From: Eric Blake [e-mail redacted]
Sent: Friday, September 24, 2010 10:06 AM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: Bilski v. Kappos and its impact on software patents

As a U.S. citizen, I would like to add my voice to those requesting that the USPTO consider carefully the stance taken on software patents after the recent *Bilski v. Kappos* ruling. I am a software developer rather than a patent attorney, so while I may not understand all the legal arguments related to software patents, I am directly affected by the outcome.

I am cc'ing this email to the Free Software Foundation, an organization that is actively interested in protecting the rights of software developers. My hope is that the USPTO will set forth a strong stand against software patents.

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.

In my own experience, I have spent a lot of personal time developing open source software, both as an individual and in my current employment. One of the interesting aspects of open source software is that it can be developed at little or no cost; in fact, much of my development time has been on a volunteer basis, at a net loss of money in the form of my internet and electric bills, purely because I enjoy the development aspect as a hobby. It is my understanding is that the patent process is designed to protect the financial rights of innovators. But if the innovation is not earning me any financial remuneration in the first place, then what would a patent be protecting? Besides, it seems rather unfair that as an individual, I lack the financial resources to research whether any of my code might be violating a patent, let alone to defend myself should my

software be called into question under a patent violation case, when none of the code that I write is worth putting under a patent because I make no money on it in the first place.

Meanwhile, my current employment is with a company that actively works on open source software. The current software patent environment is such that my company has to spend millions of dollars annually in developing a patent portfolio and defending against software patent lawsuits, all because of the current "arms race" situation among various software patent holders. Every dollar spent on defending patents is a dollar lost in researching and developing new software, which in turn hurts the bottom line of my company and thus impacts my earnings as an employee.

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.

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Eric Blake eblake@redhat.com +1-801-349-2682
Libvirt virtualization library http://libvirt.org