Dear Sir or Madam,

As I understand it, as part of the follow-up to the Bilski v. Kappos case, your office plans to release new guidance as to which patent applications will be accepted, and which will not. In many ways, I think that software patents harm innovation for individual developers and small software companies, and run counter to the purpose of the US Patent and Trademark Office's purpose of protecting innovation. What follows is my reasoning for such a stance.

First, and perhaps most importantly, most software patents describe the problem that the claimed "invention" solves but they don't detail *how* it is solved. As a result, all solutions to the problem are patented (and not just the one which is implemented by the patent applier). This makes it impossible to do something that you want to be able to do, even if you can perform an action that will assist users in a different way.

On top of this, the number of patents is huge, and there is no way for any budding developer to know of all of the patents that may apply to what they are setting out to do. If someone does actually attempt to see if any patents apply to what they are trying to do, and are later sued for infringing a patent, they can be charged with willful infringement of a patent because they were supposedly knowledgeable about the patent's existence. Willful infringement of a patent carries a much stiffer penalty than just infringing a patent. Thus, there is actually an incentive to not look for patents that may apply to what you are trying to do.

There is also the issue of opportunity when it comes to patents. Under current laws, most any type of invention created by a software developer is patentable, but due to time and cost issues, only some corporations are able to apply for patents in any sort of a large scale. (Not to mention that, if everyone applied for patents for their software inventions, it would surely overwhelm the patent office.) This creates a situation where big companies with teams of lawyers can afford to request thousands of patents, while individual developers or smaller corporations cannot. Thus, these groups are able to obtain patents, not because they are always the first to innovate, but because the majority of people don't have the means to exercise their rights on the same scale as large corporations.

Moreover, once these companies obtain these patents, they also have the funds to sue others for infringing them. Individual developers and small companies do not have the same means, and just one software patent lawsuit can bankrupt an individual, or close a small company.

Finally, because of our current patent laws, we have enabled companies to exist for no

other purpose than to purchase so-called intellectual property assets, and then sue other individuals or corporations for infringing on a patent to which they now own the rights. These companies serve no public good, create no products, and exist only to make money through litigation. What they do is not illegal, but it is immoral, and the current patent laws enable this type of behavior. The existence of such groups instills an atmosphere of fear amongst developer communities, and blatantly inhibits the kind of innovation that can benefit software users.

I am not a lawyer, but these are just some of the ways in which our current patent system actually inhibits the types of innovation that it was intended to foster. I strongly encourage you to take a strong stance against software patents, as the current patent climate around software is tremendously disfunctional, and actively discourages the type of innovation that patents are supposed to encourage.

Sincerely,

Jim Campbell
Chicago, Illinois