

## **Another Software Patent Horror Story Unmasked and Debunked: This One You Won't Believe**

Article By:

Steven Lundberg

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I have noticed lately that the anti-software patent PR machine is trying pretty hard to find examples of start-ups “crushed” by software patents.

Ok, so here is the latest laughter example they came up with: FindTheBest.com, a company that is nearing its fifth birthday and handling 20 million visitors a month, is supposedly a “start-up” being unfairly targeted by a patent troll (see <http://www.latimes.com/business/la-fi-hiltzik-20131011,0,704586.column>).

As far as I can tell from their web site, FindTheBest is doing a land-office business, and probably has a valuation better than 95% of all software companies. For starters, in my opinion, pretty much every software entrepreneur on the planet would gladly endure a challenge from a troll if they could get 20 million visitors a month in web traffic. But that is just the beginning of the irony of this anti-patent sob story. The leader of this particular start-up at present, Kevin O'Connor, sold a previous start-up he co-founded, Doubleclick, to Google for \$3.1 billion in 2008. Doubleclick, and indeed O'Connor himself, named as an inventor on at least four software patents acquired by Google (<http://www.patentbuddy.com/Inventor/O%27Connor-Kevin-Joseph/5640460#More>), had aggressively filed patents to protect its innovations (<http://www.seobythesea.com/2007/04/doubleclick-google-looking-at-some-of-the-doubleclick-patent-filings/>). Those patents weighed heavily in the valuation of Doubleclick when it was sold to Google. So, is it not a little ironic that FindTheBest.com would be outraged about software patents impeding their progress, after one of their founders profited mightily from the patent filings of his own prior company? Well, I sure think many would think so. This is not to say I don't have nothing but the utmost admiration for Mr. O'Connor's entrepreneurial talents. And, its not to say that he may very well be legitimately frustrated to have to deal with a patent infringement issue. But, these are the problems that go with the kind of success few entrepreneurs are ever lucky enough to achieve, not the problems of the vast majority of true start-ups still trying to find enough customers to survive another round of financing.

Here is another injustice of this story: Eileen C. Shapiro, the inventor of the so-called troll patent in question, is no slacker. She has an undergraduate degree from Brown University and an MBA from Harvard University. According to her LinkedIn profile, she holds 14 patents and has been actively involved in many start-ups. Is this really an example of some undeserving “troll” inventor with no right to exclusive rights in her inventions? Is it so improbable that someone that likely has a genius

level IQ would be awarded a valuable patent for her ideas, which mind you appear to have come to her a good while ago before the site FindTheBest.com was even a notion in its founder's imagination.

So, is this really an example of a "start-up" getting drummed out of business by underserving troll? The Electronic Frontier Foundation would like you to believe that — "Trolls do a really good job of targeting start-ups at their most vulnerable moments," says Julie Samuels, a staff attorney at the Electronic Frontier Foundation and holder of its Mark Cuban Chair to Eliminate Stupid Patents." (LA Times, October 13, 2013). Or, is this an example of a large, successful, well established and fast growing company nearing its fifth birthday, that some time ago left "start-up" mode behind? Wouldn't most five year old companies be embarrassed to say they were still "starting up"? This is a label only those desperately in need of contriving the facts to suit their hypothesis would dare to come up.

Moreover, is this not a great example of how Mr. O'Conner's patents helped him get a fair return for the sale of Doubleclick to Google, so he could reinvest some of his gains in FindTheBest.com, rather than an example of how Ms. Shapiro's innovations are a poster child for patents underserving of a reward.

If this is the best software patent horror story the anti-patent forces can come up with this Halloween, they should give it a rest for a while.

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