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## Most software companies infringe patents

Software patents delenda est

By [Nick Farrell](#)

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**THE CATO INSTITUTE**, a paleo-conservative think tank that promotes totally unregulated, dog-eat-dog free market ideology by invoking the Roman champion of slavery, has poured cold water on the US patent regime by saying that practically all [software](#) companies infringe patents.

In [a report](#), Cato denizen Timothy Lee compared patents on software and [business processes](#) to patents on English prose.

He asked what would happen if the US courts were to legalize patents on the plots of novels, news stories using a certain interview technique, or on legal briefs using a particular style of argumentation.

Lee pointed out that this would mean that writing most books, papers, or articles would expose authors to potential liability for patent infringement. To protect themselves, writers would have to hire patent lawyers before publication and rewrite passages found to be infringing.

He said that such a concept was completely barking but it is analogous to what has grown to be expected of software programmers over the last 15 years.

His hope is that the US Supreme Court will rule out patents on software when it hears the case of *Bilski v. Doll* this coming term.

Since patent protection was first extended to software in the 1980s, it is difficult or impossible to create any significant software without infringing one or more patents. With tens of thousands of new software patents granted every year, and no effective indexing method for software patents, there is no cost-effective way to determine which patents cover any piece of software.

Lee observed that many software companies have simply given up on trying to avoid any software patent infringement and larger firms stockpile defensive software patents to use as ammunition when they are inevitably sued for infringement.

Another practice that many software companies use is to sign broad cross-licensing agreements with other large firms promising not to sue one another.

The Cato Institute thinks patents on software and [business](#) processes should be outlawed in order to avoid stifling creativity and innovation. We tend to think that Cato has got something right in this particular case. μ



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