

# Patent Thickets and Patent Wars

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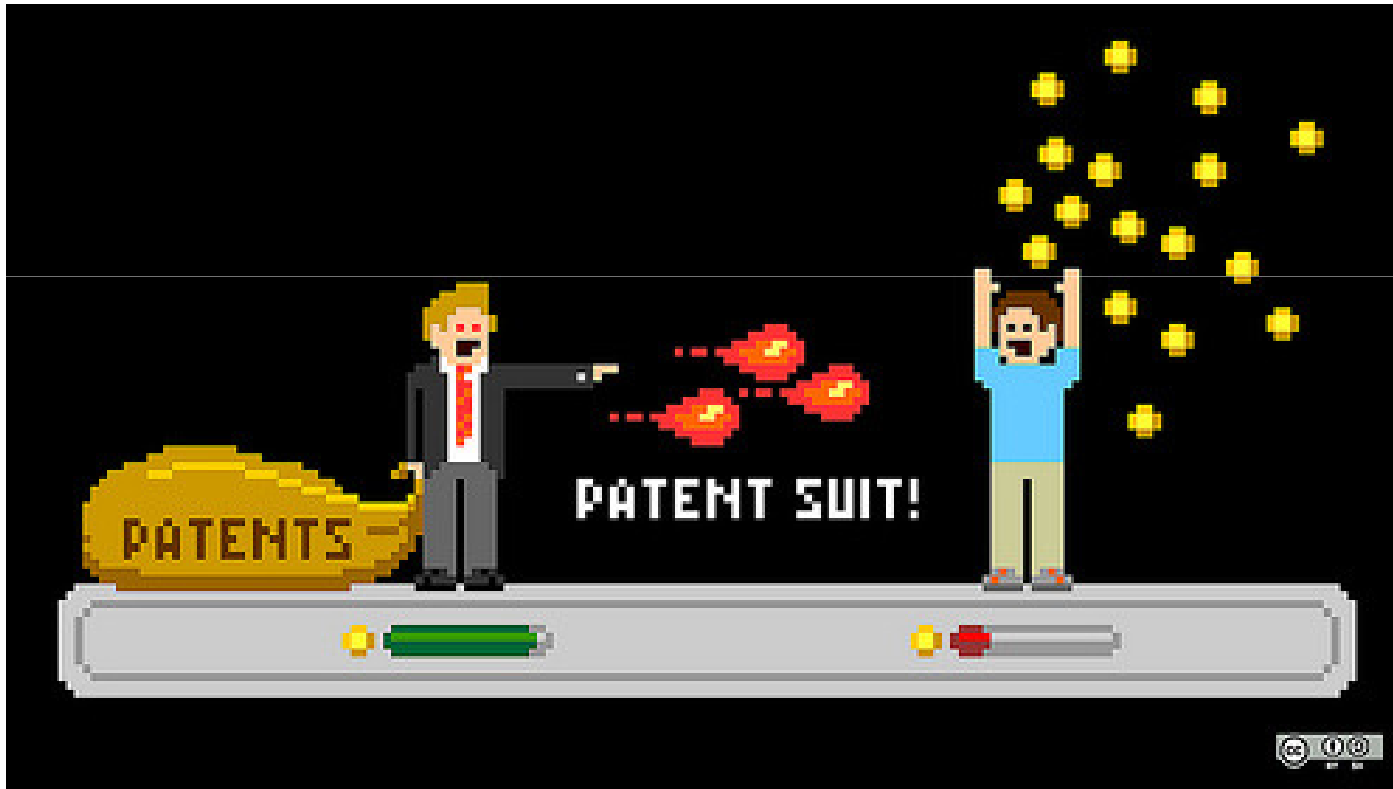
Poznań/Warsaw, Poland

# Defining the problem

- vulnerable markets
- patent infringement suits
- threats of patent law suits
- costs of litigation / costs of settlements
- stifling innovation

# Patent Wars

The huge societal costs of NPE software patent lawsuits\_Created by Libby Levi for opensource



# Patent Wars

- reasons for patent wars
- possible solutions to the problem

# Reasons

- nature of technologies
- multiple holders / multiple rights
- patent thickets
- low patentability threshold

# Technologies



Samsung-vs-Apple\_source - wikimedia commons\_author - Nikorogo

# Technologies

- protected by many IP rights
- multiple rights / multiple holders
- impossibility of assessing their status

