As an independent software developer trying to start a business, I cannot come to New York in the middle of the week to comment in person. Doubtless my competitors will be sending corporate attorneys to speak in favor of software patents.

Patents were conceived with the intent to give innovators a temporary monopoly on an invention. Once an invention is made public, anyone can copy the idea and sell it for less. This is not possible with software. Software must be compiled into machine language in order to be executed on a computing device. In most cases, it is not possible to completely reconstruct the original instructions that would be useful to someone seeking to copy a software invention. Therefore, there is no need for patents. Anyone seeking to copy a software implementation must re-implement the design with new source code. This will always result in a different design, sometimes better and sometimes worse, than the original.

In the case of interpreted languages, or open source software, patents should still not apply. Copies of this type of source code are covered by existing copyright law. Those who distribute this software are vigilant about ensuring compliance with open-source licenses. While it is not possible to extract the original source from compiled software, it is possible to identify potential copyright violations. Therefore, publicly available source code should also not be patentable.

I have been threatened with legal action over an fraudulent trademark claim. Small businesses such as mine cannot afford to defend themselves in a modern court of law. Our first and only response is to surrender immediately. Our only safety from legal attacks by larger companies is obscurity and lack of assets to take. Because of software patents, every success in software increases the risk from legal attacks by corporations. The App Store model invented by Apple is the greatest hope for financial success that small software developers have ever seen. The risk of legal attacks from software patents puts this innovation in jeopardy. In some cases, Apple has even intervened in legal cases in defense of members of its developer programs. This is not Apple's job. It is the government's job to ensure a fair market economy. Please do your job.

Sincerely,

John Daniel
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