

My main concern here is that subject matter should not be removed from the list of eligible subject matter simply because more and more things that used to be done by dedicated circuitry are migrating to being performed by software on generic platforms.

One eventual outcome if we continue on the present path is that hardware versions will be devised that will never be built, just to enable the corresponding patent applications. Another may be that the relevance of the patent system itself may go into decline.

An act of congress is desperately needed to fix this problem. However, there are two aspects of that which concern me. The first is that the legislators will have trouble understanding the issues, notwithstanding the availability of advisors. The second is that political will is going to be lacking, and that this may be because large corporations are more interested in being successful infringers than in protecting their inventions.

Nevertheless, continuing to rely upon the courts is not going to resolve issues that the drafters of current legislation never thought of, especially when the decisions swing back and forth erratically. This is not helped by the lack of technical background in the judges. I think one judge on the Federal Circuit is a chemist, and the rest are not technical at all. How can they make informed decisions on software patents? Admittedly, that is not an easy issue to resolve, short of creating another new court.

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