From: Rob Heittman [e-mail redacted]
Sent: Sunday, September 26, 2010 7:46 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: Forthcoming guidance: Please exclude all software patents from consideration

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.

Rob Heittman
3776 Mulberry Lane
Williamsburg, Virginia 23188

CTO
Solertium Corporation
4350 New Town Avenue
#202
Williamsburg, Virginia 23188