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To: SoftwareRoundtable2013

Subject: Software Patents (UNCLASSIFIED)

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Caveats: NONE

The purpose of patents is to encourage novel and innovative ideas to be developed into market. The USPTO has ignored the fact that much of software development are unpatentable by law because the law specifically forbids the patent of algorithms and such. By definition all software is exactly a set of mathematical equations. This alone should destroy the software patent idea, however; it is clear that some mechanism must be provided whereby the USPTO can provide protection for unique and novel innovations in this area.

The first thing the USPTO should do is to completely throw out the concept that if something has not been published before in the media that it must not exist in software already. For example the Sony corporation has filed an application for a methodology for stopping the unauthorized use of games by requiring player ID authentication on the game operation. This isn't new. It is merely a ubiquitous industry process. In addition it hardly is novel. Another such absolutely stupid patent (granted) was "one click" by Amazon. This one click to do any action is the basis of a keyboard. Whatever gets done can be simple or complex. The task is irrelevant. USPTO should require a high standard of Novel and or innovative.

The next issue here is to realize that identical processes delivered to entirely unique and new applications are in fact novel applications. The use of Graphical software doing some algorithm and then to use it for completely unique purpose using different forms of data may be worth of patent. Again the standard needs to be quite high.

There are many ways to do the same chore. The USPTO needs to recognize that a common task such as saving a document by way of clicking on an ICON or a Widget or whatever is the same idea and these are not novel or innovative. Graphical interface patents are absurd as they existed in academic demonstrations published long before they were dressed up for market.

In the software industry forever is about 2 weeks. Literally the term of a USPTO software patent should be very short. If a cell phone maker gets a new way to talk to the radio or whatever that is in fact novel and innovative, patent him for 2 or 5 years then expire the patent. The current system is stopping innovation. It encourages patent trolls.

The next thing that should be recognized is that if a software programmer works one place and then seeks employ somewhere else it can be expected and cannot by any means known to man be prevented from him applying his skill and methods at the new location. So it is quite worthless to patent almost all software. If software is patentable it should only be the property of the person who wrote it and if employed it should be no more than 50% of the property of the employer. This would keep software firms from playing games with employees and encourage innovation. This isn't the same as a physical device. These are methods or algorithms. Again it is highly questionable if law does apply here if correctly applied.

I believe that we should apply to any innovation (software or otherwise) patent protection only when it encourages technology development. Our whole system is collapsing because patents are being issued for "prior Knowledge" items and things which are not novel. It is also collapsing because patents are being "owned" by trolls. This is simply cured. All you have to do is do 2 things. (1) forbid the owner of a patent (not the inventor) from ownership which is inactive of use and void the patent after 2 years of inactivity. This will stop the buying of patents to stop competing technology. Patent owners who do not "produce" anything with a patent should lose it after 2 years and original inventors should carry full term 20 years. Forbid wrapping these with contracts to avoid the expiration. (2) The other thing that will stop patent trolls is to make the databases of USTPO far more accessible to the public and make them far more accurately searchable. It is insane that I as an inventor cannot get a good patent search without a patent attorney. I should be able to search all USTPO resources that are legally able to be made public easily. As a corollary the USTPO should make available Yes/No information regards National Security Patents etc so that one can at least know, this isn't patentable etc.

In general the USTPO needs to recognize that software is developed even commercially largely by reorganizing long published and long developed algorithms. I am a writer of software and I know this all to well. I may write the specific code, but often I use others examples. All of my code 100% is nothing but high level combinations of the machine assembly language that the CPU chip manufacturer built into the chip. Therefore for me to patent it would be to say well he made the chip able to do almost anything and I merely told it what to do with those instructions.

I have considerable commercial interest in this area and I do not wish to damage innovation in any way. I am tired of running up against walls the USTPO built because some idiot there in the office didn't know the industry well and thought was novel. For example I can find every method Microsoft put into their software developed in Open Source. They just rewrote the methods. It is known that Bill Gates himself was in a hacker group and actually patented the work of many others stealing it for himself and then informing the group that they were stealing from him. I cannot tell you how much of this goes on every day but it is all that Google, Apple, Amazon and the like are doing. They do nothing else.

Thanks

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Being intelligent is not a felony. But most societies evaluate it as at least a misdemeanor.

-Lazarus Long, Time Enough For Love

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