

BUSINESS

wiredopinion

codeword

A Patent Lie: How Yahoo Weaponized My Work

BY ANDY BAIO 03.13.12

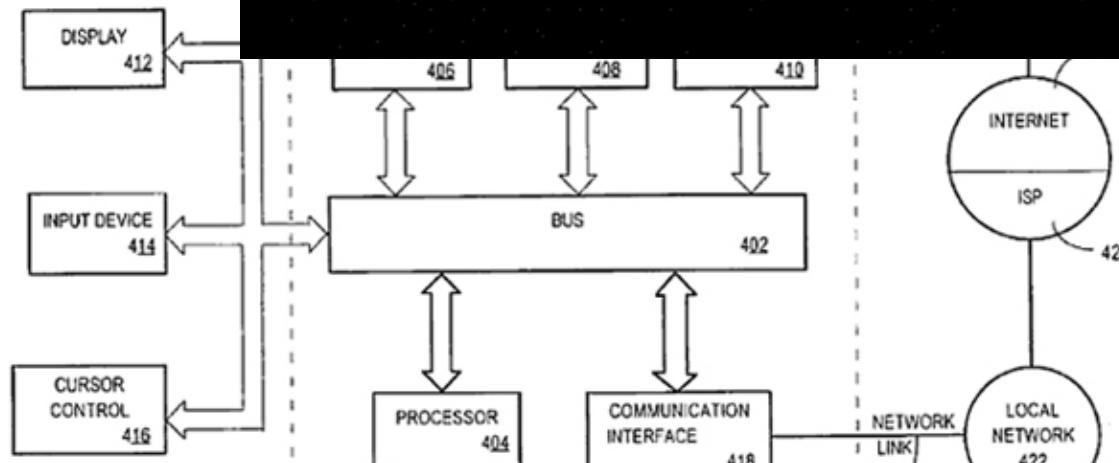
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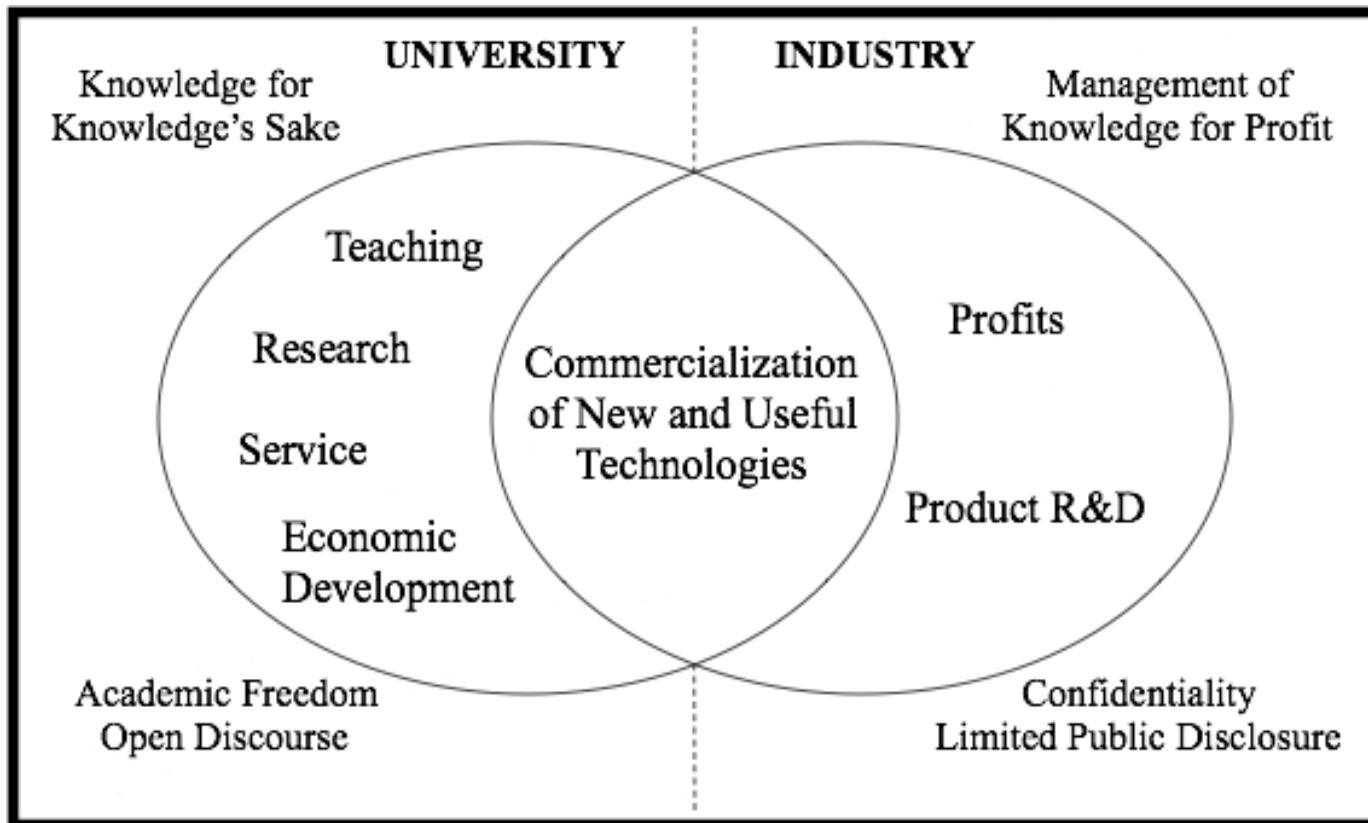
12

