Software Patents

What is a patent?

- The ability to legally claim rights to an “invention” or “discovery”
  - Patents granted through the US Patent and Trademark Office (USPTO)
  - “the right to exclude others from making, using, offering for sale, or selling” the invention in the United States or “importing” the invention into the United States.
- Allows you to protect your “intellectual property”
  - For example, as part of your core business technology
  - To allow you to license (e.g., for a fee) the invention
- Typically last 20 years from filing date (design patents are for 14)
- Only effective within the US (other countries have similar systems)
- The USPTO does not decide patent disputes, the courts do

What can be patented?

- There are three types of patents:
  1. Utility patents: process, machine, article of manufacture, or composition of matter, or an improvement thereof
  2. Design patents: design for (a utilitarian) article of manufacture (ornamental appearance, not structure or features). Copyrights can be used for non-utilitarian articles.
  3. Plant patents: plants as in crops, bushes, trees, etc
- Invention/discovery must be new (novel, original) and useful (has a defined purpose and can be built, manufactured, applied, etc.)
  1. the patent is not on the idea, but on the new machine, manufacture, etc.
  2. a complete description of the machine or subject matter is required
  3. isn’t new if already claimed or made available to public before filing (publication, sale, etc.)
  4. new also means non-obvious
What about software patents?

- Can file for both utility and design software patents
  1. Utility patents are much more common (and easier to uphold)
  2. Google patented the design of their webpage! (US D599372)
- Generally hard to distinguish what is patentable and non-patentable for ideas related to software
  - Often non-obvious and novel criteria have been loosely interpreted
  - Some really bad patents have been issued
  - Highly controversial (e.g., stifles innovation, “patent trolls”)
  - Very much in flux in the courts today (courts increasingly rejecting software patents)

Exercise 1: Find a software patent (www.google.com/patents) and give a brief summary of the invention and the general claims. Some famous examples of software patents: Amazon One-click (US 5960411), Browser Plug-ins (US 5838906), Yahoo! Search marketing (US 6269361), Progress bars (US 5301348), RSA (US 4405829).

Exercise 2: Use Google’s patent search to find a patent related to your senior design project. Briefly summarize the idea of the invention and the claims.