

La brevettazione del software

I sistemi di proprietà industriale offrono oggi in tutto il mondo opportunità vantaggiose di valorizzazione per le innovazioni nel settore dei programmi per computer.

I maggiori sviluppi in questo settore sono infatti spesso oggetto di brevettazione e concessi in licenza nonostante l'iter complesso necessario per la concessione e l'ostacolo costituito dalla comprensione a volte fuorviante dei criteri, limiti e vantaggi della protezione delle invenzioni implementate tramite computer conferita da titoli brevettuali.

Le domande di brevetto relative a programmi per computer hanno un tasso di crescita costante nell'ultimo decennio e rappresentano, fra quelle presentate all'Ufficio Europeo dei Brevetti, la percentuale più elevata fra tutte le aree tecniche. Inoltre, in seguito all'acquisizione di ingenti portafogli brevettuali da parte di industrie nel settore ICT, gli aspetti relativi allo status delle invenzioni implementate tramite computer sono prepotentemente tornati all'attenzione del grande pubblico.

Dal punto di vista strettamente legale, le invenzioni legate al software sono brevettabili, almeno in linea di principio, quando definiscono una soluzione tecnica ad un problema tecnico: un'invenzione possiede carattere tecnico quando l'effetto risultante non è limitato alla normale interazione fisica tra il programma (software) ed il computer (hardware) su cui lo stesso è eseguito. La materia rivendicata deve inoltre essere nuova, vale a dire non anticipata dallo stato dell'arte, possedere attività inventiva ed essere riproducibile da una persona esperta nel settore di appartenenza dell'invenzione.

La comprensione della particolare natura delle invenzioni implementate tramite computer rappresenta un fattore fondamentale nell'attuale contesto economico altamente competitivo e dinamico legato al settore ICT.

Eugenio Archontopoulos
earchontopoulos@epo.org
+1 202 643-2673



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La brevettazione del software

Eugenio Archontopoulos

Bologna
22 settembre 2011



European Patent Office

Ufficio Europeo dei Brevetti

Ufficio Europeo dei Brevetti

- Organizzazione internazionale intergovernativa
- Convenzione sul brevetto europeo
- 37 stati aderenti
- Procedura unificata
- 235000 domande di brevetto
- 59000 brevetti concessi

Fonti normative

- Convenzione di Parigi – 1883
- Trattato di cooperazione in materia di brevetti – 1970
- Convenzione sul Brevetto Europeo – 1973
- Accordo TRIPs – 1994
- Codice della proprietà industriale – 2005



Brevetto

- Ampia protezione
- Diritti esclusivi
- Divulgazione
- Durata massima 20 anni
- Iter lungo e complesso
- Criteri formali e sostanziali



Invenzione

Possono costituire oggetto di brevetto per invenzione le invenzioni, di ogni settore della tecnica, che sono nuove, che implicano un'attività inventiva e sono atte ad avere un'applicazione industriale



Esclusioni...

Non sono considerate come
invenzioni:

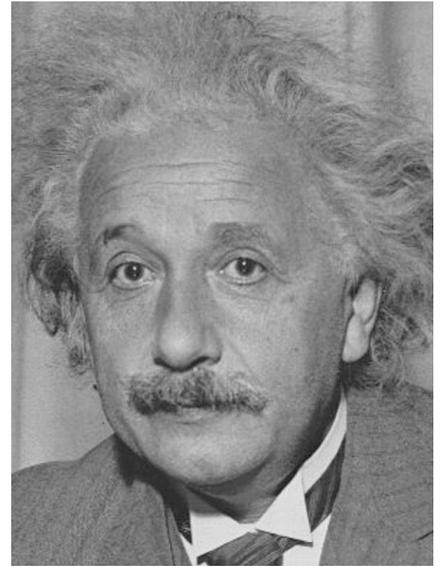
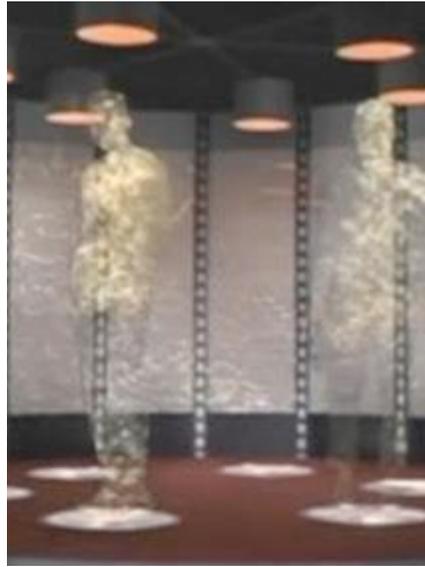
- a) scoperte, teorie scientifiche,
metodi matematici;
- b) piani, principi e metodi per
attività intellettuali, per gioco o
per attività commerciale,
programmi di elaboratore;
- c) presentazioni di informazioni



...in quanto tali

Le disposizioni escludono la brevettabilità di ciò che in esse è nominato solo nella misura in cui la domanda di brevetto o il brevetto concerne scoperte, teorie, piani, principi, metodi, programmi e presentazioni di informazioni considerati
in quanto tali