Trust issues

FIG. 4



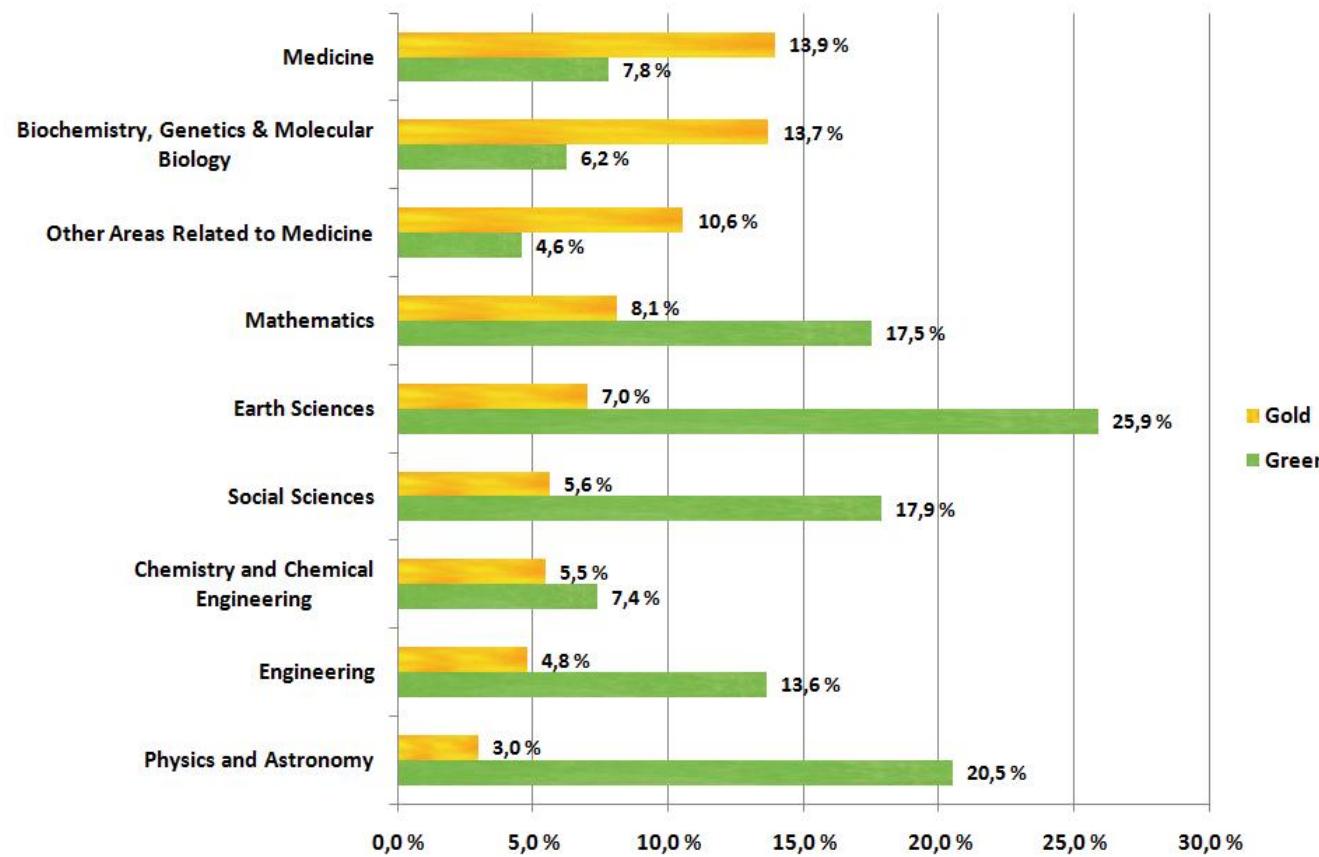
Universities and Openness



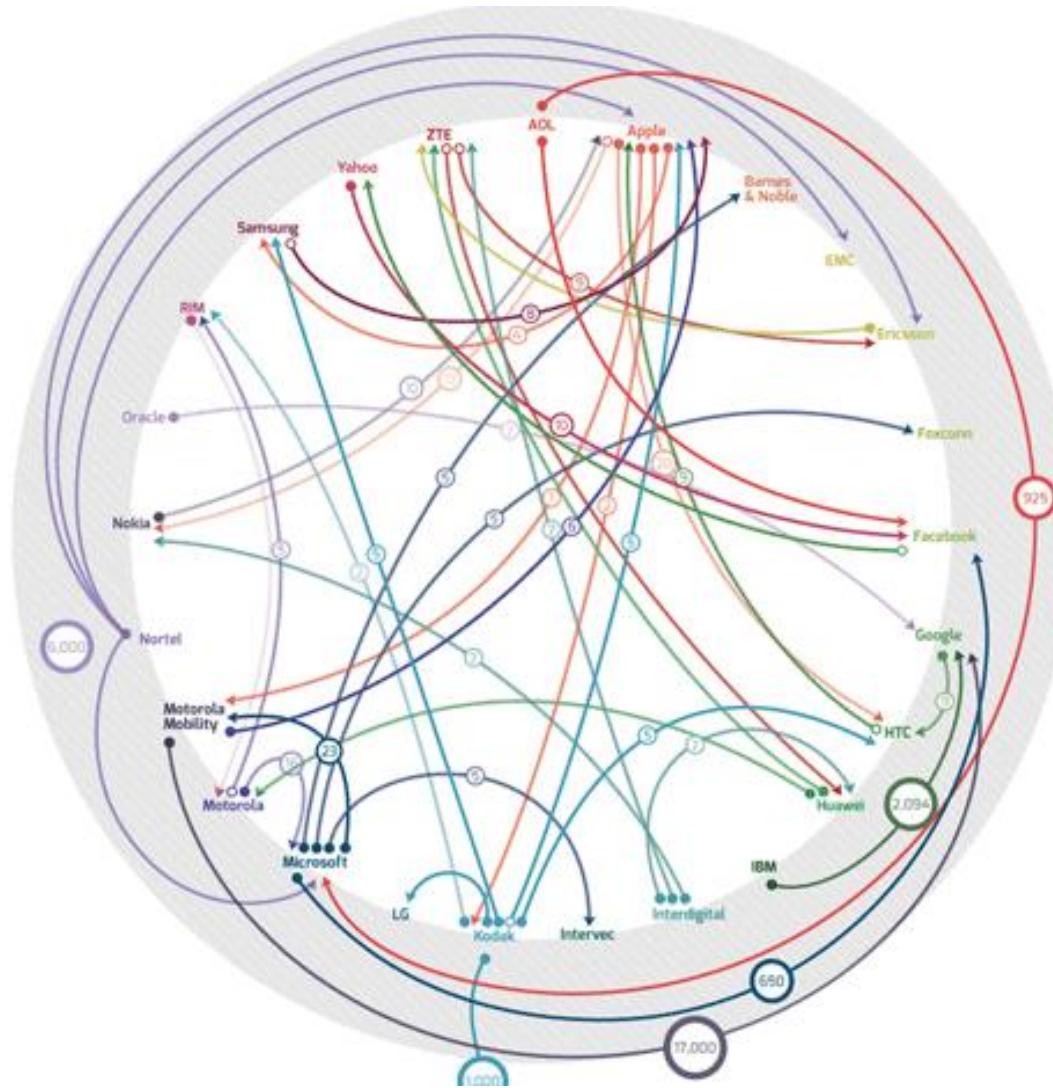
Universities and Openness



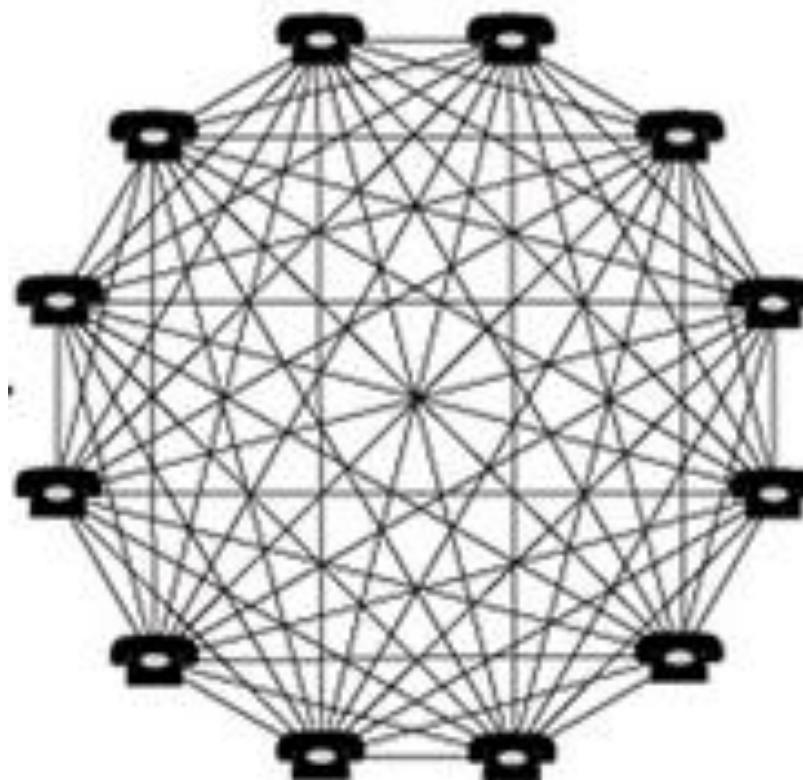
Universities and Openness



The Offensive Network



The Defensive Network



The DPL

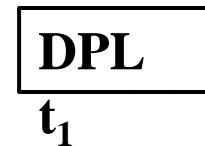
- Distributed standardized patent license (GPL/CC style)
