

From: Dan Zwell [e-mail redacted]
Sent: Monday, September 27, 2010 10:52 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: software patent concerns

Dear USPTO,

I will not claim to definitively answer whether software patents should be granted/recognized, as a US citizen and professional software developer, I have some deep concerns about software patents.

1. If some software implementation ideas deserve patents and others do not, the system will still likely not work, as there are not enough competent software developers willing to staff the USPTO--they are busy creating software. Such a patent examiner would have to be as versed in software techniques and software history as the very best developers. Furthermore, software techniques are almost as creative as art or literature, so a patent examiner cannot reasonably determine whether a competent and well-studied software engineer could come up with a given idea.

Many ideas that might seem worthy of patenting are in fact obvious solutions to a problem, if only that problem were clearly stated and understood.

2. Software patents have become a weapon, and every company is expected to have a patent portfolio for defensive purposes. This prevents smaller companies from competing with larger ones, because a patent portfolio of 20 or so patents does not pose any significant danger to a large company.

3. A large software product is made up of hundreds of thousands of ideas, and may earn little or no money. Software is speculative, and it will not be possible to create software if we cannot build upon the ideas of previous generations. Yet no software company can afford to pay for every idea it uses, because software is ephemeral and made of ideas. If creating software becomes too much of a legal liability, the US software development industry will be stunted.

Finally, software patents do not fulfill half of the purpose of patents:

5. Software patents are not useful to the greater economy, as software developers don't look to patents for inspiration when creating new products. Developers don't learn from patents, and software patents do not advance the state of the art.

Thank you for your consideration,
Daniel Zwell