From: [e-mail redacted] On Behalf Of Lucas
Sent: Sunday, September 26, 2010 3:30 AM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: guidance to patent applicants

Dear United States Patent and Trademark Office officials,

I, as a United States citizen, am opposed to the eligibility and use of software as patentable subject-matter. As patent is used to foster competition and growth in creative fields, including software as patentable material creates the opposite affect. This is because Free Software (as in freedom, not necessarily price) programmers are one of the most creative forces in the software field. Whomever wishes may develop themselves, or help others to develop, any software they wish.
That has lead to explosive software growth, though the use of the Internet, in the last decade and beyond, but the threat of software patent infringement has created an insurmountable wall. It is impossible for the free software developer (and, I would argue, any software developer) to examine the minefield of patents that their work may infringe. Also, a software algorithm is a series of mathematical instructions that a computer processes. Since the same mathematical ideas are interpreted on paper as unpatentable truths, why should the addition of a general-purpose computer, justify patentability?

Software patents hurt everyone by taking away control of the devices that now exert such strong influence on our personal freedoms, including how we interact with others. Now that computers are, for all practical purposes, ubiquitous, it's easier than ever for an individual to create or modify software to perform the tasks they wish -- and this makes it more important than ever that they be able to do so. But to allow a single software patent, creates impossible, unjustifiable, legal hurdles for many software programmers.

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 clearly obvious. Please consider the extreme harm that patenting software does, and instead favor growth in the software field, a modern platform for the exploration of mathematical expression.

Sincerely,

Lucas Endres