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Sent: Sunday, September 26, 2010 11:06 AM
To: Bilski_Guidance
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Subject: Please do not consider patents for software

As an individual working at a high level in the computer and information technology field, it has been my observation and experience that software patents are harmful to the industry as a whole and to the individual as a specific. They are harmful to the industry from constant concern of litigation over the use or development of tools that are independent in nature, obvious in nature, or are based on some form of prior art that is public domain. This has the affect of stifling innovation and decreasing efficiency or productivity, slowing the advancements that could be brought to the industry as well as the public. Software patents hurt individuals by taking away our ability to control the devices that now exert such strong influence on our personal freedoms, including how we interact with each other. Now that computers are near-ubiquitous, it's easier than ever for an individual to create or modify software to perform the specific tasks they want done -- and more important than ever that they be able to do so. But a single software patent can put up an insurmountable, and unjustifiable, legal hurdle for many would-be developers.

The Supreme Court of the United States has never ruled in favor of the patentability of software. Their 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.

To quote Benjamin Franklin, one of the most prolific and creative inventors of our times - "That we enjoy great advantages from the inventions of others, we should be glad of an opportunity to serve others by any invention of ours, and this we should do freely and generously." To me this believe is no where more obvious than in the development, production, and dissemination of software.

With all sincerity and great concern,

David Kinder