

Patent Attacks Against Open Source Intensify!

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We previously [reported](#) on how popular open source has been under attack from patent assertion entities. The attacks continue. The GNOME Foundation recently [acknowledged](#) that it was sued for patent infringement by Rothschild Patent Imaging LLC. The allegedly infringing product is [Shotwell](#), a free and open source personal photo manager. Neil McGovern, Executive Director for the GNOME Foundation says “We have retained legal counsel and intend to vigorously defend against this baseless suit.” The [suit](#) alleges infringement of a single patent 9,936,086 titled “Wireless Image Distribution System and Method.”

This suit is noteworthy in that it is not targeted at users of the open source product, but rather the entity that oversees the development. In the prior lawsuits we reported, the targets were typically companies using the open source.

One of the potentially interesting issues that could be addressed if the case goes the distance is the request for injunctive relief. Rothschild seeks as part of its relief: “an Order Enjoining Defendant, its agents, officers, servants, employees, attorneys, and all persons in active concert or participation with Defendant who receive notice of the order from further infringement of United States Patent No. 9,936,086.” Shotwell is licensed under GNU Lesser General Public License version 2.1 (LGPL). This license permits licensees to copy and redistribute Shotwell to others. If somehow Rothschild obtains an injunction, will it apply just to the GNOME Foundation or downstream users as well? One of the novel underlying legal questions that would need to be addressed is whether licensees who redistribute an open source program are “in active concert or participation with Defendant.”

Additionally, the LGPL license includes another patent provision that could become relevant. It states: “If, as a consequence of a court judgment or allegation of patent infringement or for any other reason (not limited to patent issues), conditions are imposed on you (whether by court order, agreement or otherwise) that contradict the conditions of this License, they do not excuse you from the conditions of this License. If you cannot distribute so as to satisfy simultaneously your obligations under this License and any other pertinent obligations, then as a consequence you may not distribute the Library at all. For example, if a patent license would not permit royalty-free redistribution of the Library by all those who receive copies directly or indirectly through you, then the only way you could satisfy both it and this License would be to refrain entirely from distribution of the Library.”

Should users of Shotwell be concerned? That remains to be seen. The typical response to most

patent cases these days is for the defendant to file an IPR requesting the patent office to invalidate the patent. If that happens here and us successful, then the concerns will be moot. If not filed or not successful, it would be prudent for Shotwell users to seek advice of counsel.

Stay tuned for more updates.

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