

From: Peter Donis [e-mail redacted]  
Sent: Sunday, September 26, 2010 11:42 PM  
To: Bilski\_Guidance  
Cc: [e-mail redacted]  
Subject: Re: Bilski v. Kappos

I am writing with regard to your interim guidance following from the Supreme Court's decision in *Bilski v. Kappos*, and in general with regard to what the USPTO's position should be regarding software patents.

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. While the USPTO's interim guidance does move in the direction of narrowing the boundaries of patent eligibility, it still, I submit, draws them too widely. In fact, 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,

Peter A. Donis