Novità – Sufficienza di divulgazione – Attività inventiva

Novità

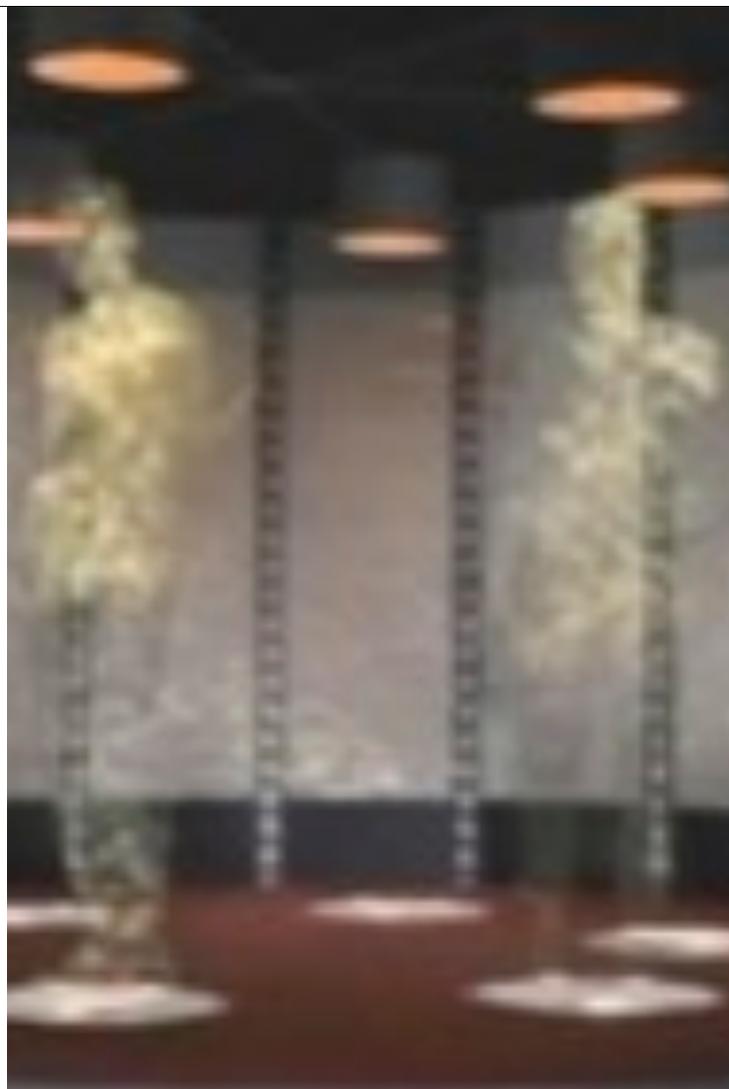
Un'invenzione è nuova se non è compresa nello stato della tecnica

Lo stato della tecnica è costituito da tutto ciò che è stato reso accessibile al pubblico prima della data del deposito della domanda di brevetto, mediante una descrizione scritta od orale, una utilizzazione o un qualsiasi altro mezzo



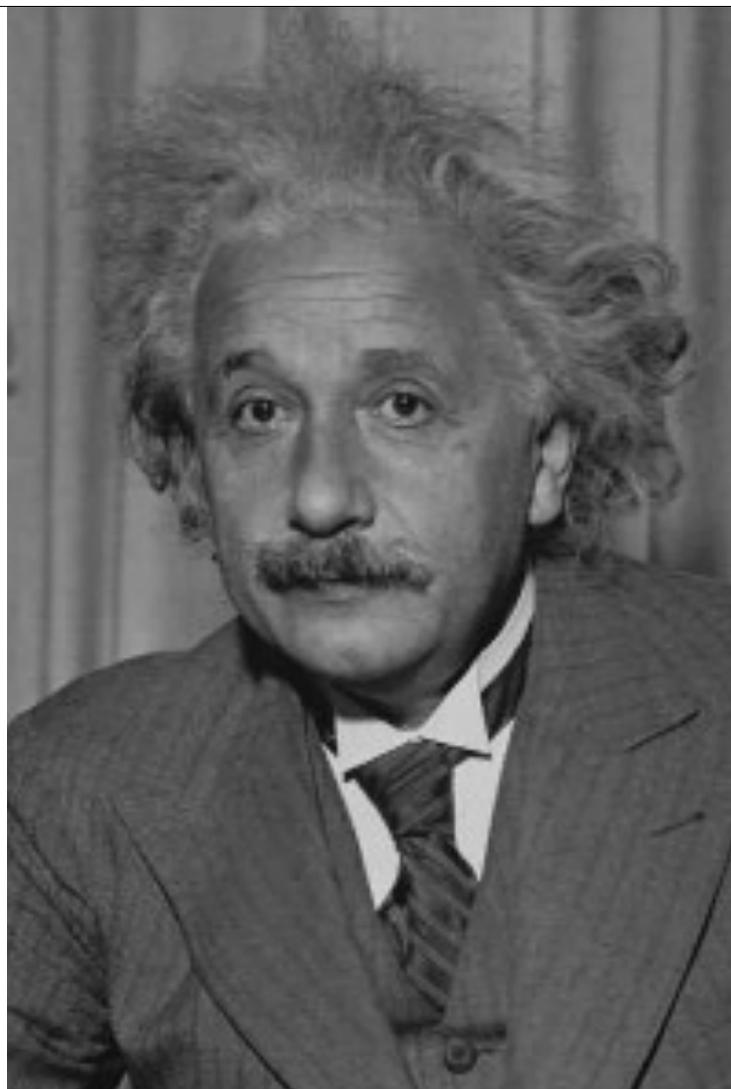
Sufficiente divulgazione

L'invenzione deve essere descritta in modo sufficientemente chiaro e completo perché ogni persona esperta del ramo possa attuarla



Attività inventiva

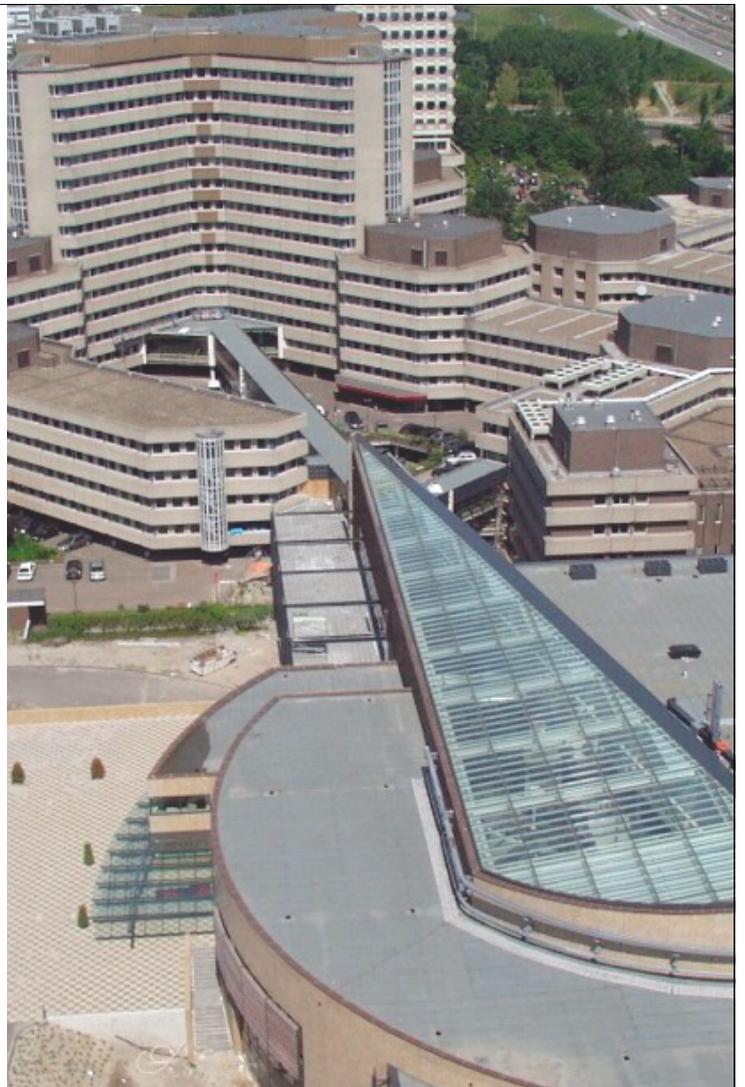
Un'invenzione è considerata come implicante un'attività inventiva se, per una persona esperta del ramo, essa non risulta in modo evidente dallo stato della tecnica.

