Oracle Corporation - Patent Policy

Official policy statement issued by Oracle Corporation.

Oracle Corporation opposes the patentability of software. The Company believes that existing copyright law and available trade secret protections, as opposed to patent law, are better suited to protecting computer software developments.

Patent law provides to inventors an exclusive right to new technology in return for publication of the technology. This is not appropriate for industries such as software development in which innovations occur rapidly, can be made without a substantial capital investment, and tend to be creative combinations of previously-known techniques.

Even if patent law were appropriate for protection of software, due to the large volume of recently-granted software patents and the rising number of new applications, the current patent process would continue to be troublesome for the software industry. Software patent examinations are hindered by the limited capability of searching prior art, by the turnover rate among examiners in the Patent and Trademark Office, and by the confusion surrounding novelty and innovation in the software arena. The problem is exacerbated by varying international patent laws, which both raise the cost and confuse the issue of patent protection.

Unfortunately, as a defensive strategy, Oracle has been forced to protect itself by selectively applying for patents which will present the best opportunities for cross-licensing between Oracle and other companies who may allege patent infringement.

Computer Software Policy Issues

The policy rationale for patent protection in many industries is understandable. In exchange for making an invention available to the public, inventors are rewarded with a seventeen-year monopoly giving them exclusive right to the new technology. In such cases, this opportunity to monopolize the commercial application of the invention is justified as an appropriate reward given the capital resources dedicated by the inventor to the invention, including time and money spent in innovation, production, distribution, etc.

This policy, however, does not fit well with the software industry. Unlike many manufacturing-intensive industries, the development of software requires a minimum of capital investment. Producing and distributing a product is simpler, faster, and less expensive in the software industry than in manufacturing sectors. New developments influential to the software industry frequently emanate from individuals and small companies that lack substantial resources.

Software varies from manufacturing in another key aspect. The engineering and mechanical inventions for which patent protection was devised are often characterized by large "building block" inventions that can revolutionize a given mechanical process. Software, especially a complex program, seldom includes substantial leaps in technology, but rather consists of adept combinations of many ideas. Whether a software program is a good one does not generally depend as much on the newness of a specific technique, but instead depends on the unique combination of known algorithms and methods. Patents should not protect such methods of innovation.

The U.S. software industry has evolved to a multi-billion dollar industry that leads the world in productivity, and accounts for substantial portion of U.S. GNP. The software industry has advanced the efficiency of other industries through the proliferation of computing and computer-controlled

processes. All of these gains have come prior to the application of the patent process to software, and consequently without patent protection for software. There is no justification for a policy that would not only drain capital resources (which are better spent on software development) into patent applications and other legal fees, and also actually serve to reduce innovation by limiting the availability of previously-developed techniques.

In sixteen years, Oracle Corporation has grown from a start-up company with a handful of employees to the world's third-largest independent software producer employing 8,000 people. Oracle filed its first patent application in November 1991, not because it felt that its software was suddenly worthy of patent protection; it filed that application because of concerns that other inventors, afforded patent protection by a flawed patent system, might find themselves in a position to seriously weaken the Company's competitive edge by alleging patent infringement. Even if Oracle had developed a certain invention first and could produce the appropriate prior art to prove its case, thousands of dollars in attorneys fees and other expenses would be spent in defense of its rightfully-owned technology. Oracle consequently believes that it must have a patent portfolio with which to respond to potential aggressors, so as to settle with them by cross-licensing to avoid litigation. Oracle is forced to channel a significant portion of its financial resources into patent protection of its assets, rather than using those resources in further innovating and expanding its computer software products.

Copyright protection for computer software is sufficient to preserve the rights of software developers, who rely on the unique combination of algorithms and techniques to produce successful software programs. Copyright law, including relief from those who copy or distribute copyrighted works without permission, in combination with careful handling taken to preserve trade secrets, has afforded adequate protection to software developers against the losses they may encounter from the wrongful use of their software. Compared to adequate copyright and trade secret protections, patent protection is excessively broad and enormously expensive.

Changing The Patent System

Oracle has recommended that patent protection not be provided for computer software or computer software algorithms, for the reasons described above.

If software continues to be protected by patent law, however, we recommend the changes described in the following paragraphs. These recommendations in no way endorse the use of patents for protecting software, but rather serve to assuage the existing problems if patents must ultimately affect software development.

Patent law should be consistent throughout the world and, if it is to be applicable to software, should extend for much shorter periods of protection than exist now, unified prior art searching capabilities, equal standards of novelty, the elimination of patent rules that allow "patent flooding," and identical standards for prior use restrictions (bar dates).

The evolution of software moves very quickly. The term of software protection should be cut back accordingly, from the current 17 years from grant date to three years from application date (the application period must be drastically reduced). A balance of fifty years protection for direct copying of code would continue to be provided by copyright law.

If the patent system is to remain an entrenched part of the software industry, then the following changes need to be made:

- The prior art capabilities of PTO records must be vastly improved to confirm effectively the novelty and non-obviousness of software patent that is the subject of applications. New classifications, as well as an effort to record the current state of prior art would be necessary.
- Because of the unusual speed with which software innovations are incorporated into products, the PTO's patent review process must be made much more efficient so that it takes no more than six months from application to registration. In the software industry, if a patent application takes two years to process, the patented "invention" is often either widely used or obsolete by the time the registration is issued.
- Examiners skilled in computer science and software programming must be trained on the nature of software inventions, and the state of existing art. Qualified examiners must be hired and retained by the PTO at much higher rates than they are today. Compensation rates equal to those provided by industry are essential to recruit qualified personnel.
- The PTO, in conjunction with industry, must establish additional committees to clearly delineate the standards of novelty and non-obviousness that will be required for software inventions to receive patents.