Software Patents: A Competitive Advantage in a Changing World

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The financial industry is incorporating fintech and block chain solutions. Healthcare companies are adapting to electronic medical records and online platforms. Even the legal field is looking for methods to optimize discovery. Software solutions have become an integral part of every sector, not only for efficiency, but also to gain a competitive edge over their competitors. Throw in a global pandemic, and that advantage becomes essential. With such transformation comes a need to protect tech-related intellectual property. Here are some considerations that start-ups and industry leaders alike should take into account when determining whether their new software solutions should be patented.

Software Innovation Growth

Companies are using the recent crisis as a means to evaluate their business and many are transitioning to software-heavy business models. Businesses such as healthcare, insurance, banking, and fitness are increasingly being pushed online and software is the building block of their digital infrastructure. Since March 2020, businesses have experienced significant changes in the way they interact with customers and manage their workforce. In 2020 alone, 63% of issued U.S. utility patents were “software-related,” and experts expect that number to increase dramatically in 2021 and 2022. Globally, software-based patent applications are on the rise as well.

Protecting IP Assets

As we transition into this new era, business and start-ups that are developing software should take steps to secure their software-based intellectual property. Here’s what businesses should know:

- Patents (and other forms of intellectual property) are assets. Securing a patent can restrict other businesses from using a software and provide competitive advantage and financial success in a rapidly changing business environment.
- Owners of software patents can also license their product out to others for an additional revenue stream while keeping their patent protections. Business owners should be aware of the various types of licenses commonly used and the advantages licenses offer as opposed to an outright sale.
- Patents are commonly used as bargaining chips in acquisitions or attracting venture capital funding. The legal protection afforded by patents offers potential safeguards to would be investors.
- When considering securing patents, developers should gain a basic understanding of the legal framework surrounding software patents. In short, (patent) claims should be directed towards non-abstract improvements to the functionality of a computer or network platform itself. Developers should also consider preparing a series of flowcharts that outline the function of the overall system as enabled by the software.

- Businesses should also take other steps to secure their software-based intellectual property. Copyright and trade secret laws have long been the traditional path to protecting software, although they don't offer the same type of protection as a patent and often play different roles.
- Employment agreements and contracts should be crystal clear as to the ownership of the intellectual property and the roles employees play in developing ideas. Current license agreements should be reviewed to make sure the terms reflect the modern era of software licensing.
- Most importantly, executives should take an active role in understanding the role software and the protection thereof plays in their business.

Large and small businesses alike are relying more heavily on software-based innovation. When businesses develop innovations in house and invest significant amounts of time and money in a particular product or solution, it is important to protect their creations in an effort to corner the market on a problem they've solved or a product they've developed to gain a competitive edge over their competitors. It is important for businesses and innovators to take time to understand the software your business has developed and whether or not you should be protecting it.