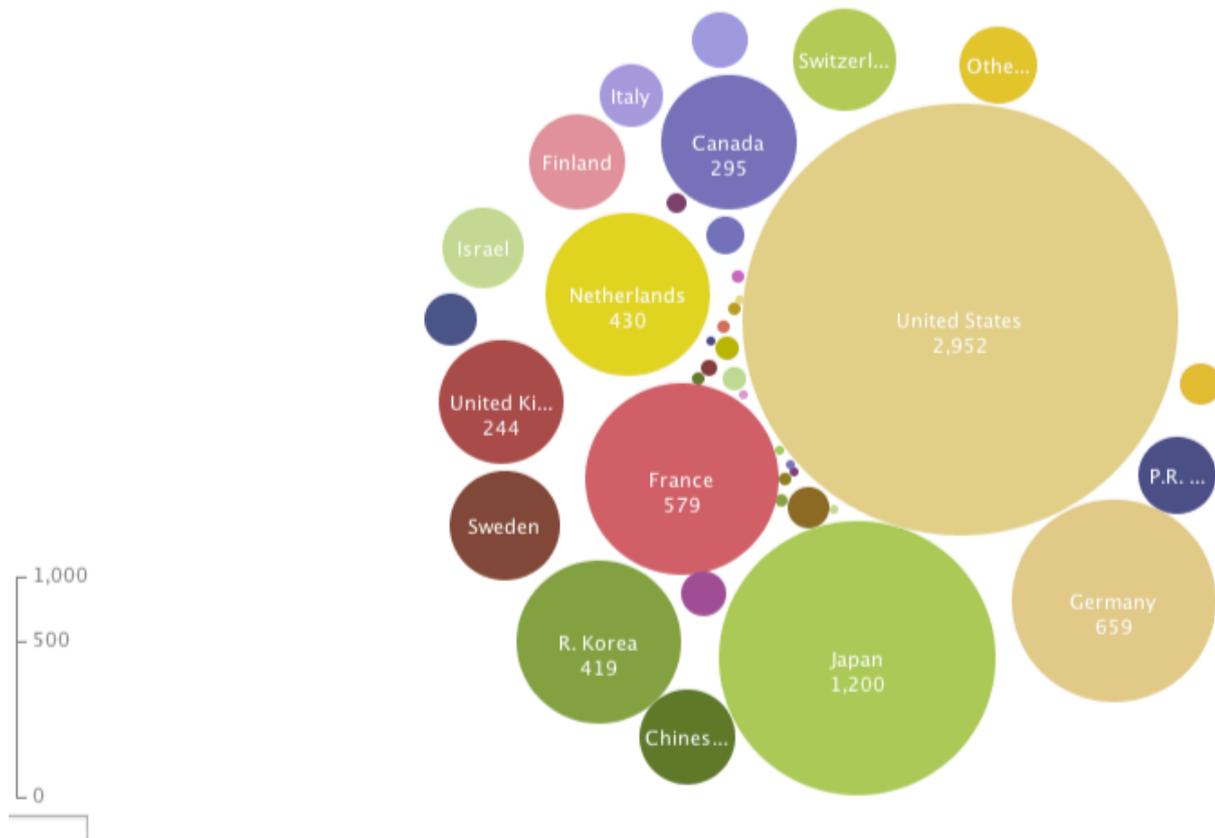


Invenzione	52 EPC	45 CPI
<hr/>		
Novità	54 EPC	46 CPI
<hr/>		
Sufficienza di divulgazione	83 EPC	51 CPI
<hr/>		
Attività inventiva	56 EPC	48 CPI

