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**Subject:** Exclude software from patent eligibility

I am the CEO of a software startup company in the field of cloud computing and computer virtualization. Our company is the primary sponsor and developer of Open Source software used by millions of people worldwide. Our business and our Open Source community is directly effected by the current software patent landscape.

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 same is true for new software companies. The process of developing new software has become a minefield of legal liability. While a challenge based on prior art or obviousness could often be mounted, the expense to a new company or individual software developer makes it impossible. As a software startup founder and a former employee at a number of software companies, I have personally seen the chilling effect this has on innovation and creation of new software.

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.