- Royalty-free, perpetual, irrevocable (unless breach)
- Available to anyone who commits to the following:
 - Will not sue any other DPL member offensively
 - Will bind any subsequent owner of patent to obligations
 - Offers all of their own patents under same DPL conditions
- **Can still enforce against non-DPL members at will**
- **6 mo. notice to leave; issued licenses remain active**

The DPL

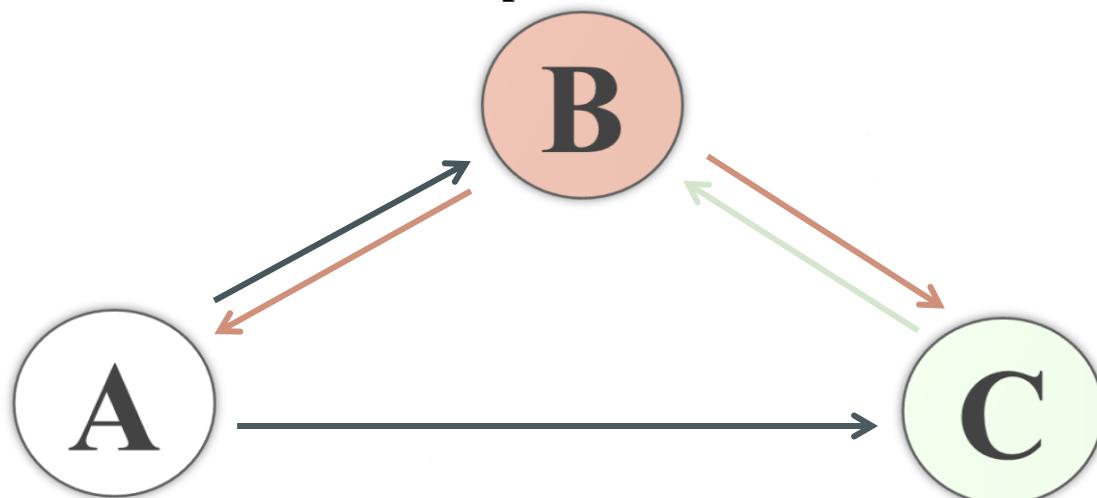
- Benefits to Network Members:
 - Freedom To Operate
 - Troll-proofed patents
- Benefits to everyone:
 - Preempts proprietary patent filings
 - Undermines “need for patents” rhetoric
 - Forces PTO to confront over-patenting and quality issues
 - Plays nicely with other solutions (Twitter IPA, Patent Reform)