9200

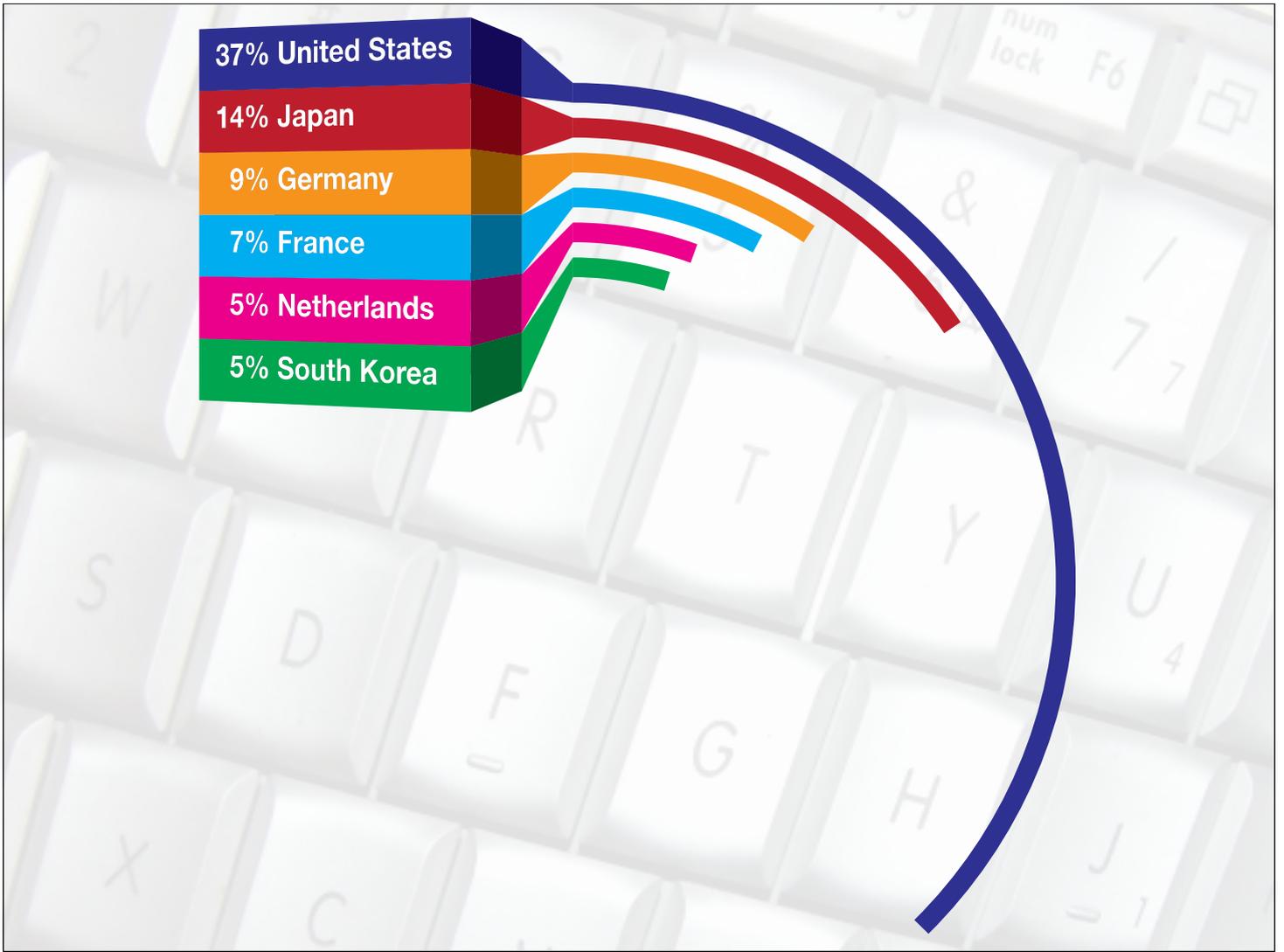
domande di brevetto per
invenzioni implementate
tramite computer

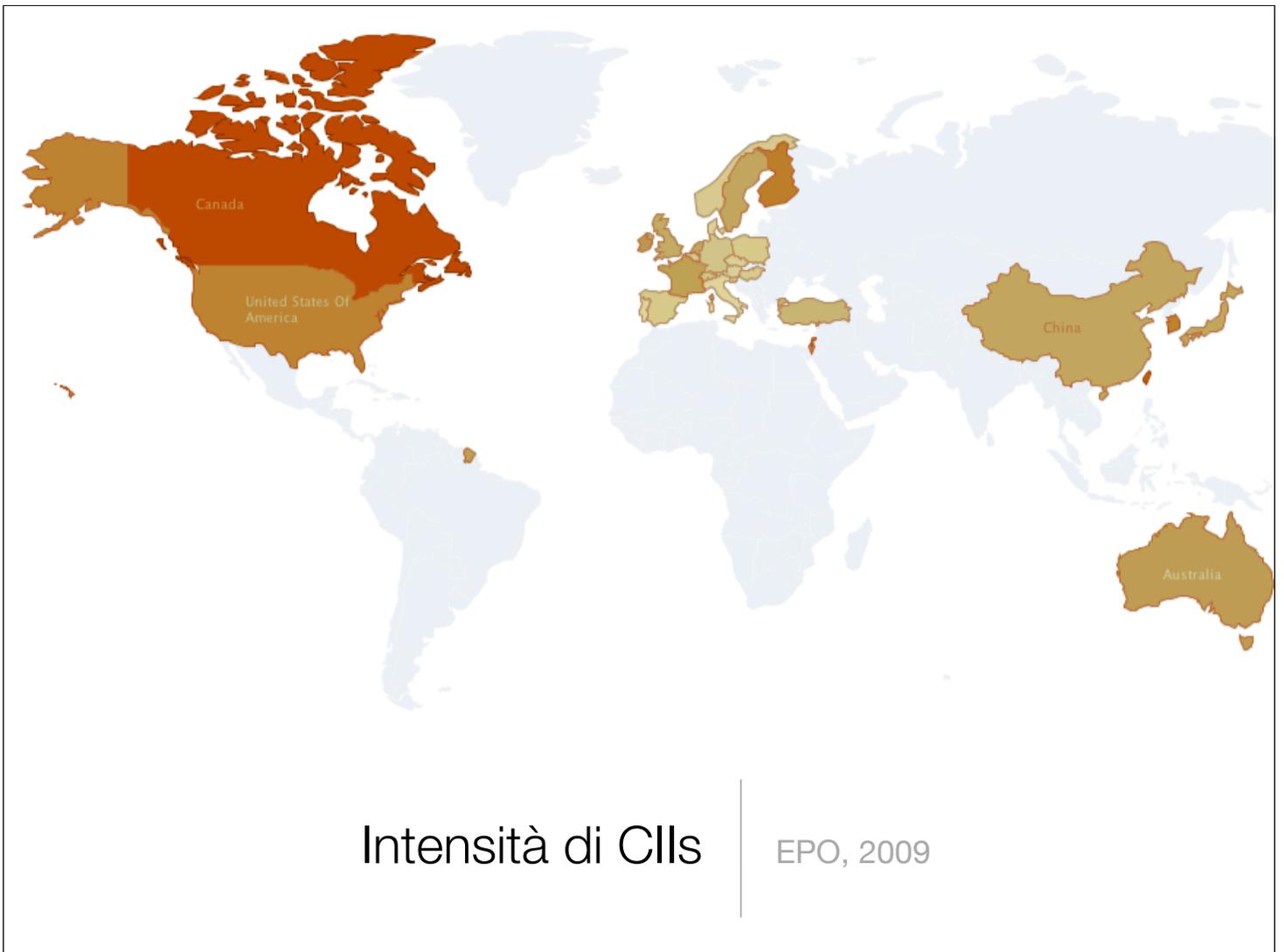




Provenienza delle domande

EPO, 2009





First Patent Is Issued for Software, Full Implications Are Not Yet Known

WASHINGTON, D.C.—The first patent for a software computer program has been issued by the Patent Office to Martin Gores, Applied Data Research, Inc. president. This represents the first patent since the well-known 1961 patent for the proposed "Method 104" designed to enable printing of computer programs.

