From: Philip Nelson [e-mail redacted]
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To: Bilski_Guidance
Subject: Software patents

I am glad to hear the the United States Patent and Trademark Office is accepting comments about the acceptance of software patents. I am the leader of IT Strategy for the small and growing business I work for, PAi.com. My perspective on this comes from the point of view that innovation by small business is the current driver of our economy, and nowhere is this more true than in the field of software development and the economy that exists on the infrastructure of the internet. This is quite a change from the time when the patent office was first opened. At that time the large capitalization required to build factories and machines needed to run them needed some encouragement. As I understand it, the patent was created to provide that encouragement, to protect the investments that only a long safe run could provide.

Today for software development, the opposite is true. While a need for patents still exists, software does not have this need. Software is able to be produced by small groups of people in a very short period of time. It can be created with a low up front investment on devices costing less than $1000. Even more importantly though are the systems that modern software runs on. These are general purpose systems whose major advance over the last 50 years has been the building blocks of shared components out of which specific programs are built. Most specific programs are themselves made up largely of the same components that every other program is made of. These components are specifically designed to be generally applicable to a general domain, whether it's business, entertainment, science and so on. These components are almost always protected by copyright under various commercial or open source licenses. The combination of low barriers to entry and widely shared components that everybody can use are what led to the almost unimaginably fast rise of the internet economy. Usually, the unique part of a program that might be patented is small in size compared to the size of the parts made up of the components. That some combination of the components we all use might have been patented in some particular way we can not use, cannot find without great expense, in many cases can see in prior art that was not patented, and is often just mathematics, is a huge detriment to the idea of using software to drive innovation in our own business.

It has been the work of others to evaluate the specific rules that might quantify whether one software patent is accepted or not and I am not an expert on this. It would be my hope though that the acceptance of software patents would be for a very narrow class of programs if at all. Most software patents should be declined. This will keep the cost of entry into the field low, risks for companies funding development low and promotes the innovation needed to continue to progress in our field. The copyright is enough protection and its enforcement is much more concrete than that of a patent. I think we need to be clear on why the patent was created. It was created to protect investment to encourage capital. That it did so by protecting ideas was secondary, a means to an end. Today for software development, investment is better protected by not having to worry about software patents.

Thank you,

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