**A offers portfolio
under the DPL**



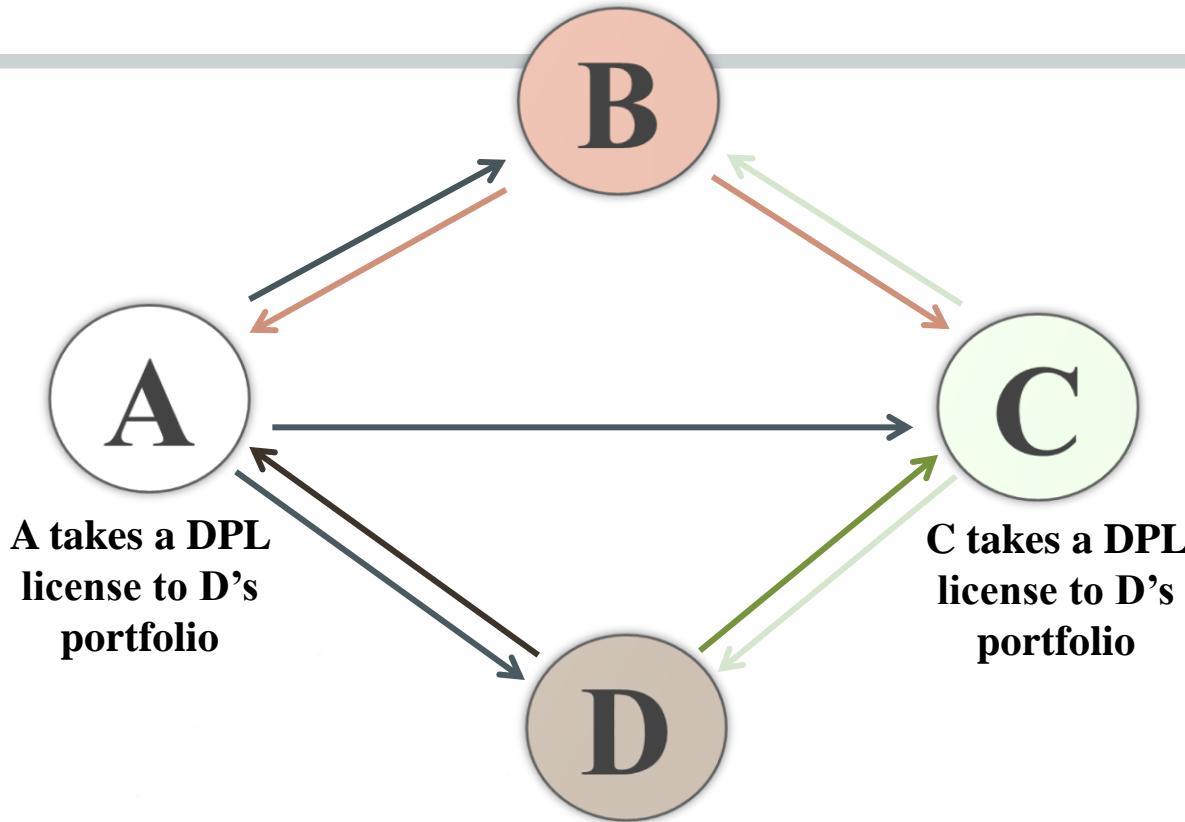
**B offers its portfolio under
the DPL and takes DPL
licenses to A's and C's
portfolios**



