From: Phil Crooker [e-mail redacted]
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To: Bilski_Guidance
Subject: Comments on Bilski v Kappos judgement

Software patents are a huge problem in the open source community. Time and again, software patents are used to either exhort royalties or to unjustly force competitors out of the market. The recent Microsoft / Tomtom case used a number of rather "weak" patents, including US patent 5,579,517 (which allegedly Linux infringes) to force an otherwise unrelated company to pay Microsoft licensing fees.

Not to step on too many toes, but the USPTO has a poor record of determining prior art and novelty in patent applications. The directive in the 35 U.S.C. 103a – prior art/person having ordinary skill in the art – is effectively is ignored in the granting of patents. Thus we get patents like 5,579,517 with many, many examples of "near" prior art disregarded. These meritless patents must be fought out in court or settled by those that can't afford or unwilling to fight.

Additionally, although the Supreme Court didn't rule on the patenting of software specifically in the Bilski case, however the "reinstatement" of the Benson, Flook and Diehr mathematical algorithum criterium presents a real opportunity for patent reform. The Supreme Court has clearly ruled that mathematical algorithums are not patentable, software is, in my and many others' opinion, clearly a series of algorithums. And the Bilski ruling itself shows that mere "business" processes, such as IBM's recent movie voting patent, 7,784,069 or Microsoft's recent automatic shutdown of an operating system, 7,784,069. It is hard to see how these patents would be granted, given Bilski's rejection of basic concepts and practices.

This situation is very damaging to the healthy development of software. I'm sure you are aware of the Bill Gate's 1991 quote regarding patents: "If people had understood how patents would be granted when most of today's ideas were invented, and had taken out patents, the industry would be at a complete standstill today."[1] This encapsulates the current development environment.

[1]http://quotes.nobosh.com/if-people-had-understood-how-patents-would-be-granted-when-most-of/q185/