Houser, Robert C.

From: Mackall, Lenell
Sent: Tuesday, November 9, 2021 2:36 PM
To: Houser, Robert C.
Cc: Smith, Sharon; Terrance, Angela
Subject: Docket No. PTO-P-2021-0032-0002

Hi Bob,

The following email came in on the usptoinfo@uspto.gov mailbox.

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Thank you,

Lenell Mackall
USPTO Contact Center
U.S. Patent and Trademark Office

-----Original Message-----

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Drew Hirshfeld, Director
United States Patent and Trademark Office (USPTO) USPTO Madison Building
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usptoinfo@uspto.gov

Re: Docket No. PTO-P-2021-0032-0002, Senators Push To Study "Unstable"
Patent Law, While Patent Trolls Cheer Them On

Dear Director:

Led by a group of senators that spent much of 2019 trying to change U.S.
patent law for the worse, the U.S. Patent and Trademark Office (PTO) has agreed to study the "current state of patent jurisprudence." The details of the study make it clear that its proposers believe in a narrative created by patent owners, that the 2014 Alice case has introduced "uncertainty" into patent law.

That would be Alice v. CLS Bank, the Supreme Court case that made it clear you can't get a patent on an abstract idea just by adding in generic computer language.

The only ones experiencing "uncertainty" because of the Alice precedent are people and companies using weak software patents to demand money from others.

For people who actually work with and on software, the Alice precedent has produced more certainty than ever before. Software innovation in the past seven years has been extraordinary. In the U.S., since Alice, the software industry is experiencing record profits and levels of employment. It certainly helps that more baseless patent lawsuits are being thrown out by courts. Truly innovative companies that build stuff—rather than rely on software patents—are thriving.

In 2020, the great majority of software-related appeals where patent eligibility was at issue ended up with the patents being found invalid.
That's happening because of Alice—we can't and we won't let that progress get rolled back.

There are many stories of small businesses faced with extortionate demands from patent assertion entities claiming to have patented basic aspects of doing business. These small companies—often with a sole proprietor or just a handful of employees—were threatened by patent owners claiming wide-ranging rights in things like online voting, package tracking, and online picture menus. Because of the Alice precedent, the patent trolls in these cases weren't able to get away with it.

Despite the clear evidence that Alice is working, a few senators have decided this area of law is so "unstable" it requires a government study, but the only instability comes from patent maximalists resisting the clear rulings handed down by the Supreme Court. EFF filed comments explaining why the Alice framework for analyzing patents is working well. If the PTO wants to study patents, it would do well to study whether we should have software patents at all. There's no evidence software patents have led to a net gain in innovation, and there's growing evidence of their harm.

EFF's full comments:
https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.eff.org%2Fdocument%2Feff-comments-uspto-patent-eligibility-study&data=04%7C01%7Cusptoinfo%40uspto.gov%7C4e67e2a6c3884efce59308d9a068d6f4%7Cff4abfe983b540268b8ffa69a1cad0b8%7C1%7C0%7C637717194405831600%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=owYefD7LJXl2iwwOb6%2F7KYM%2BK5ghEyVfsz0I3Ld1svE%3D&reserved=0

Yours sincerely,
Robert E. Rutkowski

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