From: Alison Heittman [e-mail redacted]
Sent: Sunday, September 26, 2010 11:17 PM
To: Bilski_Guidance; licensing@fsf.org
Cc: Rob Heittman
Subject: Re: Forthcoming guidance: Please exclude all software patents from consideration

My husband and business partner Rob Heittman wrote and submitted this earlier today. I would like to go on record that I agree with what he wrote, and hope that you will consider our opinions on the software patent system.

Thank you very much,

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On Sun, Sep 26, 2010 at 7:45 PM, Rob Heittman <rob.heittman@solertium.com> wrote:
> I am not a lawyer. I am a professional software engineer, an
> innovator and inventor, and a U.S. citizen. My livelihood depends on
> the ability to effectively research and develop creative software
> solutions to real problems.
>

> The patent system theoretically exists to protect the rights of
> inventors. However, I can personally attest that in my industry,
> computer software, the system achieves exactly the
opposite. Software
> patents are a heavy, leaden weight around the necks of software
> inventors like me, and I would like the USPTO to take a strong
stand
> in the wake of Bilski and exclude them from consideration
altogether.
> I think the Bilski decision hints that the Court leans this direction,
> but as I said, I am not a lawyer. I just believe this guidance
> affords a unique opportunity to undo a misdeed.
>
> Software moves quickly. The ability to innovate is equally available
> to anyone. Many, if not most software ideas can be brought to
market
> worldwide with less time and funding than it takes to acquire a U.S.
> software patent.
>
> This results in a situation where software patents are predominantly
> pursued by professional "patent trolls" and large well-funded
entities
> scarcely in need of patent protection itself, but desperately in need
> of a defensive screen against patent system abusers. This
situation
> creates only drag; it adds no value.
>
> As I'm sure you well know, software patents are impractically
> difficult to examine, and this situation only worsens over time. With
> untold billions of lines of software code in use around the world,
> much of it in private or closed systems, prior art is effectively
> impossible to discover. I share the wide belief that many of the
> extant U.S. software patent awards are invalid; a quick scan online
> finds dozens of examples where my own prior art overtly invalidates
> the claimed innovation.
>
> I also believe that the "non-obviousness" test is also broadly failed;
> I would go so far as to say that most U.S. software patents would
have
> been obvious to any other researcher in that specific field at the

> time of the claim. Patents filed in my areas of specialization are
> often laughably obvious to me as a specialist. But were I to put
> myself in the examiner's shoes, I don't know that I could do any
> better; no one can be an expert in every focus within this immense
> field.
>
> So software patents, by and large, are simply awarded to
whichever
> entity is willing and funded to do the legal documentation necessary.
> The burden of proving the invalidity of these patents falls on the
> people least equipped to play the game -- individual innovators and
> small software entrepreneurs. This helps no one, and is a truly sad
> inversion of the intent of patent protection.
>
> I cannot imagine solutions to these practical problems. The
software
> patent system is broken, and only hurts who it is meant to help. It
> stifles innovation, rewards abuse, and wastes public resources on a
> nonexistent problem.
>
> Please, exclude software patents altogether from your forthcoming
> guidance. This will be a good deed for me and all the millions of
> software engineers like me in the United States. It will free the
> USPTO to focus on intellectual property protections which do good
and
> not harm.
>
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