IBM attacking opensource startup with patents
French firm responds with EU antitrust motion

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http://eupat.ffii.org/10/03/ibm

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Aliqua introductio nos adiuvare possit.

1 Situation

- aliquid fit.

2 Timeline

- aliquid fiet.

3 Tasks

- aliquid fiat.

4 Chronology

- aliquid factum est.

5 Resources

- altera facta hic scripta sunt.

- Florian Mueller 2010-04-06: IBM breaks the taboo and betrays its promise to the FOSS community, see also next day's roundup coverage of ensuing posts

- IBM patent threat letter to Turbo Hercules
  - According to Florian's summary
    * The letter comes with a "non-exhaustive" list including 106 IBM patents plus 67 pending patent applications.
    * Patent numbers U.S. 5613086 and U.S. 5220669 appear on page 4 of IBM's 2005 "patent pledge", and also appear as patents #83 and #106 in the letter IBM sent to TurboHercules.
  - IBM explains that patents effectively prevent interoperability:
    * VP & CTO Mark S. Anzani writes: "According to your own statements, your product emulates significant portions of IBM's proprietary instruction set architecture and IBM has many patents that would therefore be infringed. For illustration, I enclose with this letter a non-exhaustive list of IBM U.S. patents that protect innovative elementts of IBM's mainframe architecture and that IBM believes will be infringed by an emulator covering those elements".
    * IBM does not even need to look at the Turbo Hercules emulator: the mere fact that it emulates the platform which implements the teachings of IBM's patents suffices to conclude that the emulator, whose sole purpose is to make IBM's software run on other computers, must also infringe these patents.
    * In 2004-5 IBM lobbied the European Parliament in favor of an interoperability privilege that would allow patents to be used when the sole purpose of using them is to enable them to interoperate with other systems.
    * Using patents for the explicit purpose of preventing interoperation is not only questionable from the point of view of the accepted ethics of the software market but also from that of antitrust law, especially when it is done by a dominant vendor.
    * We used to assume that at IBM the software developing departments and the patent departments represent very different cultures and that this explains the frequent incoherence of the behaviour of IBM. However the current letter does not come from the patent department but from the CTO, i.e. a person in charge of software development.
  - The 106 patents listed by IBM represent 106 patent families; it is to be assumed that most of them have cousins at the European Patent Offices that are no less broad and trivial.

- Turbo Hercules

  - Roger Bowler responds to IBM patent attack on Open Source

- Ars Technica: IBM breaks OSS patent promise, targets mainframe emulator

- Eric Raymond calls for "adult supervision to step in" at IBM, says IBM is digging itself in deeper with its explanation, a "retroactive attempt to deprive the pledge of actual effect" since the only criterion that the original pledge established was that a project's license had to be an open source license.

- Reuters: French firm files EU antitrust motion against IBM – one of the first reports on the issue

- The Register: IBM: Mainframe emulator part of a conspiracy

- CNET: IBM patent claims show open source has arrived

  - The author Matt Assay, chief operating officer at Canonical, the company that produces Ubuntu Linux, seems to ignore the difference between copyright and patents when he asserts: "If, in fact, TurboHercules is violating IBM's patents, shame on it. Just because OpenHercules is open source isn't a license to steal, any more than IBM should have the right to pilfer code from it or any other project without complying with the license grants afforded by such projects. .. We're talking about IBM treating open source like a grown-up, one that has to live by the same rules as the rest of the world. .. Open source doesn't get a free pass, even in IBM's world. This isn't cause for concern. It's cause for celebration. It means open source truly has arrived."

  - Pieter Hintjens replies: "Matt, shame on you. Every single open source project, including all of mine, infringe on at least one IBM patent somewhere. IBM hold 50% of the world's software patents. You know this. How can you defend IBM's use of its patent portfolio (knowing as you should that IBM finagled software into patent law both in the USA and in Europe) against an open source project, indeed against any software project?"

- IBM and Software Patents

- Software Patents in Action