**A takes a DPL license to
B's portfolio**

**C offers its portfolio
under the DPL and takes
DPL licenses to A's and
B's portfolios**

DPL
 t_2



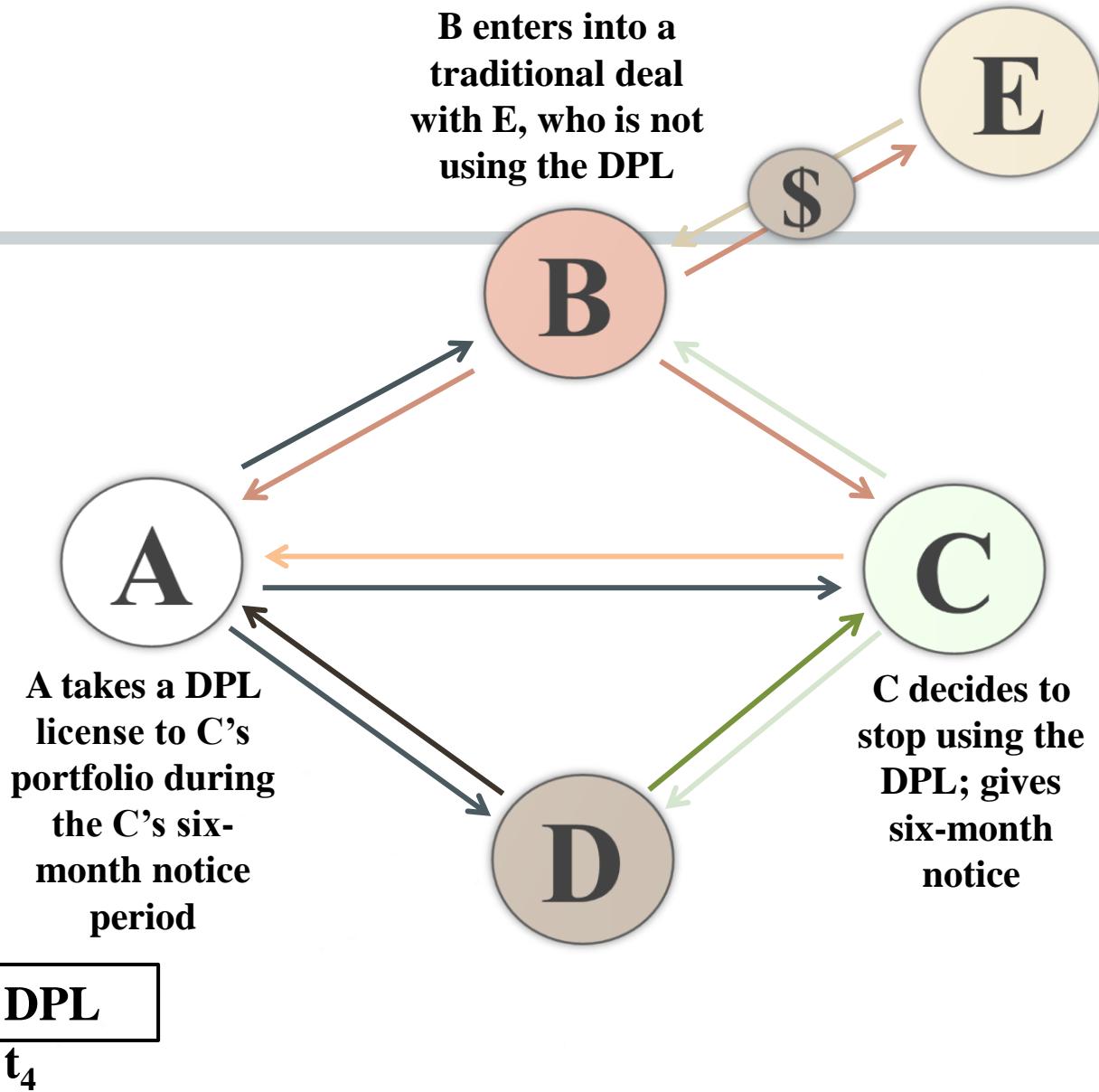
A takes a DPL license to D's portfolio

