From: [e-mail redacted]**On Behalf Of** Peter Rexer
Sent: Monday, September 27, 2010 6:24 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: Software licensing feedback.

I'm a software professional. I make my living leading a team of people that build software that large companies pay large sums of money for. I urge you to consider software patenting obsolete, irrelevant, and harmful to society.

From my perspective, the patent process is out of touch with software's ubiquitousness, ease of creation, and similarity to other types of works that are not patentable. Software is so simple to create, that millions of people are able to modify the behavior of their own devices by simply making slight modifications to software. It is important that people be allowed to be creative, and not be burdened with an unjust and insurmountable hurdle created by even a single software patent.

Writing software is a creative process, done by millions of people, similar to writing a story or a letter. Any time anyone writes a line of software, from the simplest "macro" in Microsoft Word, to a thousand line program, they are innovating, and creating a new work. If every new work is patentable, then every person that writes software could submit for a patent, and overwhelm the patent system with a backlog of applications that would gridlock the software industry. It seems wrong that a system of law functions only because a majority of citizens do not exercise their rights.

Furthermore, software is already protected by copyright. Why do we need two systems to try to protect software?

And finally, software is more akin to an alphabet, or a written language. It is built upon thousands of different ideas, just as a book uses words, organization structures, and plot devices that have been used thousands of times before. Using words in a specific order, or specific plot devices, or an organizational structure (such as chapters in a book) does not make a book patentable. Software is more similar to writing, than to any other type of "invention." Thus software should be treated more like literature, and protected by copyright, not patent law.

The Supreme Court of the United States's 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.

Patenting software takes freedom away from all computer users. It stifles innovation, and concentrates power into a few monopolies that are willing to spend inordinate amounts of money swamping the USPTO with frivolous patent applications.

-Peter Rexer