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**To:** Bilski\_Guidance  
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**Subject:** Please stop issuing software patents

The reason I think that software patents are a bad idea is because the original purpose of patents was to make sure that inventors were rewarded for the time, effort, and sweat they put into developing an invention. One envisions early inventors toiling away in a machine shop or a laboratory, trying to perfect their inventions, using equipment that was and is very expensive for any individual to procure. Unfortunately, as time has gone by, the whole patent system has become so perverted that now people are misusing it to make a quick buck - indeed, the work of filing the patent just might be the most work some "inventors" actually do.

But, software patents are especially bad because software is more of an art form than an invention. In particular, there are no upfront or ongoing costs associated with developing software, save the requirement that one possess a computer (hardly an expensive item these days) and perhaps some development software, much of which can be downloaded free from the Internet. People can and do code software just as a hobby, in their spare time. No machine shop, laboratory, or expensive equipment are required. The act of creating software is much more akin to creating music or some other work of art, and if there is to be protection for software, it should be through the use of copyrights, not patents.

I understand that one of the reasons to deny a patent is that the proposed invention is obvious. The problem is that to programmers and computers experts, many things are obvious that might not be to the patent examiners. You have perhaps seen the IBM advertisement, where as a joke one programmer changes a minus sign to a plus sign, and the other programmer catches it and they both find it hilarious. The tag line on the ad goes something like, "Our jokes are not like your jokes", but the humor of the ad underscores a very real point - that software developers and programmers don't think as other people do. Some technique, or some piece of code that might seem perfectly obvious to a programmer (and that might in fact have been around for years) might seem to be new and novel to a patent examiner. From what I've read, the patent office has a real problem with issuing patents that, had any real programmers been consulted, would have never been approved due to obviousness. However, once they are approved, then those that use the software in question might have to fight a prolonged legal battle to get the patent overturned.

Also, as the Free Software Foundations points out:

Software patents hurt individuals by taking away our ability to control the devices that now exert such strong influence on our personal freedoms, including how we interact with each other. Now that computers are near-ubiquitous, it's easier than ever for an individual to create or modify software to perform the specific tasks they want done --

and more important than ever that they be able to do so. But a single software patent can put up an insurmountable, and unjustifiable, legal hurdle for many would-be developers.

The Supreme Court of the United States has never ruled in favor of the patentability of software. Their decision in *Bilski v. Kappos* further demonstrates that they expect the boundaries of patent eligibility to be drawn more narrowly than they commonly were at the case's outset. The primary point of the decision is that the machine-or-transformation test should not be the sole test for drawing those boundaries. The USPTO can, and should, exclude software from patent eligibility on other legal grounds: because software consists only of mathematics, which is not patentable, and the combination of such software with a general-purpose computer is obvious.

I think the only people who really think software patents are a good idea are patent attorneys, who make considerable money every time a bad software patent is issued and some hapless individual or company has to defend themselves. But the patent office is supposed to promote invention - true invention, not an art form dressed up to look like invention - and not provide guaranteed income for patent attorneys at the expense of all other U.S. citizens.

Please stop issuing software patents.