

# USPTO Director Discusses Software “Patent Wars”

By: Sheldon Mak & Anderson

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David Kappos, the Director of the U.S. Patent and Trademark Office, recently addressed the so-called “patent wars” impacting the software industry. Although he acknowledged several concerns about [patent quality](#), he also highlighted the importance of IP rights to the software industry.

“Patent protection is every bit as well-deserved for software-implemented innovation as for the innovations that enabled man to fly, and before that for the innovations that enabled man to light the dark with electricity, and before that for the innovations that enabled the industrial revolution,” Kappos stated. However, he also acknowledged that patent protection must be “properly tailored in scope, so that programmers can write code and engineers can design devices without fear of unfounded accusations of infringement.”

Kappos also debunked reports that the “patent wars” between companies like Samsung and Apple signal that the system is broken. He cited a USPTO study that found that in over 80 percent of the smartphone lawsuits, the courts have construed the software patents at issue as valid. He further noted that rejections in software patent applications taken to the USPTO appeals board are upheld at a slightly higher rate than for the office as a whole, and those few decisions appealed to the Federal Circuit are affirmed 95 percent of the time.

Kappos also noted that the changes implemented under the America Invents Act should improve the quality of software patents. He specifically listed new procedures, such as post-grant opposition, inter partes review, and covered business method patents review. He also noted that additional changes are forthcoming as the USPTO completes the rollout of the AIA.

“So to the commentators declaring the system is “broken” I say: give it a rest already, and give the AIA a chance to work. Give it a chance to even get started. But we’re not done. Not nearly,” Kappos stated.

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