

From: jen leibhart [e-mail redacted]
Sent: Sunday, September 26, 2010 1:01 AM
To: Bilski_Guidance
Subject: thoughts on software patents

Hi,

I'm writing to give my opinion regarding examiner guidelines for the Bilski decision.

I write as someone who works in the internet industry so my livelihood depends on companies who want to patent software plus open source software which can be used to build products. I also write as a member of the general public who believes technology can improve our lives & having open source software assists with entrepreneurs and technologists in building new things which change the way we do things.

I am not against patents but I URGE the examiners to trend thoughtfully and get lots of opinions and some very tech savvy people on staff!! That includes both big business AND entrepreneurs, academics, technologists and those in the open source community.

I fear simple processes will be patented & then unavailable for use. What if a company were allowed to patent the 'send a message' function? Any company with an email client, instant messenger client, social network, micro-blog, text messaging, etc would be effected. The ability for people to communicate electronically would be drastically negatively impacted as only companies with big pockets would be able to license the technology and innovation of how we communicate electronically would slow. We probably would not have experienced Twitter or Facebook or others. Even people who run free message boards for sports fans have technology running with this functionality so they could need to pay up.

From what I'm reading about the Bilski decision, it's not just tech functionality that's at risk but also the computerisation of daily processes we humans do. Filling out a certain type of form can be tweaked for better results & done completely electronically. If I determine a better process for collecting this information

electronically that's not earth shakingly different to what we do now, can I patent that? It seems we're dangerously close to giving companies rights to things we humans would improve on over time.

The following is suggested copy from the Free Software Foundation. I agree with the below, hence why I'm including it here - and they have summarized a lot better than I probably have.

Thanks for your consideration. Jen

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.