From: ron gage
Sent: Monday, January 07, 2013 9:10 AM
To: SoftwareRoundtable2013
Subject: Comments re: Topic 1 - Establishing clear boundries for claims that use functional language

Greetings:

As a software developer who is strongly considering discontinuing all software development due to the danger of "accidental" patent infringement, might I offer some comments on the subject.

The difficulty in establishing a "clear boundary" is the language of the patent(s) themselves. Unless you have studies the language of patents for years in a law school, it is generally impossible for non-law practicing people such as myself to understand clearly the scope (and limitations) of a patent. Worse, patent lawyers are intentionally writing patents to be as vague as possible to 1) cover the actual discovery/invention and 2) capture as much area around the patent as to make it impossible to work around the patent. On top of that, should a software developer go on a patent search to see if a particular idea has already been patented (not invented, patented), that developer runs the significant risk of 1) missing a vaguely wrote patent that might be interpreted in some twisted and obscure manner to cover what the developer wants to do and 2) opens himself up to treble damages on the "intentional infringement" aspect.

For many software developers such as myself, simply receiving a letter from some lawyer with the words "patent infringement" somewhere in the contents is an absolute and immediate death sentence. The cost of simply entering the world of patents is well beyond the reasonable means of most of the software developers I know of.

A modest proposal:

Patents should be wrote in the language of the practitioners of the art and NOT in the language of the lawyers. If a software developer can not reasonably understand what the patent does (and does not) cover from the words of the patent itself, then that patent must be rejected as being impermissibly vague since it could not be understood by someone "skilled in the art". I would suggest that to help weed out bad patents, the USPTO should employ software developers (and NOT patent examiners) to act as a filter to prevent bad patents from making their way into the patent examination process; a gatekeeper if you will.

Sincerely proposed:

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