Protesting Patent Power

Abuse of the power of patents is becoming more widespread, with overworked patent examiners issuing inappropriate or overlapping patents, and patent-holders misrepresenting the extent of their patent holdings in order to gain licensing revenue from small software and technology firms. This according to Brandon Shalton, of FightThePatent.com, an organization he founded after discovering that software he had was using to help pastors upload spoken messages had since been patented to a company called Acacia Research, despite many instances of the technology existing prior to their application. Acacia's marketing plan, according to Mr. Shalton, is to weild its patent like a hammer, "extorting" licencing revenues from dozens of other sites, starting with the "adult entertainment" industry.

There's no question that the patent office has become swamped: each year it makes decisions on 7.5 million items, according to patent office spokeswoman Brigid Quinn, quoted in an article on Wired.com. It currently has a backlog of 500,000 patent applications, and that number could rise to a million by 2008, without a substantial increase in funding. So it is not surprising that mistakes are being made.

What troubles Shalton and others is that not only are bad patents being granted, the holders are claiming the patents cover a much wider scope of activities then they really do. Under current laws, the benefit of the doubt is given to the patent-holder, and those they are accusing of patent violation must come up with millions of dollars to defend their use. Most capitulate and sign licensing agreements because they cannot afford the alternative.

Worried about the potential of this situation to stifle creativity and put small companies out of business, he software development industry is pushing for change on several fronts. One of the main criteria used to reject a patent is if it can be proven that the process already existed; so-called "prior art". A group called the Software Patent Institute is focusing its efforts on developing a much larger database of prior art. Others in the industry are lobbying for reforms that would make it easier to challenge patents. And the patent office itself has requested funding to nearly double its number of examiners over the next five years, and put more of the process online.

(372 words)