Details of first patent appear on page 2.

This means patent marks "the new practical level," it has been observed that there was no way of working the prior art, as the proposed "Method 104" designed to enable printing of computer programs.

It appears possible that such a suit may develop as a result of the precedent set by the software patent.

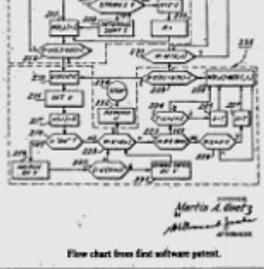
Below this, patents involved basic designs of actual hardware which law programs were able to do and which were never used to have built the system in operation.

7090 or User-Designed Codes Work on System

LOS ANGELES, Calif.—A new computer system was introduced here which, far from forbidding the user to change its programming, encourages him to do so. The IC-6000C, produced by Standard Computer Corp. is particularly for simulation and other educational institutions and comes with a register of different machine codes. These machine codes, which normally include those of the IBM 7090, 7094, and 1130 systems and a specialized Fortran system, are supported through a microprogramming system called Mainflow. The new Mainflow system allows other machine codes to be designed by the user to fit his own particular program.

Operating details of the IC-6000C appear on page 7.

science, linguistics, electrical engineering, etc., can create new computer systems as well and study their applicability to the particular type of problem they are considering. Changing the machine code from one machine to another takes less than a minute and can be done without any engineering support. It is expected that particular researchers will create machine code systems that intricately require one code and that as a result, they will get a higher efficiency for their own, particular types of operations.



Changes Under a Micro

The *Avions* for the system—called a fourth generation by the manufacturer—is such that researchers in management science can...

IBM Pushes T/S Service

WHITE PLAINS, N.Y.—IBM is offering a new time sharing service that is both cheaper and more flexible than its existing *Quadrant* service...

Cobol Is Still The Favorite

The results of a Computerworld research survey indicate that Cobol is still by far the favorite language with over...

Software Patent Raises Questions

WASHINGTON, D.C.—Whether computer programs are patentable has been in doubt for some years in the United States. They have been granted patents in Great Britain, but the official view of the Patent Office in Washington was not clearly that programs themselves were not patentable, but also that anything which was programable was not patentable.

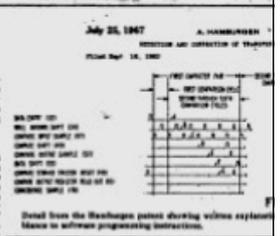
The Gores patent issued for an outlining sort allows tape units which can read forward only to be used. When outlining sorts were first introduced by S. T. Bell in 1942, it was believed that they were useful only in the case of tape units which could read backward. This made them controversially interesting, as most of the time units then in use read forward only. Typical of such tape units was the IBM 723 Control Data, and those IBM-723 tapes.

The Gores invention has the ability to use the style of tape units for the outlining sort and so allows this technique to be used with some of the then-standard systems. In addition, it was pointed out that there are certain cases where the sorting is essential to an input-output system and might make it more economical to use the Gores method than the IBM method, even when read-backward facilities were available. This particularly applies when the overall time is a major problem and where the tape is considered to be a considerable amount of time in changing direction.

Currently, the IBM 2460 models I and IV cost over 100,000 dollars, while the other models of the 2460 system take under 20,000 dollars to change direction.

Attorney's Triumph

The name of the patent suit was reported as a triumph for a Philadelphia attorney, Morton C. Jastin. Jastin (who prepared the patent) is well known as the opposing legal counsel in the famous *IBM v. International Business Machines Corp.* case.



GSA Urges Small Firms

WASHINGTON, D.C.—The prospects of an increased share of government money going to the smaller manufacturers of computers and computer peripherals because Congress has passed the Small Business Administration (SBA) again urged each manufacturer to offer their equipment through the standard GSA channel.

Navy Releases Phase 2

WASHINGTON, D.C.—The second phase of the U.S. Navy *Cobol* (Code Name) has been released by the Navy Programming Language Standards Group. These manuals, like those in the first phase, will not carry the language of the computer, but also the related program materials.