# Examples from the ITC markets

## **2G technology**

- 4000 patents around the world

## **3G technology**

- 8000 patents around the world



# Examples from the ITC market

## **MPEG-2, MPEG-4**

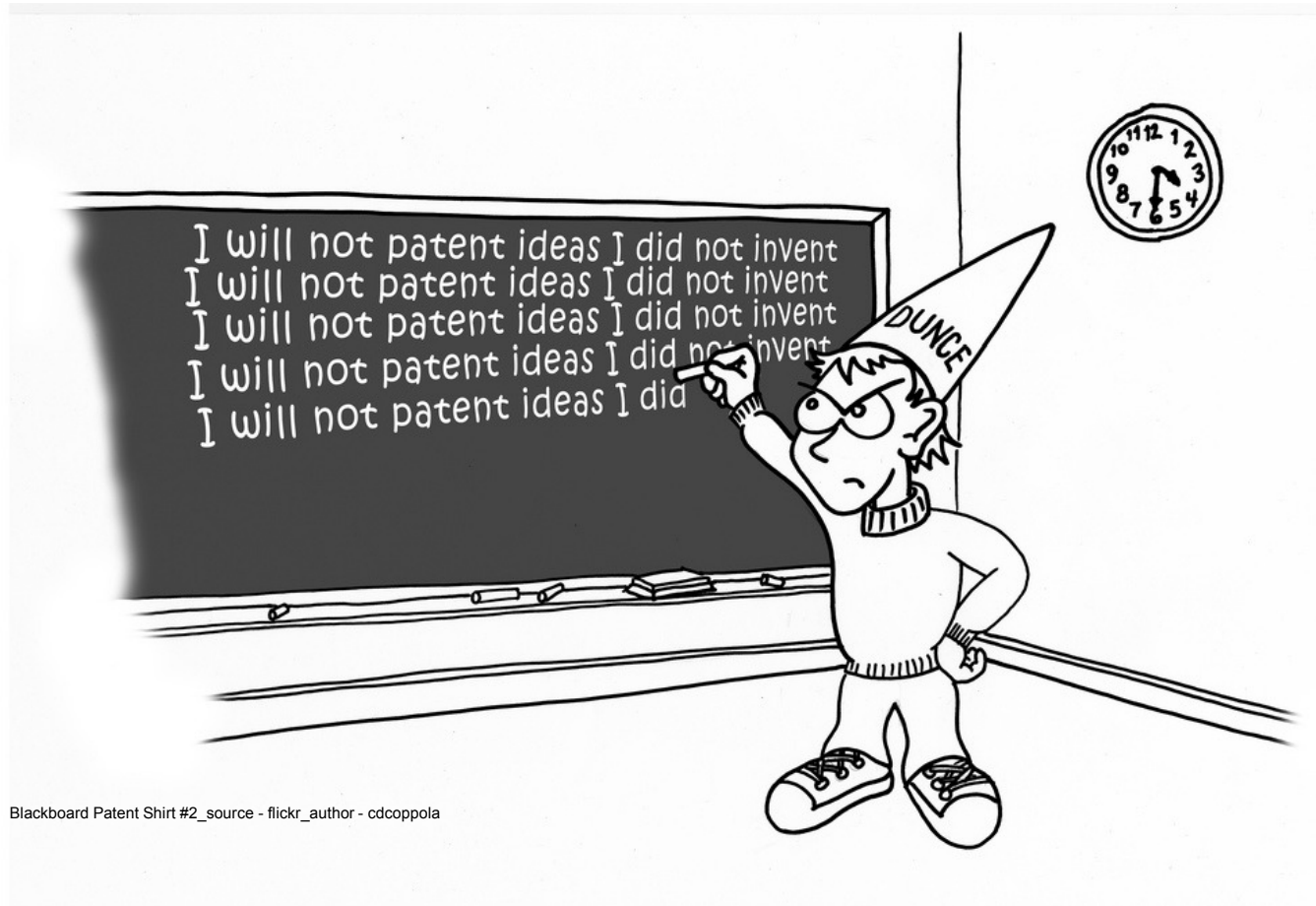
- from 5 to 26 licensors

## **DVD / Blu-ray**

- from 4 to 10 licensors

## **LED lights**

# Conducting Patent Searches



Blackboard Patent Shirt #2\_source - flickr\_author - cdcoppola

# Conducting Patent Searches

- number of patents / patent applications
- hidden patent applications
- multiple jurisdictions involved
- high costs

# Patent Thickets



Image source: [www.mineaction.org/downloads/Mine field Lebanon 1 Nov 02.jpg](http://www.mineaction.org/downloads/Minefield%20Lebanon%201%20Nov%2002.jpg)

# Patent Thickets

- large numbers of patents granted
- costs of desinging around
- design freedom restricted

# Solutions

- cross-licenses
- patent clearing houses
- patent pooling arrangements
- other legal solutions

# Patent Pools

- one-stop shopping
- avoiding litigation
- reducing transaction costs
- avoiding royalty stacking

