From: Yaron Y. goland [e-mail redacted]
Sent: Monday, September 27, 2010 8:07 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: Please stop Software Patents

Patents were intended as a way to protect those who create truly original works from having to hide those works from the public eye and thus hinder the development of science in order to protect their ideas. Alternatively Patents provided an incentive to invest in new and potentially risky but highly original ideas knowing that if the research
worked out that patents provided a limit monopoly with which to recoup one's investment.

But having worked in the software industry for 15 years or so now the number of cases where a patent covers a technique so original as to be something that a reasonably competent engineer working on the same problem couldn't have come up with on their own is vanishingly small.

The result is that software patents do not protect originality but rather create a strong business incentive for companies to compete not on the quality of their products and ideas but on the size of their patent portfolios.

The end result is that as a computer scientist I am forced to run as far
and as fast away from patent data as I possibly can. The reason has to do with the triple damages due if a company 'knowingly' infringes a patent. As a computer scientist all my employers strongly urge me to avoid any and all knowledge of patented techniques so as to make it harder to charge us with patent infringement. It is common, for example,
on mailing lists (both public and private) that as soon as someone brings up a patent a mail will go out asking that the conversation immediately end so that no one is tainted by knowledge of the patented technique.

The reason why we can safely ignore patents is because original technologies are not generally covered in patents. So there is no competitive disadvantage to ignoring what is in the patent database, at least in the software industry.

In other words the patent system, at least in the case of software patents, doesn't protect original ideas. If it did we would all be banging down the doors to get into the patent database. Instead it protects unoriginal ideas which we can all safely ignore as our lawyers encourage us to build as big of a patent portfolio as we possibly can so
as to protect ourselves from other companies wielding their own unoriginal patents.

The Supreme Court of the United States has never ruled in favor of the patent-ability 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.

Please, help encourage business growth, especially of small software businesses, by freeing them from the oppressive and illegitimate burden of software patents.

Sincerely,

Yaron Y. Goland