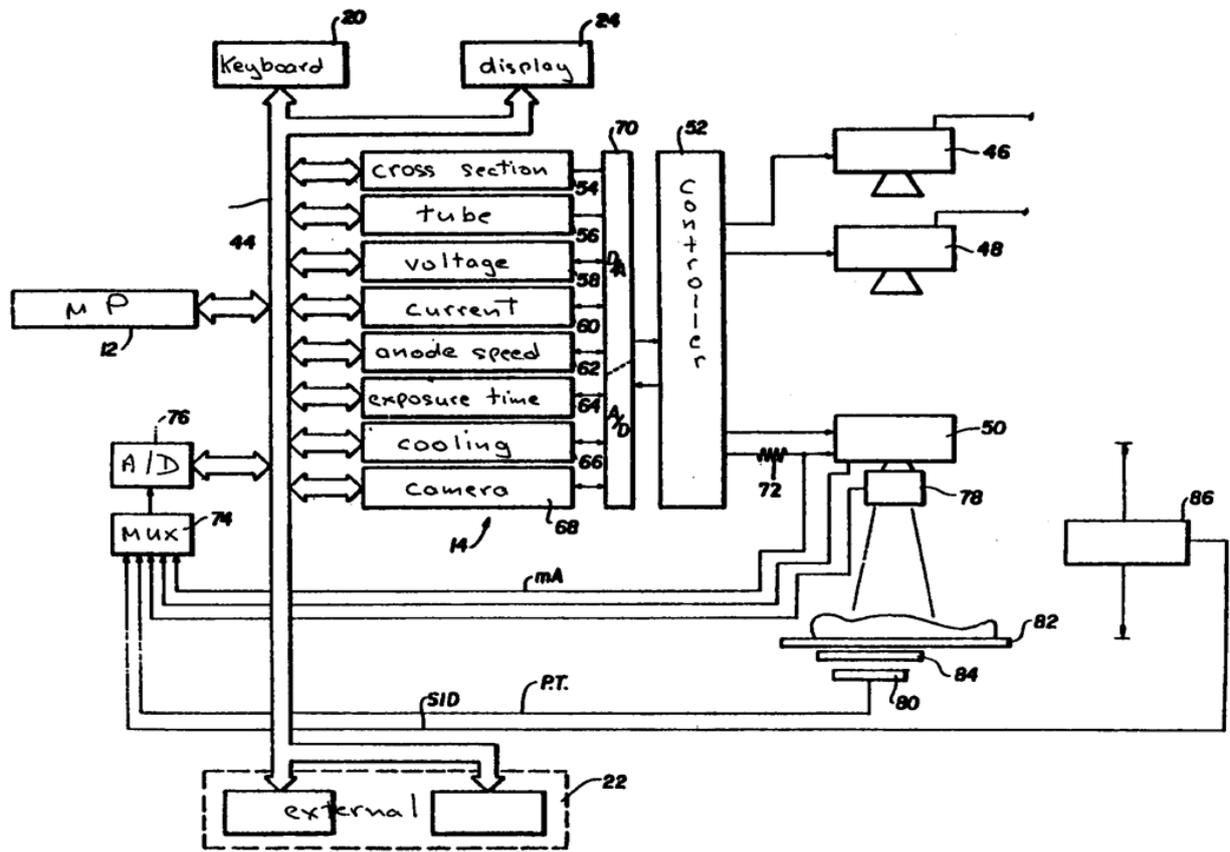
IBM Offers Fax

IBM offers Fax using IBM 2714 communications terminals, with a keyboard and a display terminal. A minimum monthly charge of \$100 covers use of the terminals of systems.

Primo brevetto software Computerworld, 19 giugno 1968

COMPUTERWORLD
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1968 June 19, 1968

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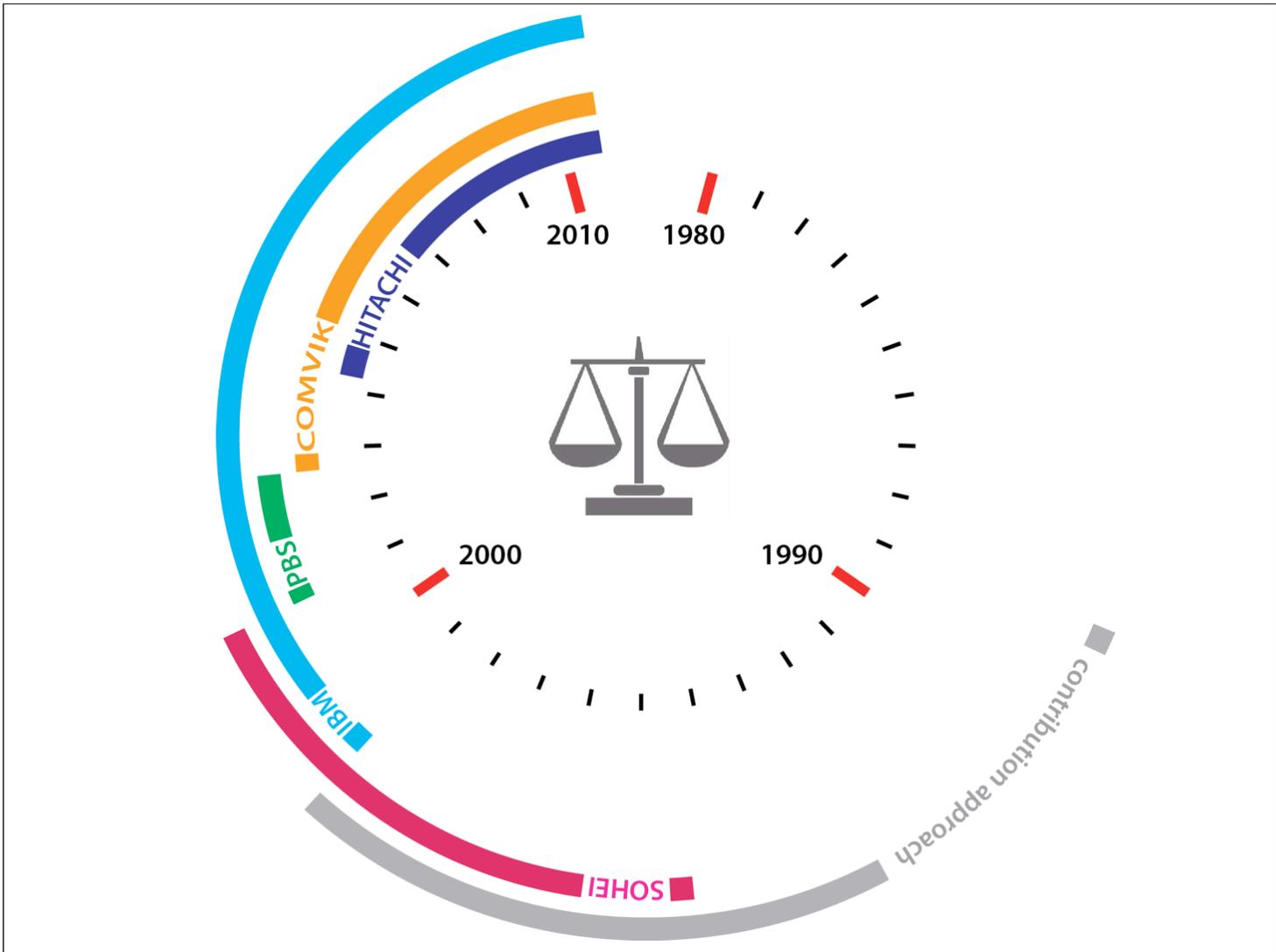
Dispositivo a raggi X

