

From: Ken Fuchs [e-mail redacted]
Sent: Monday, September 27, 2010 10:56 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: Software Patents

USPTO officials,

Software patents were never explicitly authorized by Congress and signed into Law by the President. They are purely the result of a series of court cases in a single Circuit, first allowing very limited software patents and though subsequent cases broadening them to the point that all non-trivial software patent applications were being accepted until the Bilski case.

The major problem with software patents is many software patents cover basic software functionality such that it can be difficult to write software without infringing on one or more patents which aren't necessarily valid, but cost just as much to defend against. The vast majority of software has been written and continues to be written by individuals and small companies who simply do not have the resources to even do patent searches, much less have the financial resources to defend themselves against patent lawsuits. As a result of this and triple damages for knowingly infringing patents, the vast majority of software developers rarely do any patent searches. This defeats the purpose of having software patents at all.

US software patents also have the unintended effect of driving Software Engineering positions overseas to countries that do not recognize software patents.

I'm especially concerned by how software patents will affect Free Software projects like the Linux kernel and other major software systems that combine to form a completely free operating system such as the GNU/Linux operating system.

Sincerely,

Kenneth G. Fuchs
Software Engineer