

From: Ben Teitelbaum [e-mail redacted]
Sent: Monday, September 27, 2010 3:41 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: Please Exclude Most or All Software from Patent Eligibility

Ben Teitelbaum
1006 Rose Ave
Piedmont, CA 94611

Subject: Please Exclude Most or All Software from Patent Eligibility

Dear USPTO,

I am a software developer and entrepreneur with nearly two decades of experience. I have repeatedly witnessed first-hand the negative effect that software patents have had on software innovation. Software patents have created fear and uncertainty for developers and investors that is a significant drag on the industry. This fear is fed by the huge number of software patents that are being issued by the USPTO and by their extremely broad scope. The vast majority of software patents that I have come across in the technical areas where I work cover "inventions" that are obvious, are trivially different from very similar "prior art", or, worse, are abstract mathematical concepts encoded in obvious ways as software.

Mathematical laws are natural laws and their obvious implementation in software should not be patentable.

The USPTO should implement rules that significantly narrow when software is patentable. These new rules should be understandable by non-lawyer software practitioners in the vast majority of cases. If those of us who write software cannot respect the innovation in the patents that are granted or cannot easily understand what is and is not patentable, the system has failed.

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.

Sincerely Yours,

Ben Teitelbaum

