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It is essential to global competitiveness for the US to have clear standards for subject matter that is eligible to be patented.

I work with software companies that develop innovations that often represent major technological advances. I have personally written more than 2000 granted US patents. While the US Patent Office has continued to issue patents related to software innovations, the decision of the US Supreme Court in Alice Corp. Pty. Ltd v. CLS Bank Int'l has cast doubt on whether a large number of these patents are valid.

My experience has been that owners of US patents that may be subject to a challenge under Alice, are reluctant to bring claims for infringement against competitors who are wrongfully using their patented innovations, particularly well-funded foreign competitors who enter the US market. This is due to the risk that if an infringement claim is brought, a judge will find that the patents are directed to ineligible subject matter as an easy way to remove a complex infringement case from their docket. As a result US companies often defer the commencement of patent infringement claims to stop foreign competitors, and are losing market share and revenue.

Another common problem I have encountered is that Alice has made it impossible to accurately determine the value of software patents. Companies considering acquiring or investing in an entity that has developed and patented its software technology, are uncertain of the value of the patents because they may be subject to a subject matter eligibility challenge. This has often limited the amount that companies are willing to invest in or pay to acquire an entity that has developed and patented its software technology.

Certainty about the types of inventions that qualify for US patent protection is important to spur innovation and improve the health of the US economy. It is also critically important that Congress take action so that patents that are issued under the standards applied by the US Patent Office are not subsequently held invalid by the courts as directed to ineligible subject matter.

I encourage Congress to enact the Joint Proposal of the American Intellectual Property Law Association (AIPLA) and the Intellectual Property Owners Association (IPO) for amending 35 USC §101 to clarify what constitutes patent eligible subject matter. Legislative adoption of this Proposal will eliminate much of the current uncertainty surrounding subject matter eligibility of US patents and will benefit the US position in the global economy.

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