

From: thomas dalton [e-mail redacted]
Sent: 7/30/2010 10:41:57 AM
To: USPTO Info <usptoInfo@uspto.gov>
Subject: Bilski Guidance

Sir/Madam,

I tried to email a comment regarding your recent interim guidance following the Bilski case but the email address given (Bilski_Guidance@uspto.gov) does not work. Could you please either give me the correct address or forward the following to the people concerned. If you forward it for me, I would appreciate you letting me know. Thank you.

Regards,

Thomas Dalton

Sir/Madam,

I would like to provide the following comment regarding your interim guidance following the Bilski case:

In your guidance you recognise the following factor in determining whether an idea is sufficiently abstract not to be eligible for a patent:

"The particularity or generality of the elements of the machine or apparatus; i.e., the degree to which the machine in the claim can be specifically identified (not any and all machines). Incorporation of a particular machine or apparatus into the claimed method steps weighs toward eligibility."

I agree that this is a good consideration and wish to comment on its application. If the patent is for software running on a computer, then the concept of "Turing completeness" (see [1]) becomes highly relevant. The concept says that any computer capable of executing a few very simple commands (a "Turing machine") is capable of running any program that can be executed on any other Turing machine (assuming sufficient time and memory). That means that, if the computer in the patent application is a Turing machine (and it almost certainly will be - even the chips in musical greetings cards are Turing machines) then the software can, in fact, be run on pretty much any computer. It may be necessary to "recompile" to software, but that is merely equivalent to translating it into another language, there is no creativity, novelty or any kind of "cleverness" involved (in fact, it differs from translating natural languages because computer languages are far more precise so literal translations are always correct, there is no need to consider nuances and words without exact equivalents in the other language).

That means that your interim guidance should be interpreted as saying that all software is ineligible for patents, since any software can be run on any computer (assuming recompilation and sufficient time and memory, none of which are considerations that should have any bearing

on patent-ability). I recommend clarifying the guidance to make that interpretation explicit.

Thank you for considering this.

Regards,

Thomas Dalton

1. http://en.wikipedia.org/wiki/Turing_completeness