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To: Bilski_Guidance
Subject: Software Patents

Because it is so easy to get a software patent granted, it is nearly impossible to write any non-trivial software that is free from patent encumbrances. Most patents simply fail the obviousness test. Software is extremely easy to design, produce, and modify, so software patents should only be granted if something is truly groundbreaking and revolutionary. Unfortunately, I think it is very difficult to tell if something meets this criteria and I think it will be difficult for the patent office to judge this across the broad spectrum of software disciplines. Because of this, my feeling is that software patents should not be granted at all. But if software patents must be granted, they should have very stringent obviousness tests that must pass with experts at the USPTO and with outside expert consultants. I understand that raising the bar on patents like this will probably raise the cost. I think this is a good thing. I think applications that fail the obviousness test should also be rejected outright and not appealed and modified. Only the very strongest new ideas should be patented and there should be a substantial cost to failed applications. One could argue that this favors all but the largest corporations. I disagree. I think it will discourage all but the very best ideas from ever being submitted by anyone, even large corporations. I know from first hand experience that large corporations currently file software patents in a shotgun approach without much real thought to the costs of the application. I think this is primarily because almost no patents are outright rejected due to obviousness.

Lance Good