From: Jimmy Brokaw [e-mail redacted]
Sent: Sunday, September 26, 2010 1:55 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: Bilski Guidance

The purpose of our patent system is to encourage innovation by protecting developers of new inventions. Software patents do not achieve the goal of encouraging innovation; they impair it. Furthermore, they serve no legitimate government interest.

Software is protected by existing copyright law. If a company spends millions of dollars to develop a new and unique software feature, and another company steals the code and resells it, the developer can take legal action without resorting to patent law. Copyright law also includes exceptions to allow innovation, such as fair use.

Copyright law is a far better vehicle for protecting software developers.
Rarely, if ever, is the mechanism for achieving a goal in software nonobvious. Rather, it is the goal itself that is innovative and original. This means creative new and useful software is in effect more art than engineering.
Allowing competitors to develop alternate code that serve the same market need using different code should be encouraged. If a book introduces a new genre that turns out to be popular, other authors should be encouraged to produce new works in the new genre, as long as their works are distinct under copyright law. The same is true for software.

To put it simply, a developer of software should not need to do a patent search to see if anyone has ever attempted to do what he wants to do with software. It should be sufficient for him to simply not copy someone else's code.

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.