

From: Tao Effect [e-mail redacted]
Sent: Sunday, September 26, 2010 6:31 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: Software Patents

Dear USPTO,

Software patents are anti-competition, anti-free market, and anti-consumer.

Imagine yourself a brand new, fledgling entrepreneur. You've found some problem and have come up with a great solution to it. It's not particularly difficult to implement, it's simply a different way of doing things, and the great part is that it's all conceptual, no physical assembly required. Then, you discover that either part or whole of this idea is patented by a major technology company (probably IBM, Apple, Google, or HP), and there goes your ability to innovate, hire people, etc.

Take for example the idea of 1-click shopping. That's patented, and yet the work involved to implement that is miniscule. Or, affiliate advertising. That entire idea is patented by Amazon, and even though it's used by many without a license, at any moment, Amazon could sue them.

For many, the mere threat of a future lawsuit discourages innovation.

This is made worse by the fact that the costs for obtaining a patent are for most entrepreneurs completely prohibitive. So even if they genuinely do have a good new idea, they won't patent it, and it's very likely some major company will instead, potentially keeping them out of the market with their own idea.

Major companies will file for thousands of patents every year simply to build a "war chest" to use against competitors. They'll patent ideas and for many of them they won't ever do anything with that idea. Thus, some other entrepreneur comes along, sees that the idea they came up with is patented by a giant (who isn't doing anything with the idea), and they will become discouraged and are less likely to implement it. This idea could be something very simple, something that only takes a few months, or weeks (or even less time) to implement, yet it will go unrealized because of our crazy patent system.

The patent system was supposed to protect small entrepreneurs from the Goliaths out there, and encourage innovation. At least in the area of software patents, it is currently having the exact opposite effect.

The USPTO can, and should, exclude software from patent eligibility on other legal grounds: because software consists only of mathematics and abstract concepts, which is not patentable, and the combination of such software with a general-purpose computer is obvious.

Sincerely,
Greg Slepak
CEO, Tao Effect LLC