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Sent: Monday, September 27, 2010 2:04 PM
To: Bilski_Guidance
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Subject: Software patents are anti-innovation

I am an software entrepreneur - I have created two software companies. Despite being a startup, my fear is not I will be put out of business by lack of sales or by a competitor with better software. No my greatest fear is that I will be put out of business by a patent lawsuit.

In fact this is almost what happened to my first business. We created a software product to manage the HVAC systems of buildings. We had a great product that many people loved because this was in the late 1990s and we had build Web support into our product. Then one of the established big players decided to unleash their patent portfolio on us, because amazingly enough the US Patent Office had granted them a patent on using a web browser in conjunction with a building automation system. This is not because we stole any of their ideas (in fact their system didn't even support web browsers). They sued for us patent infringement because we threatened their business and they couldn't innovate their own product. How does such a story justify patents as promoting innovation? Big companies amassing patents to put little companies out of business instead of improving their own products is in my opinion an unethical manner in which to run business. But this is this the situation the law of the land in the US has created with software patents.

The entire idea of software patents is a bit like patenting the plot lines of stories of novels. No one can copy a novel or software code because those things are protected a copyright law (a good thing). But the idea of patenting the basic abstraction of a story plot-line or software function rather than the expression of that abstraction is fundamentally wrong. The legal trick of tying a software abstraction to "machine or physical process" is just a sleight of hand. The whole idea of tweaking that sleight of hand isn't the real problem, the real problem is that software should never have been patentable in the first place.

I have no hope that US software patent system will be fixed. But for those of who make a living innovating software, it is truly a sad, un-American institution. It puts those of actually making software products in a game of Russian Roulette which at any point we can be sued for infringing a software patent which is most likely held not by a company which actually makes something, but rather preys on productive companies.

All I can say as a software entrepreneur is please, please ban software patents. No one should own the the abstraction of a software function, only the copyright for the expression of that idea in code.

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