

From: Giff Constable [e-mail redacted]
Sent: Saturday, September 25, 2010 5:35 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: Please Cease Software Patents

To the USPTO,

I am writing as a U.S. citizen and someone who has been a software entrepreneur/executive for 16 years now. I have worked for multiple venture capital-backed companies and created both enterprise software as well as consumer Internet applications. As an entrepreneur, as someone who wants to see innovation and small business thrive in America, I am writing to vehemently encourage that the USPTO cease the granting of software patents.

Software patents are a tax upon innovation in this country. The *only* legitimate parties they help are the very largest companies, such as IBM and Microsoft, not entrepreneurs and smaller innovators.

Patents do not help small businesses grow. In today's software world a small, nimble team can take on giants, but software patents allow the powers and parasites to move competition out of the marketplace and into the courtroom. This neither benefits inventors nor consumers.

Today, software innovation never comes from a lone genius thinking in a vacuum. Ideas build on top of ideas, and reference the countless things that come before. For the last 15 years, I have seen multiple teams starting companies around the same idea, around the same time. They are not copying each other, but rather all looking at the same trends and seeing similar opportunities. The USPTO would be wrong to put itself in the role of king-maker. The software industry moves too fast, and too much happens in parallel. The best and only legitimate way to reward innovators and consumers is to let the market sort it out.

The most egregious patents are those related to processes, where someone takes an existing idea and handles it in software. To me, it is like giving patents to an artist who paints a scene of swimmers in the ocean. Are you going to grant that person a patent and ban everyone else from painting images of swimmers in the ocean? Are you going to grant the painter a patent on the colors used? On the curve and speed of the brushstroke? Would that not be ridiculous? No, instead our legal system grants copyright. Somehow, the USPTO has lost sight of this when it comes to software.

During this debate, I suggest that you listen with particular care to entrepreneurs who are doing the real innovating. You will find that the vast majority of us, and the venture capitalists who back us, want software patents to cease. Innovation should happen in the market, not the courtroom. By letting us compete in the market, you help innovators, job creators and consumers alike.

Sincerely,

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