From: Dj Gilcrease [e-mail redacted]
Sent: Saturday, September 25, 2010 11:44 AM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: End 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. 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.

I agree completely with the form letter above by the Free Software Foundation, but I would like explain a little as an actual software developer. I work on mostly small open source software projects some of which I know violate a software patent or two. All the developers of these projects are volunteers and the software we produce is targeted at small markets, so the companies holding these patents would not go after us because there would be no return. If by chance something I develop did become popular I should not have to worry about some random patent holding company (aka non-practicing entity or Patent Troll) suing me for a random idea they wrote down but never developed into usability. I do not have the time, money or expertise to research every idea I have about how software should work to ensure no one has filed a patent on it. These software

patents suits are often a larger or only source of revenue for the company compared to original idea and this is not what patents are designed to do.

If software patents must exist they should be limited to a maximum of five years from issue date, and the burden of proof for violations of said patent must be that the holding company has designed, manufactured, or distributed products that have features protected by the patent, eg they must be a practising entity. An example of this type of software is Amazons "One Click" feature. They developed the idea into real software that is used on their site every day, and I believe they should have some protection from competitors stealing the idea but not a full 20 years as that length of time is unrealistic in the rapidly changing world of software.

A few examples of bad software patents
http://www.google.com/patents?id=y8UkAAAAEBAJ&dq=5787449
http://www.google.com/patents?id=dyQGAAAAEBAJ&dq=6125447
http://www.google.com/patents?id=mEwEAAAAEBAJ&dq=6061520
http://www.google.com/patents?id=gUR7AAAAEBAJ&dq=7130389
http://www.google.com/patents?id=QKwVAAAAEBAJ&dq=7130389
http://www.google.com/patents?id=nz8pAAAAEBAJ&dq=5572643
http://www.google.com/patents?id=koMYAAAAEBAJ&dq=5835914

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