



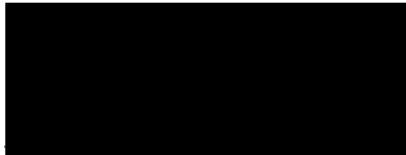
Office of Hon Craig Foss

MP for Tukituki

Minister of Commerce
Minister of Consumer Affairs

Minister of Broadcasting
Associate Minister for ACC

12 FEB 2013



Dear 

Thank you for your email message of 28 January 2013 in relation to the amendment I have proposed for the computer program provisions of the Patents Bill. The amendment provides that only computer programs "as such" are ineligible for patent protection.

You are concerned that the "as such" wording is much weaker than the original wording in clause 15(3A) of the Bill and will allow computer programs to continue to be patented in New Zealand.

In addition to reiterating the points made in my response to your letter of 27 September 2012, I would like to further reassure you that the "as such" wording will not lead to computer programs continuing to be patentable in New Zealand. Other jurisdictions that have this wording in their legislation do not allow computer programs themselves to be patented. Inventions that merely involve computer programs, including inventions involving so-called "embedded" software, can still be patented.

The Commerce Select Committee, in its report on the Patents Bill, made it clear that, while computer programs themselves should not be patentable, inventions involving "embedded" software should still be patentable.

On this basis, the "as such" wording is consistent with the Commerce Select Committee's intention, and will mean that computer programs will no longer be patentable in New Zealand. This will contribute to a simpler and more open environment for innovation to take place in New Zealand.

In relation to your comments about the World Trade Organisation Agreement on Trade Related Aspects of Intellectual Property Rights (The TRIPS Agreement), concerns have been raised about the wording of the Patents Bill's computer program provisions (clause 15(3A)) as originally recommended by the Commerce Select Committee.

The concern was that this wording might be interpreted to mean that any invention that used or involved a computer program would not be eligible for patent protection. Such a broad interpretation would likely be in breach of New Zealand's obligations under the TRIPS Agreement. It would also be contrary to what was intended by the Commerce Select Committee. On this basis, I considered that the Commerce Select Committee's original wording should be amended to clarify the intention and ensure consistency with the TRIPS Agreement.

I hope that this reassures you that the adoption of the "as such" wording will not mean that computer programs will continue to be generally patentable in New Zealand.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C. Foss', with a long horizontal flourish underneath.

Hon Craig Foss
Minister of Commerce