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To: Bilski_Guidance
Subject: Rule against software patents

As a professional software developer, I strongly assert that you must end software patents for three reasons. First, no creative thinking or innovation is required to receive a software patent. Second, they are a toxic liability on innovation in the United States. Third, any software company relying on a patent to exist is the last kind of software company that should stay in business.

Consider patent 7028023[0], awarded in 2006, entitled "Linked list." The linked list was developed in 1956[1], and is a fundamental data structure in Computer Science. All introductory Algorithms and Data Structures books describe the linked list and dozens of variations. As a professional programmer, I assert that it is common to make custom structures in linked lists, especially to solve an application-specific problem. Any competent software developer solving a specific problem using linked data structures would reach the same solution. Ming-Jen Wang has simply gone the extra step to patent his. Were I to follow suit, I would have several patents to my name. This is not an isolated incident. Another egregious example is "Operating system shut down" owned by Microsoft[2]. From my point of view, what must come on must be shut off. But the US Patent Office saw this idea as innovative enough to be awarded a patent.

Patents are also a toxic liability on innovation in the United States. There are countless examples of major companies with major patent portfolios threatening up-and-coming companies. Microsoft famously threatened Linux with patent infringement on 235 patents [3]. Microsoft didn't list which patents were infringed, but my cynicism leads me to believe many of them were in the "Operating system shut down" category. Sun Microsystems' ex-CEO has also detailed how Microsoft and Apple threatened their products with their broad patent portfolios [4]. Sun Microsystems counter-threatened with their own software portfolio. Microsoft is also lucky - Sun could have easily strangled Microsoft's innovative language platform, .NET, in a patent slugfest. "Kids in a garage"-style startups have no patent portfolios and are subject to the whim of the giants. The only beneficiaries are

the existing players in the market. The rich get richer, and the poor get poorer.

Finally, any software company that relies on software patents to exist is a failed company. In our business, every idea is copied. But it turns out that ideas are worthless and talent and execution are priceless. This is why Google succeeded as search king, even though they entered the market late. They simply had better and faster search results. This is why Apple is winning the smart phone market - they simply have a better phone. If you look at any successful software company under a microscope, all of their ideas have been copied elsewhere. They've used ideas that they've seen elsewhere. But nobody else can copy their talent. If the best-of-the-best weren't able to participate in the give-and-take of ideas, then the best companies just can't use the best ideas. Everyone loses. Good ideas get sold to the highest bidder, and everyone else pays a tariff.

For the good of innovation in America, you must abolish software patents, and reject all currently-issued software patents.

Thank you for your time,
Jake Voytko

FOOTNOTES:

[0] <http://www.google.com/patents/about?id=Szh4AAAAEBAJ>

[1] http://en.wikipedia.org/wiki/Linked_list

[2] <http://patft.uspto.gov/netacgi/nph->

[Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/PTO/srchnum.htm&r=1&f=G&l=50&s1=7,788,474.PN.&OS=PN/7,788,474&RS=PN/7,788,474](http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/PTO/srchnum.htm&r=1&f=G&l=50&s1=7,788,474.PN.&OS=PN/7,788,474&RS=PN/7,788,474)

[3]

http://money.cnn.com/magazines/fortune/fortune_archive/2007/05/28/100033867/

[4] <http://jonathanischwartz.wordpress.com/2010/03/09/good-artists-copy-great-artists-steal/>