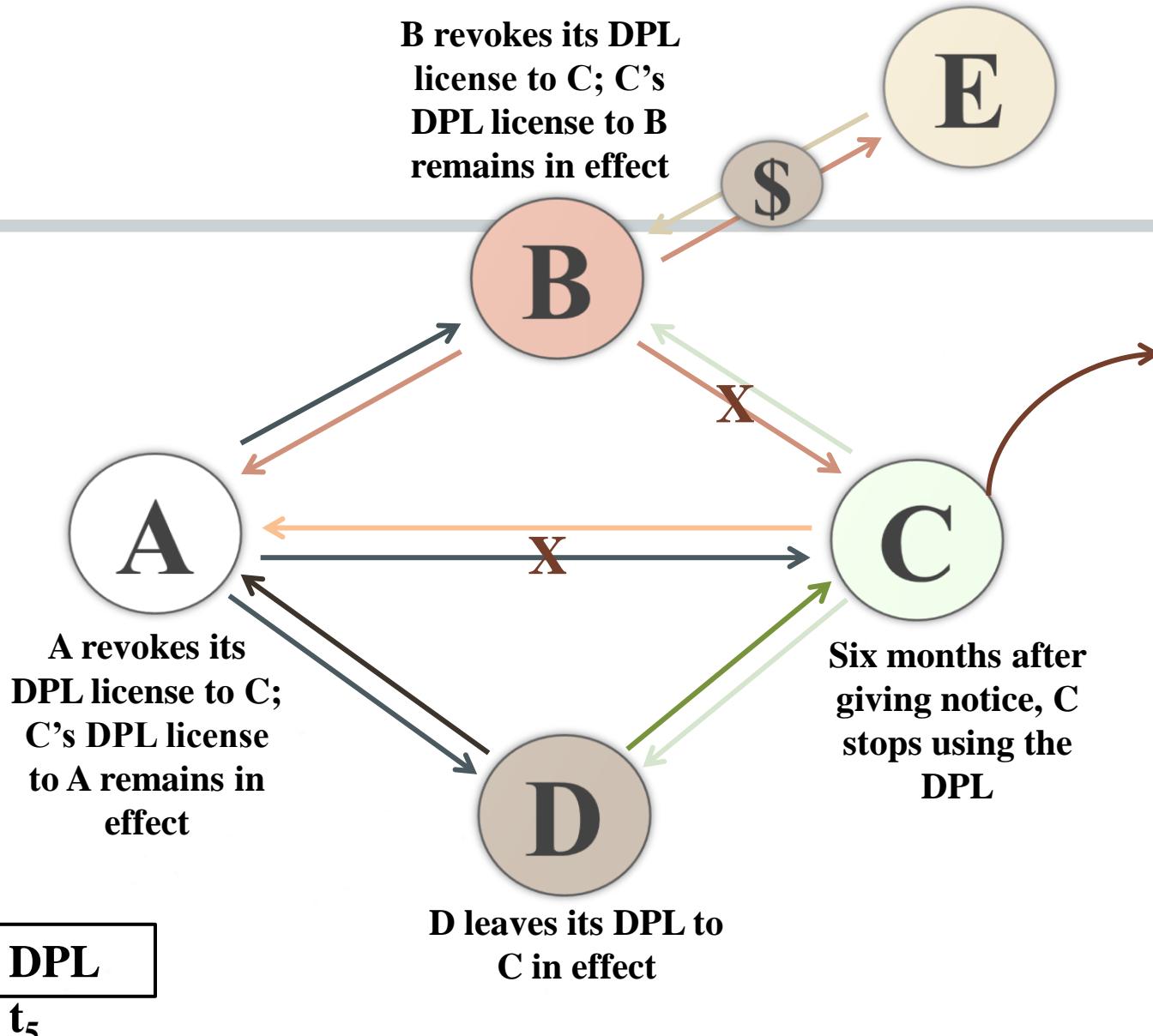
C takes a DPL license to D's portfolio

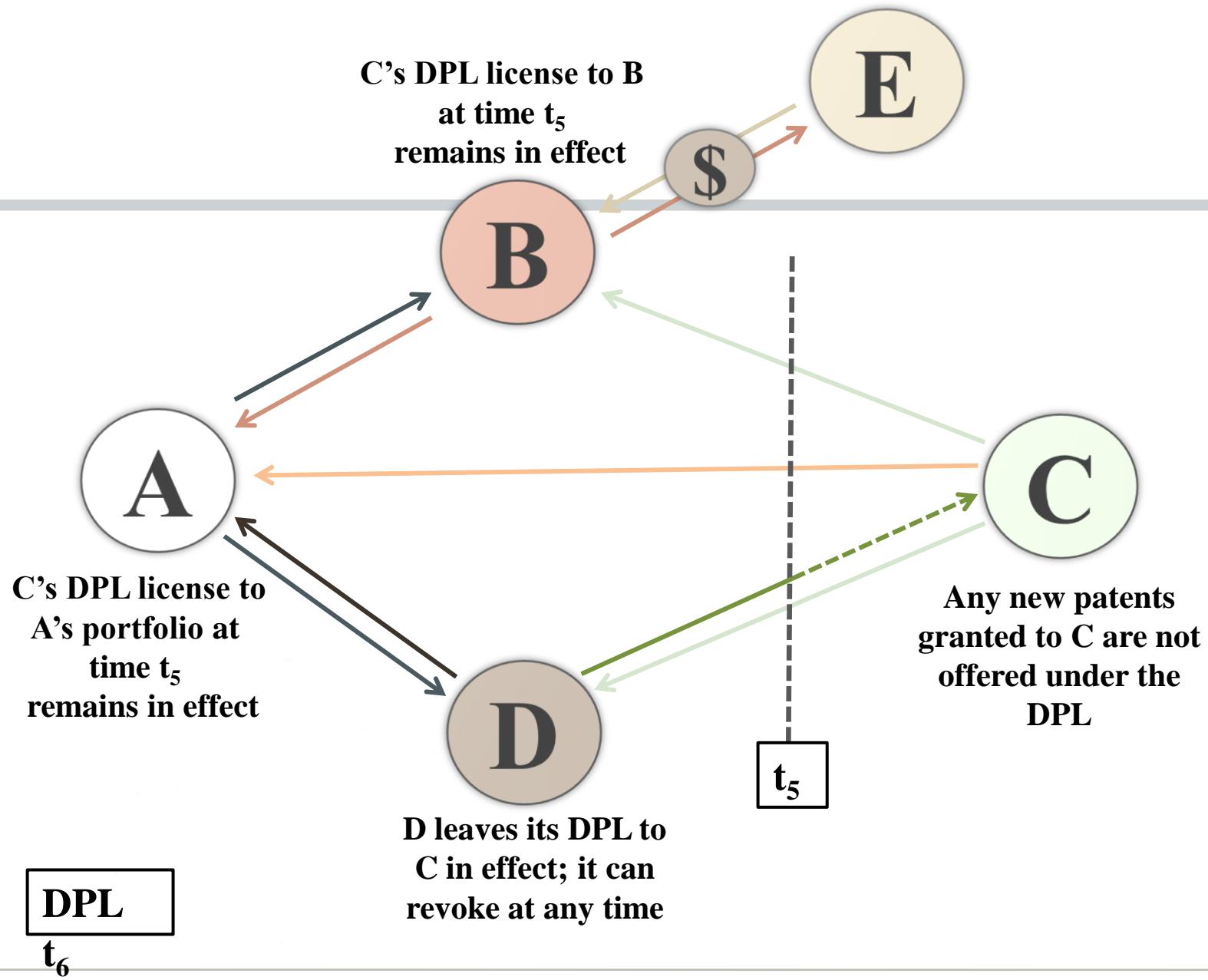
D begins offering its portfolio under the DPL, and takes DPL licenses from A and C