# Players on the Patent Market

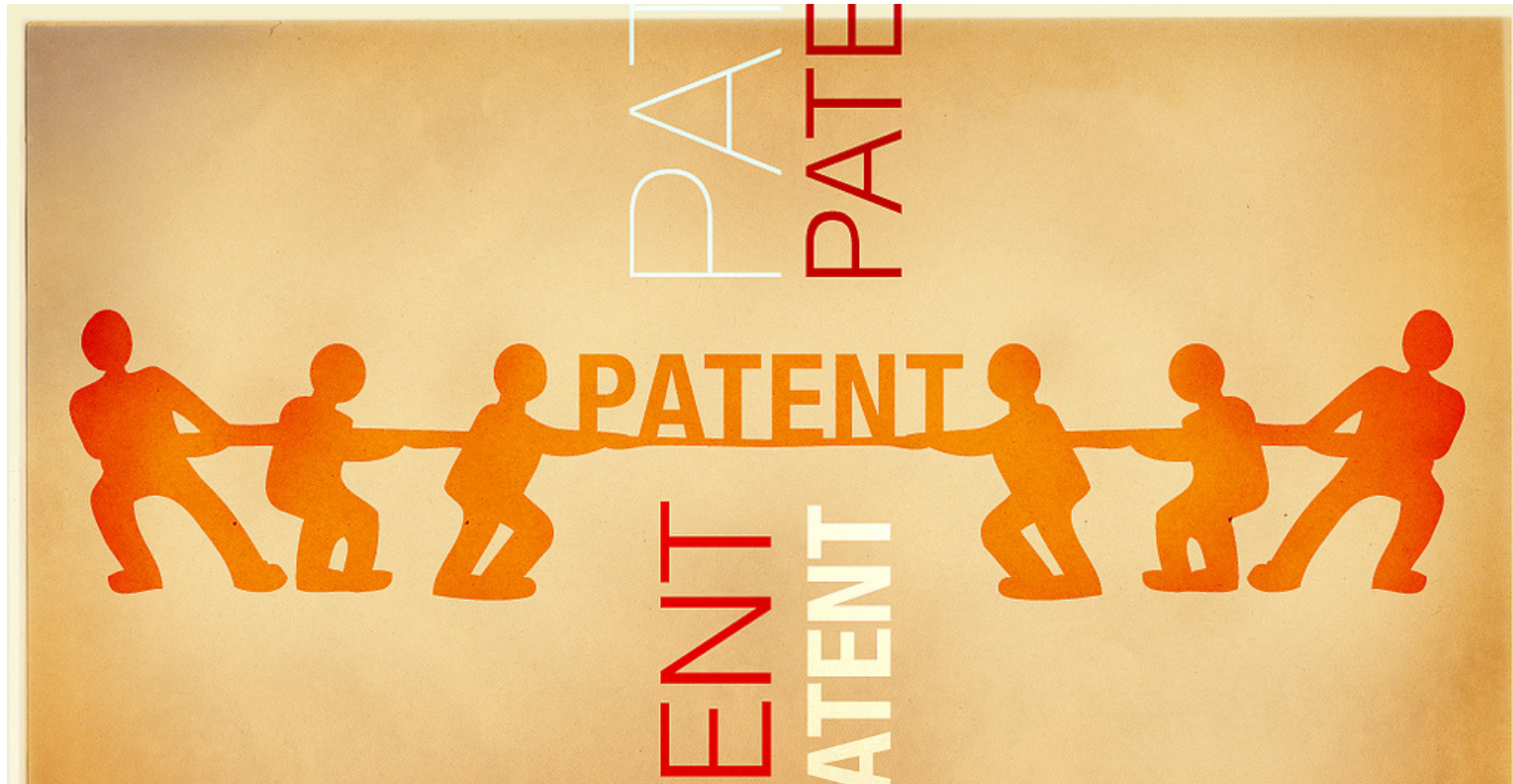
- patentees active on technology and product markets
- patentees active solely on technology market
- non-practising patent entities (patent sharks, patent trolls)



# Non-practising entities

- not involved in research and development
- not involved in production
- involved in threats of litigation
- involved in costly litigation

# Searching for Legal Solutions



Speaking of software patents\_source - flickr\_author - opensource.com\_Created by Jessica Duensing for opensource

# Searching for Legal Solutions

- antitrust / competition law
- injunctive relief / modifying remedies regime
- patent law reform

# Antitrust / Competition Law

## FRAND Licensing

- open / non-exclusive licenses
- fair and reasonable licensing terms
- non-discriminatory treatment

# Injunctive Relief

- US and EU approaches to granting injunctive relief
- E-Bay vs EU IP Enforcement Directive
- granting injunctive relief in standardization context (*standard essential patents*)

# Injunctive Relief

## Asian markets

- China
- South Korea

## European countries

- Netherlands
- Germany

# Patent Law Reform

- patentability criteria
- introducing compulsory licenses
- flexible remedies



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INNOVATIVE THINKING | GLOBAL PERSPECTIVE

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