

From: Abby Fichtner [e-mail redacted]
Sent: Sunday, September 26, 2010 8:38 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: End Software Patents

As a software developer who has worked for a number of innovative start ups and software companies, I urge you to please put an end to software patents. They do nothing but harm by putting up road blocks against improving the state of software development, something that continues to become an increasingly more important part of all of our lives. And so, software patents harm all of us by standing in the way of progress.

Most software patents describe the problem that the claimed "invention" solves but they don't detail how it is solved e.g. at least with design and implementation. As a result, all solutions to the problem are patented (not just the one which is implemented by the patent applier) and so prevent anyone else from innovating in that area. The result is that all of us lose and progress is stopped.

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.

Sincerely,
Adrienne Fichtner
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