

OIN Will Promote Linux Innovation, but Raises Issues

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Open Invention Network (OIN) was formed to defend the Linux community from patent infringement cases. But the accumulation of patents only partly addresses the needs of the community.

NEWS ANALYSIS

Event

On 10 November 2005, OIN was launched. Funded by five technology suppliers — IBM, Novell, Philips, Red Hat and Sony — the company's mission is to acquire patents and offer them royalty-free to promote Linux and spur innovation. Its CEO, Jerry Rosenthal, was formerly an IBM vice president specializing in intellectual property (IP) licensing.

Analysis

Software patents pose the single largest threat to the open-source software model. Though they protect their owners' IP, they can also create legal barriers to many open-source efforts. For example, as Linux and Windows edge onto one another's turf, the Linux community will have few defenses against the power of Microsoft, if the software giant should seek to claim royalties from the use of allegedly misappropriated IP.

A company like OIN that can uphold a strong patent portfolio will create a counter-offensive against potential patent infringement claims. OIN expects to accumulate patents by purchase, auction or donation. It will contractually offer royalty-free usage of its patents to technology suppliers for use in their own products (as long as the patent user makes no future patent infringement claim against Linux and associated software). We believe this collaborative environment is likely to free up the flow of technology somewhat, by reducing fears of lawsuits from patent claims.

However, the creation of OIN does not address an issue of great concern to corporate users: If an enterprise or a community of open-source software users is sued for using allegedly misappropriated code in a product, the user must possess an indemnification contract asserting a vendor's legal responsibility to defend the user against such infringement — or risk being subjected to the costs of defending against the legal action.

Recommendations: To succeed, OIN must do more than accumulate a large number of patents. The company must also:

- Clearly and publicly articulate a sustainable, scalable, long-term financial business model.
- Show how it will attract future investors. Though the initial group includes investors from the consumer market, it has failed to attract Hewlett-Packard, Intel, AMD, Dell, Sun Microsystems, Fujitsu and Unisys, among others.
- Disclose the specific terms and conditions to obtain royalty-free usage rights to patents.
- Have in place a methodology and qualified resources for scrutinizing, assessing and acquiring a critical mass of meaningful patents.
- Clarify how it will differentiate itself from the Open Source Development Labs (OSDL) patents common project (which is also reaching out to patent holders, but without mandating an acquisition policy). OSDL and OIN might benefit from a merger or cross-collaboration.

Analytical Sources: George Weiss and John Enck, Gartner Research

Recommended Reading and Related Research

- "SCO's Suit Against IBM: An Update and Recommendations" — Although Linux users are not being directly challenged in SCO's legal action against IBM, they face some long-term risk and should seek to indemnify themselves. **By George Weiss**
- "Hype Cycle for Open-Source Software,2005" — Open-source software is increasingly penetrating mainstream IT organizations, particularly through the infrastructure and networking segments. **By Mark Driver and others**

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