From: Richard Freytag [e-mail redacted]
Sent: Monday, September 27, 2010 1:35 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: USPTO - Please stop issuing software patents-

Dear Sir or Madam,

I am a U.S. Citizen, voter, and small business owner selling high-tech software products to the government and industry. I regularly develop and use technology that could be patented. To date I have not filed to date for any of my patents and have worked to put them in the public domain because the time and cost of patents is too high to file and, interestingly, too high to search because of treble damages.

I have never found the prospect of litigating to win funding for my developments a compelling business model. Most of the work is not in the technology (sometimes considerable) but in application of the technology and educating the consumer in the value of the technology. The up-front costs of patents to the inventor causes them to want to recoup their investment as quickly as possible. The result is that the web of patents I might violate is so out of my price range for an exploratory and niche product that I cannot justify even to begin to investigate the patents, their application, or prove a market exists. As a result many new technologies never see market application at anything like their potential value.

Software patents hurt individuals by taking away our ability to control the devices that now exert such strong influence on our personal freedoms, including how we interact with each other. Now that computers are near-ubiquitous, it's easier than ever for an individual to create or modify software to perform the specific tasks they want done -- and more important than ever that they be able to do so. But a single software patent can put up an insurmountable, and unjustifiable, legal hurdle for many would-be developers.

The Supreme Court of the United States has never ruled in favor of the patentability of software. Their decision in Bilski v. Kappos further demonstrates that they expect the boundaries of patent eligibility to be drawn more narrowly than they commonly were at the case's outset. The primary point of the decision is that the machine-or-transformation test should not be the sole test for drawing those boundaries. The USPTO can, and should, exclude software from patent eligibility on other legal grounds: because software consists only of mathematics, which is not patentable, and the combination of such software with a general-purpose computer is obvious.

I as a software developer and inventor of new software technologies (see DARPA W31P4Q-08-C-0242), request that the U.S. Patent and Trademark Office stop issuing software patents.

Respectfully yours,
Richard Freytag
Manager, Freytag & Company, LLC