

**The Patent Busting Project**  
An EFF Initiative To Protect Innovation and Free Expression

**I. The Problem**

Every year numerous illegitimate patent applications make their way through the United States patent examination process without adequate review.<sup>1</sup> The problem is particularly acute in the software and Internet fields where the history of prior inventions (often called “prior art”) is widely distributed and poorly documented. As a result, we have seen patents asserted on such simple technologies as:

- One-click online shopping<sup>2</sup>
- Online shopping carts<sup>3</sup>
- The hyperlink<sup>4</sup>
- Video streaming<sup>5</sup>
- Internationalizing domain names<sup>6</sup>
- Pop-up windows<sup>7</sup>
- Targeted banner ads<sup>8</sup>
- Paying with a credit card online<sup>9</sup>

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<sup>1</sup> < <http://www.ftc.gov/opa/2003/10/cpreport.htm>>;

<<http://www4.nationalacademies.org/news.nsf/isbn/0309089107?OpenDocument>>

<sup>2</sup> U.S. Patent No. 5,960,411. <<http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/srchnum.htm&r=1&f=G&l=50&s1=5,960,411.WKU.&OS=PN/5,960,411&RS=PN/5,960,411>>

<sup>3</sup> U.S. Patent No. 5,715,314. <<http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/srchnum.htm&r=1&f=G&l=50&s1=5,715,314.WKU.&OS=PN/5,715,314&RS=PN/5,715,314>>

<sup>4</sup> U.S. Patent No. 4,873,662. <<http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/srchnum.htm&r=1&f=G&l=50&s1=4,873,662.WKU.&OS=PN/4,873,662&RS=PN/4,873,662>>

<sup>5</sup> U.S. Patent No. 5,132,992. <<http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/srchnum.htm&r=1&f=G&l=50&s1=5,132,992.WKU.&OS=PN/5,132,992&RS=PN/5,132,992>>

<sup>6</sup> U.S. Patent No. 6,182,148. <<http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/srchnum.htm&r=1&f=G&l=50&s1=6,182,148.WKU.&OS=PN/6,182,148&RS=PN/6,182,148>>

<sup>7</sup> U.S. Patent No. 6,389,458. <<http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/srchnum.htm&r=1&f=G&l=50&s1=6,389,458.WKU.&OS=PN/6,389,458&RS=PN/6,389,458>>

<sup>8</sup> U.S. Patent No. 6,026,368. <<http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/srchnum.htm&r=1&f=G&l=50&s1=6,026,368.WKU.&OS=PN/6,026,368&RS=PN/6,026,368>>

<sup>9</sup> U.S. Patent No. 6,289,319. <<http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/srchnum.htm&r=1&f=G&l=50&s1=6,289,319.WKU.&OS=PN/6,289,319&RS=PN/6,289,319>>

- Framed browsing;<sup>10</sup> and
- Affiliate linking.<sup>11</sup>

## II. The Harm

The harm these patents cause the public is profound.

Unlike most technologies, software and the Internet have attracted a vast number of small business, non-profit, and individual users – each of whom has adopted and built upon these resources as part of their daily interaction with computers and the online world. From open source programming to online journaling to political campaigning, the average citizen is using new technology online and on her desktop as often as any traditional company.

With this increased visibility, however, comes increased vulnerability. Previously, patent holders had only targeted competing companies. These companies have established legal departments and outside counsel and are thus able to defend against illegitimate patent threats. Now some patent holders have begun to set their sights on the new class of technology users—small organizations and individuals who cannot afford to retain lawyers. Faced with million-dollar legal demands, they have no choice but to capitulate and pay license fees – fees that often fund more threat letters and lawsuits. And because these patents have become cheaper and easier to obtain, the patentee's costs can be spread out quickly amongst the many new defendants. Our patent system has historically relied on the resources of major corporate players to defeat bad patents; now it leaves these new defendants with few if any options to defend themselves.

Illegitimate patents can also threaten free expression. More and more people are using software and Internet technology to express themselves online. Website and blogging tools are increasingly popular. Video and audio streaming technology is ubiquitous. E-mail and Instant Messaging have reached users of all ages. Yet because patents can be anywhere and everywhere in these technologies, the average user has no way of knowing whether his or her tools are subject to legal threats. Patent owners who claim control over these means of community discourse can threaten anyone who uses them, even for personal non-commercial purposes. We lose much if we allow overreaching patent claims to reduce the tremendous benefits that software and technology bring to freedom of expression.

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<sup>10</sup> U.S. Patent Nos. 5,933,841 <<http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/srchnum.htm&r=1&f=G&l=50&s1=5,933,841.WKU.&OS=PN/5,933,841&RS=PN/5,933,841>> & 6,442,574 <<http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/srchnum.htm&r=1&f=G&l=50&s1=6,442,574.WKU.&OS=PN/6,442,574&RS=PN/6,442,574>>.

<sup>11</sup> U.S. Patent No. 6,029,141 <<http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/srchnum.htm&r=1&f=G&l=50&s1=6,029,141.WKU.&OS=PN/6,029,141&RS=PN/6,029,141>>.

### III. The Project

So how do we confront these problems? Both the Federal Trade Commission and National Academy of Sciences have issued a series of recommendations for reforming the patent system,<sup>12</sup> each of which provide a useful start. However, there is no guarantee that these reforms will be adopted or that they will be considered on any specific timeline. To help fill this gap, EFF is launching a Patent Busting Project to take on illegitimate patents that suppress non-commercial and small business innovation or limit free expression online. The Project has two components:

#### A. Documenting the Damage

In the coming months, EFF plans to launch various technical efforts to document the harm that these patents are causing to the public interest. The efforts will include:

- (1) Identifying the worst offending patents;
- (2) Documenting the prior art that shows their invalidity; and
- (3) Chronicling the negative impact they have had on online publishers and innovators.

EFF plans to explore numerous approaches to achieving these goals, including inviting contributions from the public; building on the successful information-gathering and public education of the Chilling Effects Clearinghouse;<sup>13</sup> and collaborating with organizations such as the Internet Archive,<sup>14</sup> the Public Patent Foundation,<sup>15</sup> and various technology law school clinics around the country.

#### B. Challenging The Patents

Once it has identified some of the worst offenders, EFF will begin filing challenges to each in the form of a “re-examination request” to the U.S. Patent and Trademark Office. These requests create a forum to affirmatively invalidate patents rather than forcing technology users to await the threat of suit. Under this procedure, EFF can choose particularly egregious patents, submit the prior art it has collected, and argue that the patent should be revoked. EFF will collaborate with members of the software and Internet communities as well as legal clinics and pro bono cooperating attorneys to help in these efforts.

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<sup>12</sup> < <http://www.ftc.gov/opa/2003/10/cpreport.htm>>;

<<http://www4.nationalacademies.org/news.nsf/isbn/0309089107?OpenDocument>>.

<sup>13</sup> <http://www.chillingeffects.org/patent/>

<sup>14</sup> <http://www.archive.org>

<sup>15</sup> <http://www.pubpat.org>

#### **IV. Additional Resources and Contact Information**

For more information on the project or to make a donation, contact:

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#### **Additional Resources:**

Press Release: EFF Launches Patent Busting Project  
<[link to press release](#)>

Chilling Effects Clearinghouse: Patents  
< <http://www.chillingeffects.org/patent/>>

FTC Report on Patent Reform  
< <http://www.ftc.gov/opa/2003/10/cpreport.htm>>

NAS Report on Patent Reform  
<[link to NAS](#)>