

Dear Mr. Clarke,

I believe that an important prior art issue exists with software patents that will be almost impossible to address with your databases, but nonetheless should be considered.

A great deal of non-obvious, innovative software innovation happens in academic, business, and recreational circles that is never patented. This is for several reasons:

(1) Often the software isn't deemed innovative by its creator, even though it may be the case that the PTO could be persuaded otherwise. Therefore, there exists a great deal of prior art for software that the PTO will never consider.

(2) There's much software developed for which even practicing software engineers will disagree regarding the degree of innovation of the work. This is because software engineering is a very broad field, and the people working in it have wildly varying areas of skill and intelligence. Therefore, I believe that truly non-obvious software systems are quite rarer than is indicated by the number of such patents granted by the PTO.

Because this software isn't patented, it doesn't make it into the PTO database that is searched for prior art.

So, the question exists: How do we best deal with software patent applications when the PTO database can only show the presence of prior art, but not the absence? I think the answer is that we cannot justly grant such patents, as they would then provide overly-broad limitations on all other programmers.

Please try to put an end to most software patents. The PTO's experiences with them in the past has shown that they're too difficult to grant in a way that's just to the public at large.

One example that's been in the news lately is British Telecom's patent on a GUI using a mouse (or some such patent). Once BT tried to enforce it, the software community found an old black and white film discrediting the BT patent's claim to originality.

You may be tempted to think, "Well, the system worked properly. The patent was appealed, and BT realized it was unenforceable." Unfortunately, when such sweeping patents are granted in the first place, it has a chilling affect on many software engineers, because an engineer can no longer count on an "obvious" technique being not already patented.

Sincerely,  
Christian Convey  
Professional Software Developer