

From: Jamie Hamilton [e-mail redacted]
Sent: Monday, September 27, 2010 1:09 PM
To: Bilski_Guidance
Subject: Time to end software patents

To whom it may concern:

The current software patent system primarily serves to hinder innovation, not promote it.

I am a serial tech entrepreneur, having served as co-founder and/or VP of six startups, which collectively raised \$15m, and created many new products and hundreds of new jobs. We built innovative technology, but used trade secrets over patents because the software patent system is broken. Our sole experience with patents was nuisance lawsuits by holders of feeble intellectual property, willing to settle for a fraction of the legal fees we would incur fighting them in court.

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 yours,

Jamie Hamilton
New York, NY