Koch & Sterzel, T26/86



Samsung all'IFA

5 settembre 2011



I tre pilastri

- Ulteriore effetto tecnico oltre quello implicito derivante fra la mera interazione fra hardware e software – T1173/97
- L'oggetto di un'invenzione non è escluso se possiede carattere tecnico – T258/03
- Attività inventiva conferita solamente dalle caratteristiche tecniche – T641/00



It may very well be that
the meaning of the term
“technical” or
“technical character”
is not particularly clear

Pension Benefits System



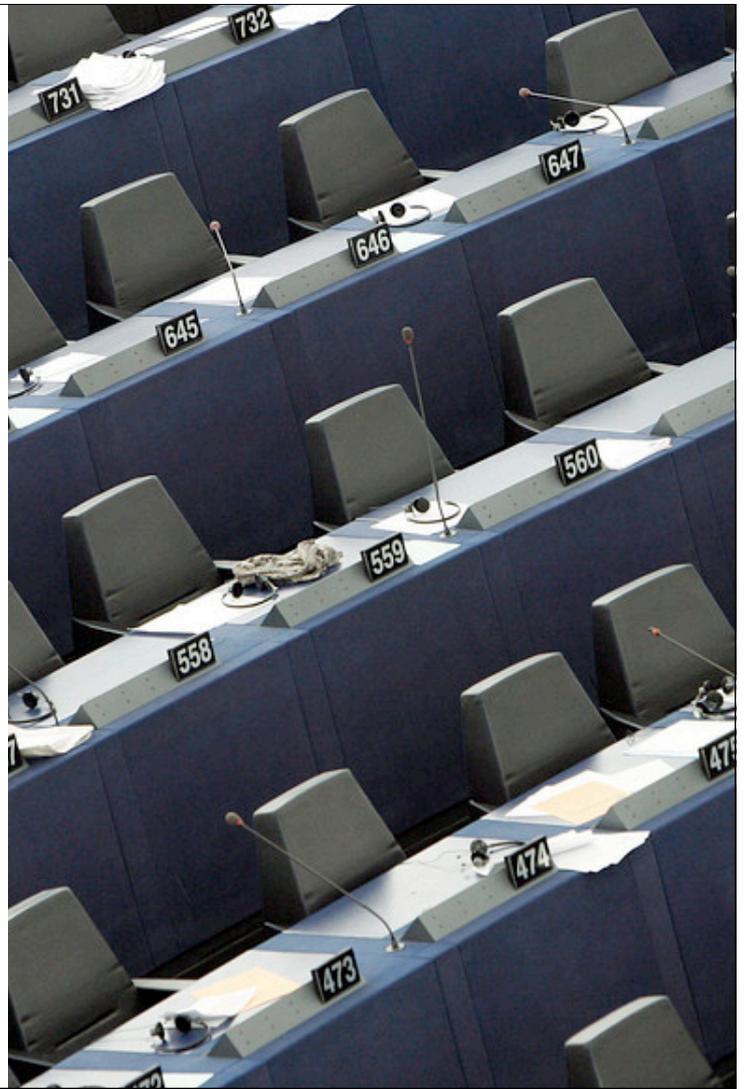
Questione di fondamentale
importanza: la definizione
dei limiti della brevettabilità
nel campo del software

Alison Brimelow



It is time for the legislator to take over

Corte d'Appello Allargata
dell'EPO, opinione G3/08





Brevetto comunitario – EPLA – Direttiva brevettabilità delle CII

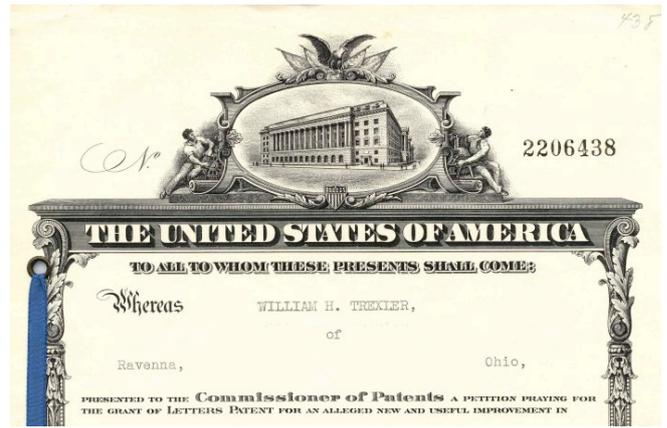
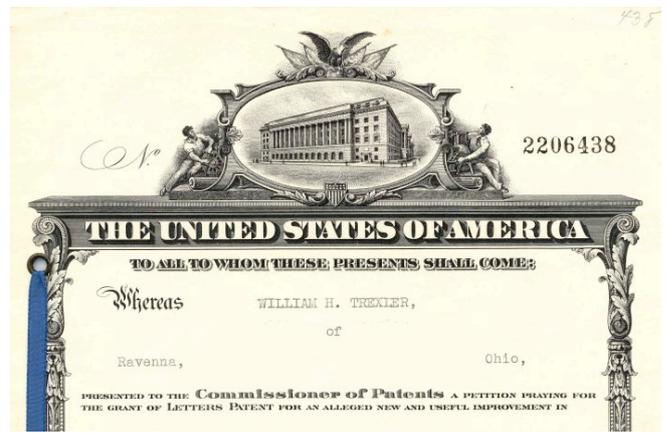


