September 1, 2021

Re: Requests for Comments on Patent Eligibility Jurisprudence Study

Founded in January 2012, the Developers Alliance is a global industry association that supports software developers as entrepreneurs, innovators, and creators.

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Commissioner Hirshfeld,

Developers Alliance submits the following comments in response to the July 9th, 2021 Request for Comments from the US Patent & Trademark Office to express the views of software developers with regards to the study on the current state of patent eligibility jurisprudence in the United States. Our comments focus on how the current jurisprudence has impacted investment and innovations, specifically in the technology space.

Developers Alliance is a leading advocate for software developers and the companies invested in their success. Alliance members include industry leaders in consumer, enterprise, industrial, and emerging software development, and a global network of more than 70,000 developers from 50 states and many countries including the EU, UK, Canada, and Australia. We have advocated for software developers for almost a decade. Our members are building a better future, moving our world forward, and seeking to ensure a thriving app ecosystem that allows developers to profitably reach consumers around the world.

An accurate picture of how developers are impacted by patent laws is necessary to establish a policy that encourages competition and sector growth. Developers represent a wide section of the tech economy, and they believe that existing laws prohibiting patents on abstract ideas, laws of nature, and natural phenomena should be maintained. Developers believe that changes to those laws would cause great harm to the American technology industry, jeopardize innovation, and take away the jobs of creators within the space.

Developers have benefitted from laws that prevent companies from patenting abstract ideas. Specifically, these laws provide a critical floor that protects startups from over-broad lawsuits on account of abusive patent assertion entities which was a critical issue before the adoption of IPR. Removing or revising these laws could put many tech startups out of business, or disincentivize growth in an otherwise flourishing industry by again exposing our industry to patent trolls and nuisance lawsuits. These laws ensure that developers have the necessary freedoms they need to create, develop, and bring new products to market.

Disallowing parties from patenting abstract ideas allows the developer community to expend more time and resources on creating products and services to help our economy grow, and employing more highly skilled tech professionals, and spend less on litigation. When patent assertion entities can obtain (and assert) over-broad U.S. patents that cover basic ideas (e.g., “on a computer”), it forces developers and developer-led companies to spend on extortionate settlement fees or exorbitant legal fees. When the patent office prevents companies from patenting the use of conventional technology to perform abstract ideas, it can remove much of this risk. And when those abstract idea patents have been issued, the ability to file early motions to dismiss frivolous cases allows developers to defend themselves before incurring enormous litigation expenses that could ultimately force them to shut their doors.

Developers' success does not depend on obtaining patents on abstract ideas, laws of nature, or natural phenomena, however, changes to patent eligibility would impact the ability of their products to ultimately come to fruition. Allowing abstract patents, specifically in the areas of quantum computing and artificial intelligence, could negatively impact investment in the broader technology sector at a time when it faces exponential growth opportunities. Investors would likely be concerned about return on their investments and thus the industry as a whole would suffer on account of reduced growth opportunities given the fear of, and costs associated with, litigation. This would have grave consequences for America’s position of being globally competitive technologically, thus we ask you to consider the broader implications of the technology landscape and investment in developer-led companies.

Thank you for considering the comments of the developer community. As one of the primary organizations representing this industry, Developers Alliance would welcome the opportunity for additional dialogue regarding this important topic.

Sincerely,

Sarah Richard
Policy Counsel & Head of US Policy
Developers Alliance