From: Eric Herman [e-mail redacted]
Sent: Thursday, September 23, 2010 7:41 PM
To: Bilski_Guidance
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Subject: The USPTO must take a stand against software patents

United States Patent and Trademark Office:

When reviewing Bilski vs. Kappos, please take note that software patents fail the basic tests of serving The People of these United States.

Notice:
1. Software patents do NOT aid in forming a more perfect Union.
2. Software patents do NOT establish Justice.
3. Software patents do NOT insure domestic Tranquility.
4. Software patents do NOT provide for the common defense.
5. Software patents do NOT promote the general Welfare.
6. Software patents do NOT secure the Blessings of Liberty to ourselves and our Posterity.

Fundamentally, software patents do NOT serve We The People.

Unlike other areas of patent law, software patents prevent the re-implementation of an _idea_, not a machine which is a particular implementation of an idea, but rather the _idea_ itself.

Ideas must be free to exchange between citizens as ensured by the freedom of expression explicit in the first amendment:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Furthermore, the Free Software Foundation http://fsf.org/ is completely correct in stating:

> 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.
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> 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.

Most importantly, software patents prevent citizens from being able to create software which helps fellow citizens; software patents unravel the very fabric of our great nation.

The USPO has a _duty_ and constitutional mandate to uniformity and categorically reject software patents.

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