

From: Hugh C Kennedy [e-mail redacted]
Sent: Sunday, September 26, 2010 12:32 PM
To: Bilski_Guidance
Subject: Interim Bilski Guidance

Hello,

I am a Computer Engineer by training, and a software developer by both profession for eleven and avocation for twenty years. I'm writing today to express my concerns about the Interim Bilski guidance on the issuing of patents on software.

All software is an expression of one or more algorithms, however simple. Algorithms are inherently unpatentable, and the expression of them in software (as opposed to being embodied in a fixed machine) should be considered to be held under copyright exclusively. This is both already available to producers of software (and is infact central to the licensing of software), and provides the correct scope of protection for the embodiment of an idea.

Hardware, fixed machines, are definitely patentable (and often patent worthy). However a general purpose microprocessor is not a different machine simply because it is running through a new set of instructions.

I have seen over the last decade, parties (on occasion my employers) awarded patents on non-novel algorithms and software that have been clearly described in the literature for years previous to the application for patent rights. Subsequently, corporations and individuals could be in the ridiculous position of being found to be infringing on an obvious idea.

The inability of the USPTO, or any central body, to apply the depth and dilligence required to ensure novelty in software suggests that the subject should be abandoned entirely, and existing viable copyright mechanisms used exclusively.

Thank you,

-hugh kennedy
Philadelphia, PA