# *A Brief History of Software Patents (and Why They're Valid)*

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Today, there is significant public policy debate over patents on the computer-implemented technologies commonly referred to as "software patents." The Supreme Court will soon decide if these inventions are patentable or not in *Alice Corp. v. CLS Bank*; either way it decides, though, the debates will continue in the courts or in Congress, or in both. This essay fills a gap in the scholarship by identifying the role of software patents in historical development of the high-tech industry-both technologically and commercially. This history is important for two reasons. First, it reveals that opposition to intellectual property protection for software long predated the turn to patent law in the late 1980s and 1990s, which suggests that the reasons for some opponents are more ideological than they are rooted in the empirical facts of the market, the technology, or even in the nature of particular patent doctrines. Second, this historical account reveals that the shift from copyright law in the 1980s to patent law in the 1990s was not a result of strategic behavior or rent-seeking by commercial firms who exploited their access to the halls of power in Congress (or somehow duped the courts into providing them the same legal protections). To the contrary, this historical evolution represented a natural legal progression as the technology evolved from the 1960s up to the mid-1990s. In the U.S. legal system - precisely because it is designed to happen this way - legal doctrines evolve in response to changes in innovative technological products and the commercial mechanisms deploy this innovation in the marketplace. Patent law has long exemplified this basic operating principle, as its extension to software in the past several decades reflected the same extension to the radically new technological innovations in the previous two centuries. In sum, a brief history of software patents confirms that they are indeed a patentable technological innovation.

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