

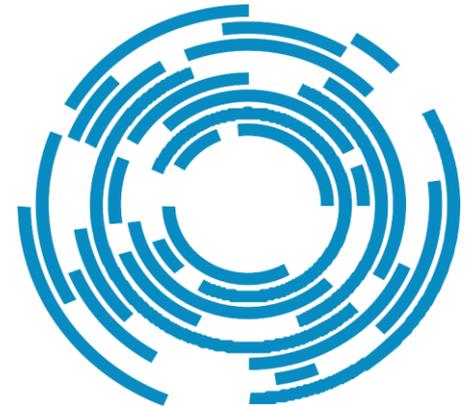
Innovation in the Digital Single Market

The role of Patents

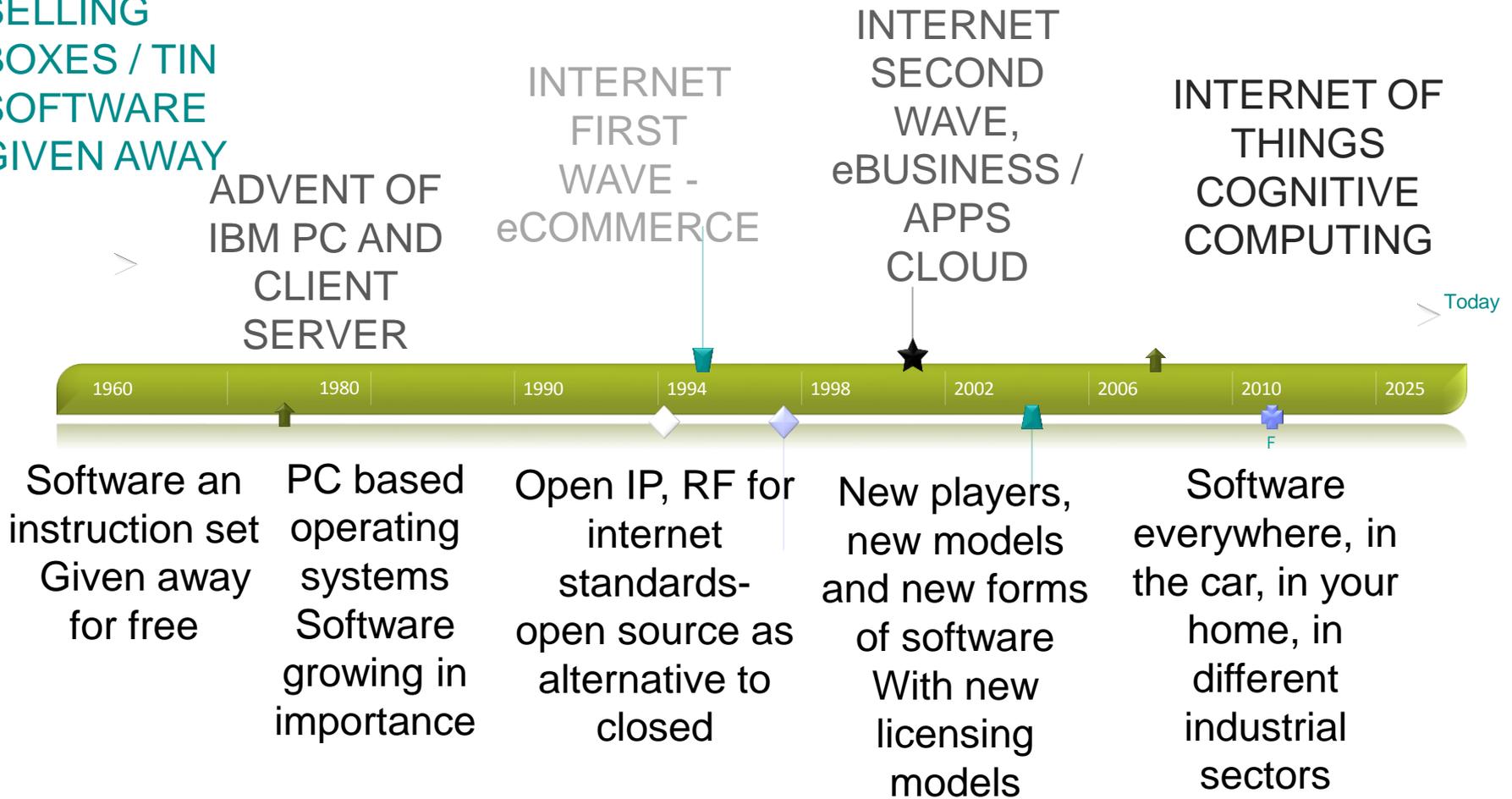
Jonathan Sage
Government and Regulatory Affairs
Intellectual Property Policy Lead, Europe

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IBM Government and
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Importance of software in innovation increasing over time, across more and more sectors



And yet patenting software related inventions is getting more and more difficult!

- Often the real innovation in new technology resides in the software
- With regard to the huge effort that goes into software research and development – software needs patent protection as well as other kinds of technology
- The classical argument : without being able to protect CII's the level of investment in R & D would drop since the investment is not worthwhile - but seriously..
- Patent law ties the concept of invention to technology – yet software is an abstract concept – patent experts now have difficulty in understanding the criteria and evaluation process – particularly in the US post Alice versus CLS – which throws every thing up in the air – “abstract idea” versus “transforming an abstract idea” into something more..
- EPO more predictable – more reasonable approach though we would plead for slightly more openness in what belongs to the area of technology (a dynamic concept)



And generally, more uncertainty on patent protection for CII

- Uncertainty about patent protection for CII **is increasing internationally**
- The EPO has become more restrictive in the last 10 years
Australia and New Zealand limited protection
India recently published draft guidelines for Computer Related Inventions (CRIs)
- Even the US, which historically has been very open for patent protection on CII, introduced lots of uncertainty by the Supreme Court's Alice v. CLS in 2014.
- On the other hand the protection needs of industry is increasing at this very time with new technological breakthroughs that will rely on CII
- The result might be an increasing "gap" relating to the certainty which CII can be protected by patents or not

There is a growing gap between industrial need for patent protection and the availability of patents which can affect innovation



Future developments – UPC and CII

- The new court system will have enormous influence both on patent applications and existing portfolios - in its role as nullity court for unitary European patents and traditional European patents, the UPC has the last word on patent eligibility for CII
- A new doctrine may come into effect which puts the whole patent system at risk if it is less patent friendly - Proprietors do not know to what extent the UPC will confirm the current EPO practice on CII protection
- Responsibility of UPC in deciding the fate of a wealth of existing patents (to the extent these are not opted out) relating to inventions developed and protected before the new court was set up.
- As the UPC approach to patent eligibility of CII will be uncertain for quite a number of years applicants **may well consider returning to the national PTOs for patent protection of CII** where they find an established examination practice and jurisdiction.

