

**From:** Jason Frothingham  
**Sent:** Thursday, April 11, 2013 5:13 AM  
**To:** Sked, Matthew  
**Subject:** Comments re: Partnership for Enhancement of Quality of Software-Related Patents

Forgive me a bit if this wanders as I get to my my main points. For historical purposes I have written about software patents multiple times over the years. Examples on the Internet can be found at:

<http://zerias.blogspot.com/2012/05/android-centralization.html>  
<http://zerias.blogspot.com/2008/06/why-do-open-licensed-drivers-matter.html>  
<https://plus.google.com/117255203942825212306/posts/HbvZj31BTjq>  
<https://plus.google.com/117255203942825212306/posts/ZhdMFhab92Q>  
<https://plus.google.com/117255203942825212306/posts/BPBK1DB2jYn>

In direct terms; *Software Patents Are Directly Harmful To Innovation.*

To try and put this in simple terms, *Software* refers to code that is written in a format that can be broken down into a mathematical process. In the case of modern computers the mathematical process is based on a *binary* code base. This reality of *Software* means that all software is, by design, a *Mathematical Equation*.

Ergo, a *Software Patent* essentially is a claim on a *Mathematical Construct*.

A *Software Patent*, at it's core, places a mathematical equation under the protections of a patent. Imagine for a second what would happen if an average person walked into the patent office and applied for a patent on  $2+2=4$ . *What would happen?* Would the patent be granted? Probably not given that patents are not supposed to be used to protect Idea's.

Not to be ugly, but the Patent Office itself should be familiar with the Idea-Expression Divide and it's relationship to Mathematical Constructs. For those who do not work in the Patent Office: [http://en.wikipedia.org/wiki/Idea-expression\\_divide](http://en.wikipedia.org/wiki/Idea-expression_divide)

From a historical point of view the point of the patent system was to protect hardware innovations. Fair enough the concept of placing patent protections on a *Mathematical Construct* was not that far fetched back in the 1950's and 1960's when the *Mathematical Construct* was tightly coupled with the physical calculating hardware. I would doubt that any of those inventors or their managers taking out patents on early analytical engines could have possibly predicted the separation of software from the hardware; much less the on-going patent wars where companies like Apple claim that nobody else can perform  $5 \times 5 = 25$  on their mobile device; excuse me... where companies like Apple claim that nobody else can have imagines auto-scroll when an image reaches an edge of the screen.

Look, I realize that a large number of companies have billions of dollars sunk into software patents... but at some point the fact that those software patents are just *mathematical constructs* that are not covered by the intentions of the Patent System has to be addressed.

As of right now the US Patent and Trademark Office is going to be best served by simply getting rid of software patents. Yes, it's going to cause a lot of whining and gnashing of teeth as billion dollar investments get burned overnight... but the end result is a software market that won't have to worry about a company like Microsoft, Apple, or Oracle hauling competitors into court instead of creating new products.

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