It is easy to complain. Much harder to come up with solutions. Many won't like what I propose, but who wants to make lawyers happy anyway ?

The solution ?

1. End all software patents. Don't make them shorter, eliminate them.

I have no problem with software being copyrightable just as it always has been. That is more than enough protection and keeps enough lawyers un-gainfully employed.

2. End all process patents. They serve absolutely no purpose. None.

If you create a new process, use it. The benefit is from creating the idea and using it in a business to your advantage. Afraid that some big company might steal the idea ? That is life. **When you run with the elephants there are the quick and the dead**. That is a challenge every small company faces. A process patent is not going to make your business successful. The successful execution of business processes will. If we had process patents or the culture of software litigation in the 1980's as we have today current technology would consist of running terminals on DEC and Wang Computers at the local library for $10 per hour and there probably would not be a world-wide web.

No doubt that by the mid 90's someone would have sued Marc Andreessen and his friends at the University of Illinois long before Mosaic could ever turn into Netscape. My guess is that the patent attorneys at British Telecom would have been all over them contending that hyperlinking was protected, but for $10 per download they could use them in their new browser…

Some of the benefits of eliminating process and software ?

a. Reduce the court room costs associated with process and software patent litigation. That is taxpayer money saved.

b. Improve the efficiency of the Patent Office.

Process patents are a magnet for everyone who has ever dreamed of being awarded a patent. The flood of applications not only slows the speed at which inventions that deserve patents are awarded, it reduces the quality of investigation into applications. That is a lose lose situation. Patents that shouldn't be awarded are awarded, which in turn creates more work as those patents are challenged.

c. End the ridiculousness of the current Patent Arms Race.

Companies are buying patent collections as a way to defer litigation or to support their litigation efforts rather than to benefit from the intellectual property purchased. Billions of dollars are being spent on this arms race. Billions of dollars that without question impact consumer prices from these companies.

d. Patent costs cost jobs.

Uncertainty is never good. Certainty of risk is even worse. What i mean by that is that almost every major corporation is this country has ongoing patent litigation and many, many small companies (my companies included) have ongoing patent litigation as well.

How does this impact jobs and job creation ? The thing about patent litigation is that it is unlimited and unquantifiable. There is absolutely no way to look at your business and say "this is where and what my risk is". Because of software and process patents any company could be sued for almost anything. It is impossible to know what the next patent to be issued will be and whether or not your company will be at complete risk. It is impossible to go through the entire catalog of patents issued over the last 10, 15, 20 years and determine which will be used to initiate a suit against your company.

It's impossible to quantify just how much and how often you will be sued and what the costs associated with those lawsuit(s) will be.

The risks are unlimited.

Unlimited risk in any environment will force a company to hold back resources in an attempt to protect itself. In the case of several of my companies, it means that we have held off hiring people so that we have cash in the back to deal with current and future patent litigation.

It's a joke, but that is the reality of doing business in this country.

e. Look overseas

Pick any country that is currently doing well, China is a perfect example. In China the Intellectual Property Laws are so weak that someone thought it was a good idea to completely replicate Apple retail stores. Compare their economy to ours. As much as I hate to compare other economies to ours, it's worth taking a look .

It is time to change. This country needs the change.

Eliminating software and process patents won't end patent litigation, but it certainly will be a good first step. And while it may only be a step, it will be a positive step towards improving the economy and adding jobs.

Update: I wanted to re post a comment from my last post. I think it is important. It obviously doesn't go as far as I would like, but if you care about patent reform let your representatives know.

Unfortunately, the patent reform bill that President Obama just encouraged Congress to pass, does nothing to address the problem of patent trolls. (The full text of the bill, H.R. 1249, can be read here: http://www.govtrack.us/congress/billtext.xpd?bill=h112-1249).

This bill passed the House 304-117 and it's companion bill (S.23:http://www.govtrack.us/congress/bill.xpd?bill=s112-23) passed the senate 95-5, vitally assuring that the two bills will be reconciled and signed into law in early September, once congress returns from recess. This is "reform" in name only, as the bills will do

nothing to discourage the job-killing litigation tactics of the patent trolls that Mr. Cuban references above.

If you care about the issue of patent trolls, you have one month to encourage your Congressperson to amend S.23 and/or H.R. 1249 to include limiting damages from "non-practicing entities" (aka, trolls).

Update:Aug 8 – From the comments of a reposting of the blog on another site.. I couldnt resist

asjogren
13 Fans
5 hours ago (2:43 PM)

I agree totally with Mr. Cuban. The software industry spends too much time, money, and effort creating patents on bloody obvious ideas, and defending themselves from others who created such stuff.

"One Click Purchase" – Patented. Obvious. And I like Amazon.

"IBM Patents Changing Color of E-Mail Text" – Patented. And I used to work for IBM.

"Google Patents Country-Specific Content Blocking" – Patented. And I like Google

Software is already Copyrighted. Thus, one cannot copy or create derivative works.

And get this:
"USPTO Awards LOL Patent To IBM"
Yes, LOL, and IMHO were granted to IBM for a method of translating abbreviation to/from text.

And to that, I say "WTF