DPL

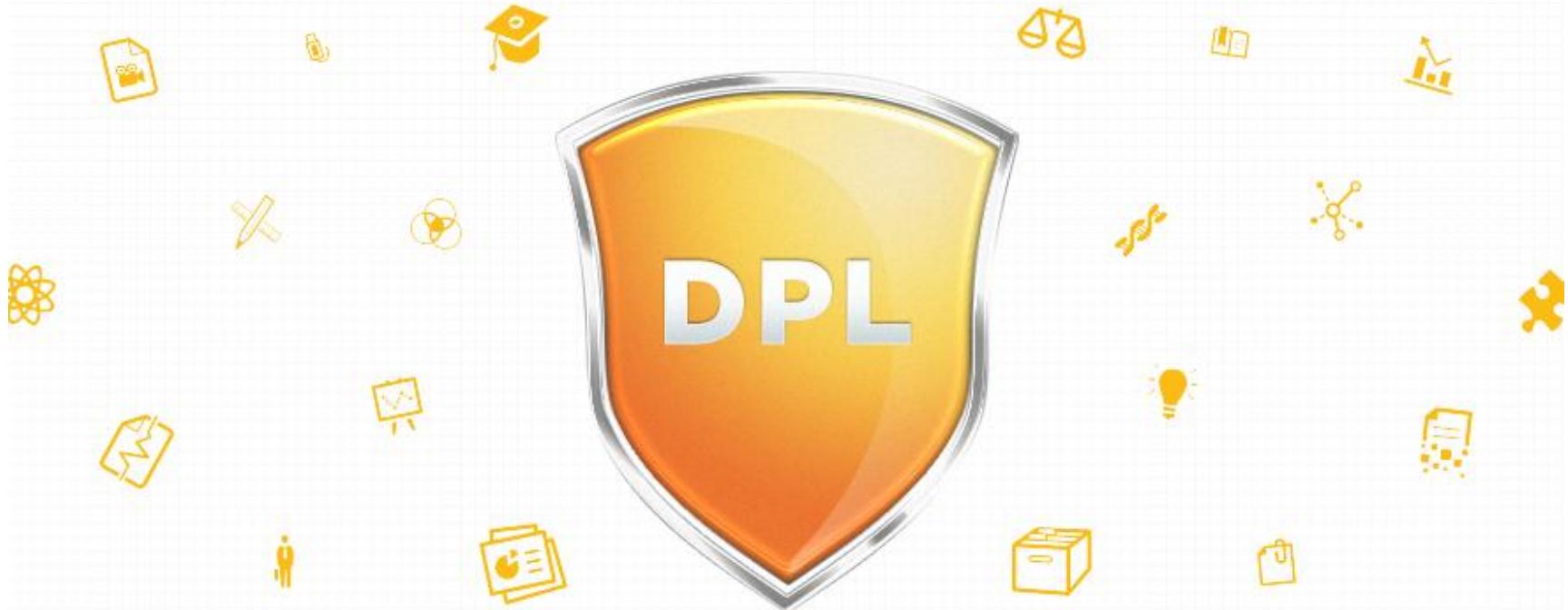
t_3







@defensivepatent



Troll Proofed. Innovation Protected.