

**From:** Jim Durrell [e-mail redacted]  
**Sent:** Friday, September 24, 2010 4:04 PM  
**To:** Bilski\_Guidance  
**Subject:** Software patents

To Whom It May Concern,

I am writing to encourage you to drastically restrict or altogether eliminate the patents granted on software. Software does merit patent protection, software patents harm the social good by hampering innovation, and software patents have never been ruled on favorably by the Supreme Court of the United States.

All software patents fail to take a physical form or describe a particular machine that is required for protection. In an effort to make them concrete, the patent office has awarded protection for user interface and website elements, but this is like awarding patent protection on the idea of a pocket watch rather than the actual escapement and spring. Further, most software patents are awarded despite being obvious to "mechanics skilled in the art". The extraordinary degree of patent litigation among software companies is evidence of the degree of independent fabrication. Too often, these are not true inventions but just the obvious way to tackle a problem. Finally, the most complex parts of a software system (the high level interactions) can be generally reduced to a formal calculus. This further highlights the relationship of software and mathematical formulas that are not eligible for patent protection.

Software patents should also be rejected because they fail to achieve the explicit goal of the US Constitution in awarding patents: to promote the progress of science and useful arts. Because most software patents are awarded for incremental steps that are obvious to engineers, the effect is to stifle innovation as software companies are bogged down in litigation. The current system threatens any small company with extinction because it is too easy to innocently transgress on patents. It is not necessary to steal ideas from patented work, as software engineers often find the same obvious way to solve a problem. While the problem of independent invention is not unique to software, the fact that it dominates the industry shows that the patent model does not fit.

Finally, the Supreme Court has never ruled favorably on software patents. Software, because it is not a particular machine, can at best be considered a business method patent, but even those were largely rejected in Bilski. Most software patents are for instructions that run on a general purpose computer. Whether viewed as business methods or mathematical formulas, neither is patentable.

For these reasons, software does not merit patent protection. The state of the industry and the overwhelming resistance to software patents among software engineers (something not seen in any other engineering discipline) shows that the patent model simply doesn't fit. Please reject software patents so that the industry may continue to thrive.

Thank-you for your consideration.  
Sincerely,  
James Durrell