Bilski v. Kappos

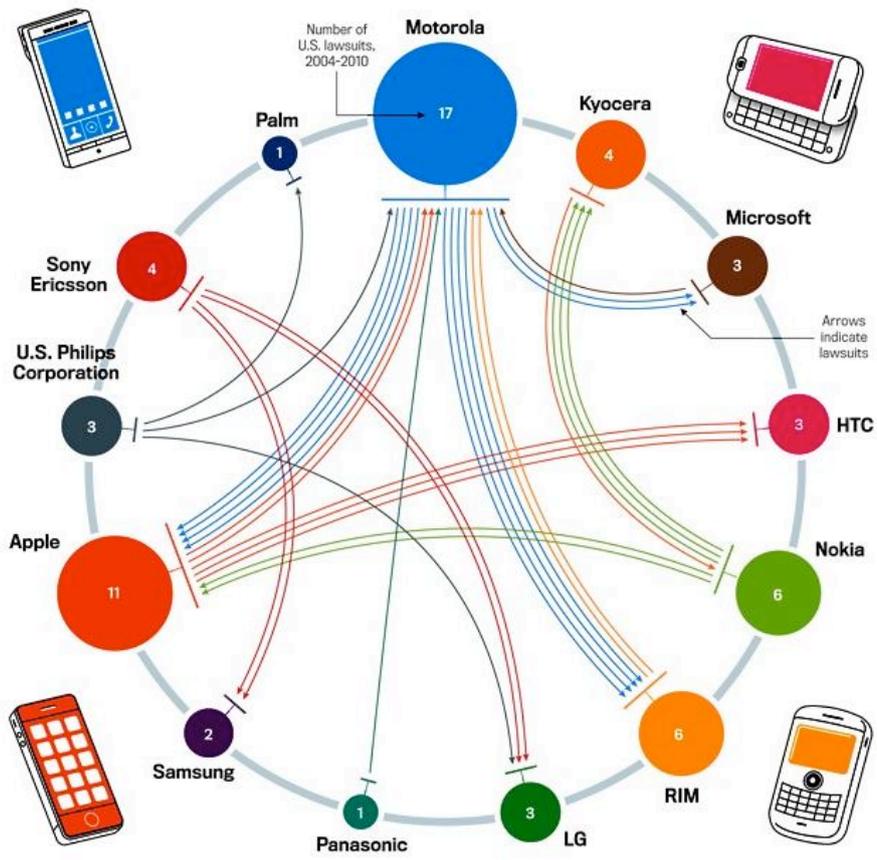


Brevettare è essenziale

non ci sono opzioni



510204.08 \$



Fonte: Newsweek

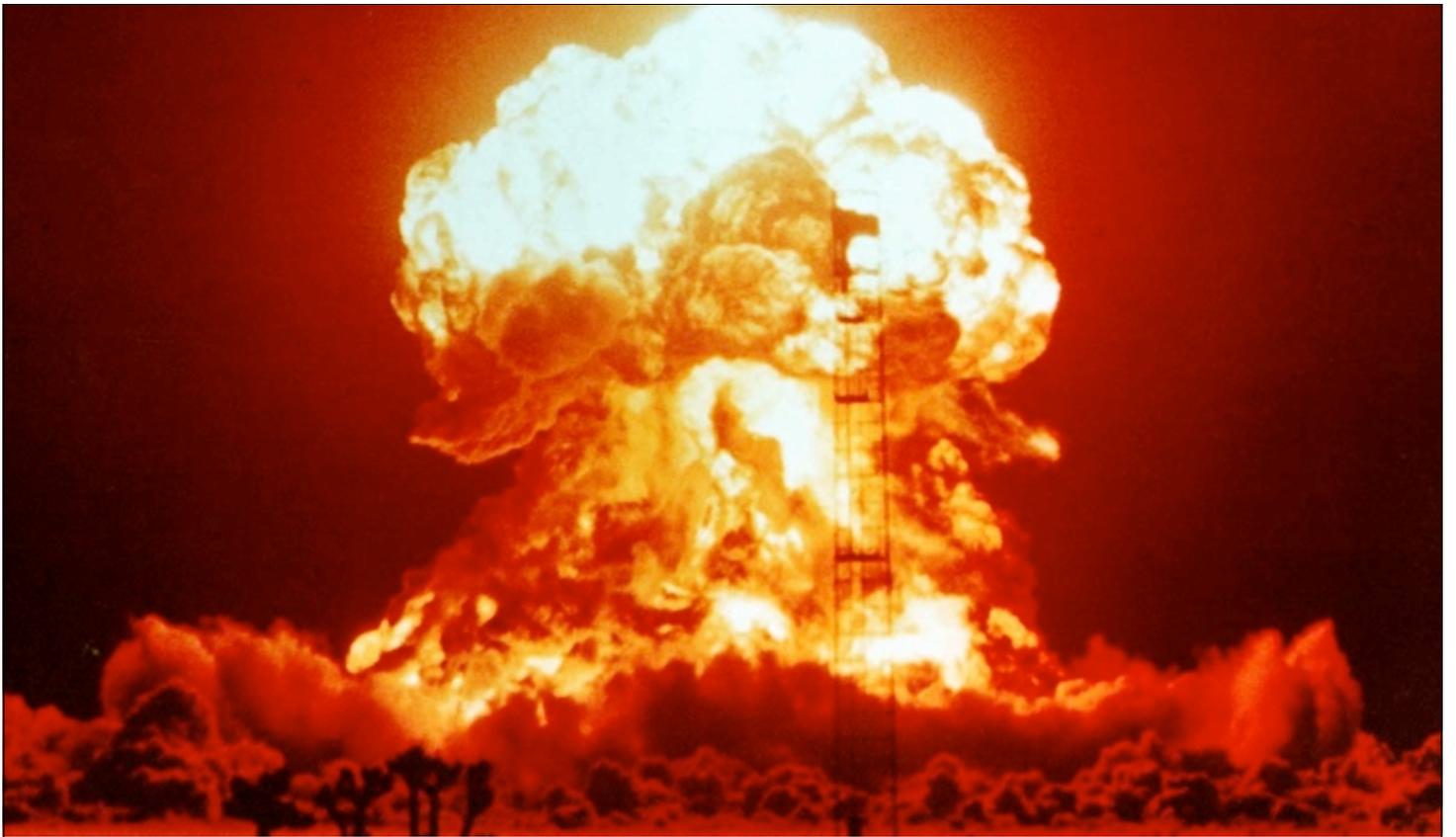
If people had understood how patents would be granted when most of today's ideas were invented, and had taken out patents, the industry would be at a complete standstill today. The solution to this is patent exchanges with large companies, and patenting as much as we can.

The tech industry has a significant problem. Software patents are kind of gumming up the works of innovation.



Patent commodification

uno



Deterrente brevettuale

due



Stress test del sistema | tre



Intervento legislativo

quattro

Eugenio

Eugenio Archontopoulos

earchontopoulos@epo.org