

From: Chris Cera [e-mail redacted]
Sent: Monday, September 27, 2010 4:58 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: I've published 6 software patents applications, and I urge you to please end software patents

Dear Sir or Madam:

First of all, these opinions are my own and do not reflect those of my current or previous employers. Please note that this opinion is counter to my personal and financial interests which will likely benefit from keeping things as they are today.

I am an "inventor", software developer, and currently co-founder of a small internet software company. I have published 6 patent applications [1,2,3,4,5,6] in the past five years, and I have experience from all sides: big vs small companies; owner vs employee; co-inventor vs consumer; etc.

I believe software patents are extremely harmful to the industry as a whole. The current approach doesn't strengthen our economy, protect inventors or investors, or make our country more productive compared to the rest of the world. The winners in today's global internet economy are the innovators that can execute, and not the companies that choose to litigate.

I have a number of issues that I've ranked in order of what I think are the most problematic aspects of software patents today:

-- Obvious --

Many software patents are obvious, and nearly every web-based product is infringing on some patent claims that are technically still in good standing. This is a valid cause of concern for stakeholders of any software company, and very inefficient use of time and energy for the country.

-- Harmful to small companies --

It's very difficult for a small company to afford a patent. Small companies are the life-blood of our economy, the sector that generates the most jobs, and embodies the entrepreneurial spirit which this country was founded upon. The majority of all software innovations are coming from startup or small companies.

The attorney fees can cost up to \$30,000 for filing the patent. Then you can easily spend another \$30,000 in attorney fees getting the claims approved by the USPTO clerks. Your competitors can also get involved which is

an indirect way of driving up your costs. The USPTO maintenance fees also add to the expense of maintaining a patent.

I've had many colleagues ask why my current company filed for patents. The answer is that it's needed as a defensive tactic so a competitor doesn't try to shut us down with an injunction on their existing claims leaving us bankrupt from attorney fees.

All in all, favoring larger companies that can afford this luxury does little to promote innovation or the economy as a whole.

-- Length of Coverage --

Twenty years might as well be an eternity in the software industry, and if the majority of software patents are not deemed obvious, then the duration should be reduced to something like three years. This leads to the next problem ...

-- Time to Approval --

Many applications take 5+ years to get approval. Most software inventions are obsolete in less than five years. The majority of the patents I've co-invented (circa 2006) are currently at the status: "Docketed New Case - Ready for Examination" (i.e. still pending).

Furthermore, "patent pending" distorts business valuations since the value could be huge or worthless. As a result most early-stage software investors don't consider patents a barrier to entry for competitors at all [7]. I believe this was one of the main reasons patents were adopted into law in the first place.

-- Exploitation --

This "Time to Approval" hurts business more than it helps. A common tactic is to send a notice to your competitors that they "might be infringing" if their patent is ever granted, etc. I've had attorneys tell me that if/when the patent is granted, then you can collect damages more easily based on the time since you provided notice to the competitor. This same "putting them on notice" tactic is used if your patent is approved and you're thinking about collecting damages later.

Despite my personal objections to certain available tactics, I have a fiduciary responsibility to my shareholders to use whatever means necessary to deliver long-term value to them. I hope it never comes to that point.

-- Possible Exceptions --

In graduate school I learned and appreciated the art and science that goes into a beautifully complex algorithm. Some of these are a combination of non-obvious

techniques and complicated mathematics. There is something there that my conscience says might be worthy of patent protection, but I would rather see the slate wiped clean than protect <0.1% of current applications.

The harm to the software industry is vast, well known, and so I urge you to please end software patents.

Best Regards -Chris

[1] 20060253246: Data-driven combined traffic/weather views

[2] 20060247846: Data-driven traffic views with continuous real-time rendering of traffic flow map

[3] 20060247850: Data-driven traffic views with keyroute status

[4] 20060253245: Data-driven 3D traffic views with the view based on user-selected start and end geographical locations

[5] 20060247845: Data-driven traffic views with the view based on a user-selected object of interest

[6] 20090144158: System And Method For Enabling Viewing Of Documents Not In HTML Format

[7] "Depending on Pending ..." by Josh Kopelman.
<http://redeye.firstround.com/2008/05/depending-on-pe.html>

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