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Comments Submitted by Brandon Mintern

Posted by the **Patent and Trademark Office** on Sep 7, 2021

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Modista (http://modista.com/) was sued out of existence at a fledgling stage in 2008 based on a competitor's patent: https://www.k9ventures.com/blog/2011/04/27/modista/. That competitor no longer exists. Modista could have improved online shopping for every American and broadened the competitive landscape for online retail. That scenario is plausible considering that the founder later went on to found a different company in 2011 that has since grown to 300+ employees and $50MM+ in annual revenue.

Capable tech innovators are absolutely discouraged by software patents. Only big companies can afford to stockpile them, and they can use even the threat of a patent suit to shutdown upstart competitors or convince them to accept an unwanted acquisition agreement.

As an employee, I am discouraged from researching existing patents, since willful infringement has a stiffer penalty. The purported upside of patents—to share useful breakthroughs after a time-limited, government-enforced monopoly—just doesn't seem to work well at all for software.

Comment ID

PTO-P-2021-0032-0009

Tracking Number

kqw-n31e-7o3f

Comment Details | **Submitter Info**

Document Subtype

Comment(s)

Received Date

Jul 8, 2021

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