

**Contact:** Karen Duffin  
Bite Communications for OSRM  
t: 415-365-0459  
e: karen.duffin@bitepr.com

**European Patent Process Under Review in New Study**  
**Sponsored by Open Source Risk Management**  
*Launched at European Software Patent Conference;*  
*OSRM Says Legal Costs Could More Than Double if EU Allows Software Patents*

BRUSSELS, Belgium, November 8, 2004—Open Source Risk Management (OSRM), the only vendor-neutral provider of Free and Open Source Software (FOSS) risk mitigation and management solutions, today announced the launching of a study designed to assess whether current European laws regarding technology patents achieve their stated objective of recognizing and protecting true innovation.

Through this "Patents and Prior Innovations Project," volunteers in the FOSS community will be invited to help write a history of software innovation, focused on tracing the technical history of patents recently identified as relevant to the City of Munich's Linux migration. The work will be done on the [Grokline website](#) under a [Creative Commons license](#), with the intention of presenting the resulting report to the European Parliament.

"This project is being launched at a critical time - just as Europe considers whether to align its patent system closer to that of the United States - a system that has a poor reputation within the software community," said Brian Kahin, Visiting Professor at the University of Michigan, formerly Senior Policy Analyst at the White House Office of Science and Technology Policy. "Assessing whether patent history actually reflects intellectual history is an important test of the value of the patent system as well as of individual patents. Software is unique in that it may be easier and certainly more satisfying to create than to document. This means that it can be difficult and costly to determine just who did what first - which is what patents are supposed to do. In many cases, the software community has stepped forward with prior art that has helped defeat aggressive use of particular patents. This project is the first systematic undertaking to examine and evaluate the patent threat over a larger area - in this case, a major platform on which billions of dollars in investments are riding.

"A patent system that misidentifies true innovators and fails to allow sufficient review by outside parties is an expensive one," said Daniel Egger, OSRM founder and chairman. "In the U.S., the average cost of patent litigation is about \$3 million per lawsuit. Under such a system, those to whom a patent legitimately belongs must go to court to claim their benefits and protection - a costly and unfair tax on those who produce beneficial innovations. OSRM estimates that as much as fifty percent of the cost of defending against software patents is due to patents that never should have been granted in the first place."

OSRM's "Patents and Prior Innovations Project" will be launched November 9, 2004, at an international software patent conference in Brussels, "Regulating Knowledge: Costs, Risks, and Models of Innovation," which will bring together academics, policy makers and business leaders to assess the global impact of software patents. The conference is timed to help educate European policy makers as the Parliament reconsiders whether to accept liberal European Patent

Office practice or to reassert the European Patent Convention's clause precluding computer program patents.

"Our primary intention with this project is to offer data and insight that we hope will help the European Union make an educated and prudent decision regarding software patents, and, specifically, to help prevent them from replicating mistakes made under the United States' patent system," continued Egger. "At the same time, we are building a collection of the technical community's knowledge of innovation in software development, which can be used as a resource for years to come by historians, legal scholars, patent researchers and others. We hope to arrive at a community-built resource rich with factual contributions that are credible and in the aggregate tell a compelling story. That story will be a history of true innovations in software."

### **Structure of OSRM Patent Project**

The specific focus of the project will be evaluating the "Munich list" of patents, one by one. Participants will contribute their knowledge of code, documents, books, articles, theses, conference reports, working papers, presentations, and memos, as well as personal recollections.

"Challenging and successfully debunking a single patent or a group of patents or even a majority of patents is not the point of this project," says Len Newman, attorney and software developer who has joined OSRM to head the project full-time. "The overarching research question is how patent law, as actually applied in recent years, has measured up to the real history of innovation in software. This is a question the Grokline community is uniquely capable of addressing."

More information about the project can be found on the Grokline [homepage](#)

### **Software Patent Conference: "Regulating Knowledge: Costs, Risks, and Models of Innovation"**

Sponsored by the Foundation for a Free Information Infrastructure ([FFII](#)), Maastricht Economic Research Institute on Innovation and Technology ([MERIT](#)), the Confédération Européenne des Associations de Petites et Moyennes Entreprises ([CEA-PME](#)), the [Open Society Institute](#), and [The Greens | European Free Alliance in the European Parliament](#), the conference will bring together economists, software professionals, and policy makers to assess the global impact of software patents. The first day will examine several important issues in depth. The second day of the conference will be held in the EU Parliament Building, with members of the European Parliament in attendance, and will focus on policy issues and context.

At the conference, U.S. patent law and Free and Open Source Software experts, including Bruce Perens (Open Source community leader and OSRM Director), Dan Ravicher (President and Executive Director of Public Patent Foundation), Len Newman (OSRM patent project director), and Brian Kahin will participate to offer their perspectives, based on experience with the U.S. patent system. Also in conjunction with the conference, Perens will release a white paper examining the issue of patents and computer industry standards, which can be found [here](#). Economists speaking in the Parliament include Luc Soete, Director, Maastricht Economic Research Institute on Innovation and Technology (MERIT), University of Maastricht, and Dietmar Harhoff, Director, Institute for Innovation Research, Technology Management and Entrepreneurship at the University of Munich. Additional details about the conference can be found [here](#).

## **OSRM's Patent Risk Mitigation Efforts**

As part of its mission of managing financial risks for users of Free and Open Source Software, OSRM works for reform of the current standards under which governments grant patents. OSRM believes the problem of non-innovative patents extends far beyond the area of software and ultimately will need to be addressed through legislative changes. As such, OSRM seeks to direct efforts toward horizontal reform of the patent system.

In August, OSRM sponsored and released the results of the first-ever evaluation of potential patent infringement by the Linux kernel. Patent attorney Dan Ravicher conducted the study and found that no court-validated software patent is infringed by the Linux kernel, but that 283 issued but not yet court-validated software patents, if upheld as valid by the courts, could potentially be used to support patent claims against the Linux kernel. Ravicher's position paper sparked widespread public discussion and has been downloaded from OSRM's web site by the public over 10,000 times. The paper is available at this [link](#). In response to the findings brought to light by this seminal patent study, OSRM has expanded its risk mitigation and insurance offerings to cover patent issues.

## **About Open Source Risk Management**

Supported by Free and Open Source Software leaders as well as experts in patents and copyrights law, Open Source Risk Management (OSRM) is the industry's only vendor-neutral provider of risk mitigation, indemnification, and management services for enterprise Free and Open Source Software users. OSRM helps organizations assess potential legal risks and design risk-mitigation solutions based on a set of best practice protocols. Additionally, OSRM provides indemnification by underwriting copyright and patent coverage, through its affiliates, for the Linux kernel versions 2.4 and 2.6. Through its FOSS Legal Defense Center, OSRM also works in tandem with highly specialized software rights lawyers to offer coordinated legal defense services. For more information, please visit [osriskmanagement.com](http://osriskmanagement.com).