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**The Beginning of the End of the Internet?**

**By Bill Platt**

**The Beginning of the End of the Internet? by Bill Platt**

A steady stream of Patents have been coming from the U.S. Patent Office over the last few years, which have left folks in the software industry frustrated and outraged.

With Patents that were issued to Amazon, Alta Vista and more recently McAfee getting extensive headline coverage, many have asked themselves what is afoot over at the U.S. Patent and Trademark Office. How can such universal software concepts such as "One-Click Purchasing", "Search Engines" and now, "Auto-Downloading of Software / Software as a Service (SaaS)" become items that are allowed to be Patented by companies?

Most Patent experts do not take these "junk Patents" seriously knowing full well that they will be overturned by the courts and other processes set up to police the system.

Amazon is set to test their patent in September of 2001 against BarnesandNoble. During an injunction hearing, the judge stated that if BarnesandNoble simply instituted a two-click system then he had nothing that could be said about their use of this purchase system.

Alta Vista's Search Patents will fall because the creator of Archie has proof that his system was in fact "prior art". Given that Archie provided the first search engine, what does that tell us about the management at Alta Vista who tried to claim that they invented search technologies? More important to this discussion, what does this tell us about our Patent System that allows Alta Vista to get a patent on search technology in the

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first place?

McAfee now boldly claims that "what it really holds is a Patent on the future of the Internet." If there were half a chance this Patent could survive the test of time, then they would be right in their assessment. Again, the question comes down to how, even after two-and-a-half years of investigation, the U.S. Patent and Trademark Office could make the determination that McAfee invented these concepts and were worthy of receiving a Patent for such?

What makes this current system so frustrating is that processes

that have been considered common knowledge for years are earning patents on a regular basis. With the broad range of definition being granted with the modern Patents, all areas of software development are being negatively influenced.

Dozens of software developers have already spoke up to ZD-Net / eWeek / Talkback concerning the story about the McAfee patent. Here are a few of their comments:

( <http://www.zdnet.com/eweek/stories/general/0,11011,2802506,00.html> )

Allen Vander Meulen, an Independent Consultant from West Chester, PA said:

A patent on "Auto Update"????? Ridiculous!!! I was writing code to do auto-updates for PC software across LAN's and via modems in the late 1980's and early 90's. (Of course, there was no internet component or any need for authentication at that time!)

Al Pareigis, a Software Professional from Oak Brook stated:

The patent is nuts!

The fundamental concept of check and download upgrades auto-magically has been a cornerstone of software distribution. Heck, the last one I wrote was in the mid 90's. It was using OS2 clients with Rexx routines to do that for a 911 center.

Sprucing up the concept with words like 'web', 'browser' and 'server' does not change the fundamental concept. It is a common practice and knowledge to the profession.

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Mauri Presser, a Computer Specialist from Virginia stated:

This reminds me of the conflict between Microsoft and Apple in the case of the Trashcan vs. the Recycle Bin. Both icons (folders) serve the same purpose. The "Auto Update" feature in any software serves the same purpose, to automate the process. Just like batch files in the command line days, or script files, or for that matter, any software. I remember entering commands on a Sperry Univac computer sold to the US Navy called the AN/UYK-20, that did not have a keyboard. During troubleshooting, instructions and data were entered by using a 16 switch maintenance panel. The operating system and parameters could also be loaded by magnetic tape or paper tape. The point is, these means of program and data entry just automated the process. Does anyone have a patent on the "concept" of automation? Or is it only the method that gets

the patent?

Martin Willcox, an IT Manager from Manchester, United Kingdom cut to the chase:

"The McAfee case clearly demonstrates just how absurd and anti-competitive the notion of patenting software really is. Very little software is genuinely new or novel – in reality, most of us in the development community spend our lives either refining and extending ideas that go back years or porting those ideas to new technologies."

Martin Willcox's assessment of the situation is right on the mark. Companies are now using the Patent system to try and bury their competition.

Think about Amazon for a moment. Two months after Amazon received their Patent, they filed suit against BarnesandNoble.com ——— their number one competitor. If BarnesandNoble had not been as strong as they were financially when this suit began, the legal fees could have buried them! "This nonsense raises the cost of doing business, since it takes years and costs \$1 million or so to break these junk patents."

( Quoted from: <http://www.trudelgroup.com/pwars.htm> )

What if BarnesandNoble had been a young upstart? Could they have survived if they had little cash and a million dollar

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legal bill? How many small companies could have afforded this attack? How many small companies could have survived the litigation process even when they were in the right?

To obtain a patent under our system, an inventor must file an application describing and claiming the invention (which must be -- in the broadest sense of the word -- new, non-obvious, and useful) with the U.S. Patent and Trademark Office (PTO). The PTO assigns the application to an examiner who conducts a search of existing inventions (known as "prior art") and then issues a patent if nothing fishy turns up.

Under this system, which was last modified in 1999, the only real method for weeding out the bad patent is through costly litigation.

There are indications that there are actually several factors at play in the problems that exist within our Patent system:

\* The PTO examiners are not given the kinds of tools they need to complete their jobs as they would wish, as indicated by

this story:

A September, 1999 letter from the Patent Examiner's Union Chief to the Patent Advisory Committee stated in part, "What examiners are asked to do, and what impact those directed activities will have on the quality of patents, are clearly matters of great concern...." PTO examiners are being pressured to solely use a system called WEST for their patent searches, an "information retrieval system with debilitating flaws; not only is the system frequently incapable of performing even simple word searches, the results are often woefully incomplete and even inaccurate," and that "searches using the new system take longer to perform, produce fewer results than the systems that they replaced, and thus prevent us from doing our jobs."

(Source: Washington Post, November 19, 1999).

\* The staff at the Patent and Trademark Office is understaffed and under prepared to meet the challenges of the system in today's rapidly expanding technology sector and technological knowledge base.

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Consider this. If a net-savvy programmer worked for the PTO, then none of these patents would have occurred, as he would have the knowledge available to him to make sound judgements.

\* Unscrupulous companies are taking advantage of the inadequacies of our Patent system to position themselves in such a way that they can legally extort their competitors through the use of the U.S. Patent and legal systems.

\* The only recourse available, to those who feel that a bad Patent has been imposed, is expensive litigation or submission to the legal Patent holder.

By signing our petition today, you can contribute to our project to bring the U.S. Congress to consider the possibility of repealing the application of Patents to the software industry, or to investigate the processes and procedures of the U.S. Patent and Trademark Office (USPTO) to discover and solve the inherent problems that are allowing for the system to be abused.

<http://www.PatentTrail.Org/petition.html>

### **THE WILDCAT'S BEGINNING**

**By Irvin L. Rozier**

#### **THE WILDCAT'S BEGINNING by Irvin L. Rozier**

The Wildcat's Beginning

In the beginning when all things were nice  
There were no wildcats, there were no mice  
And then one day the old man came out  
And said, "Let there be wildcats!"  
This he did shout.  
Then low and behold, a furry wildcat was born  
Meowing about on my Cwanga's farm.  
He said, "I'll do you no harm"  
With a sly little smile and plenty of charm.  
Oh how that wildcat could lie  
With a smug look and a twinkle in his eye.  
The struggle between the two lasted for years  
Sometimes with laughter and a few tears.  
Why o why couldn't they be friends?  
Love each other and make amends.

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The wildcat had a beginning and has an end.  
His death could come around the next bend.  
Victory over the wildcat will certainly come  
Give me a piece of strawberry bubble gum.

Irvin L. Rozier

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author, preacher, retired US Army



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