From: Alan Keefer [e-mail redacted]
Sent: Friday, September 24, 2010 7:36 PM
To: Bilski_Guidance
Cc: licensing@fsf.org
Subject: statement in opposition to software patents

As a professional software developer myself (and a US citizen), I can personally attest to the fact that the existence of software patents provides a disincentive to innovation; nearly every work I create is a potential future legal liability, and the state of the industry is such that it is quite literally impossible to develop any kind of software that is safe from potential future patent litigation. I've seen first-hand how frivolous software patent lawsuits filed by unscrupulous trolls or competitors that are unable to win through fair competition can drain massive amounts of resources that would otherwise be devoted to creating new products and providing high-quality jobs.

The software industry is such that trade secret and copyright protection serve as enough of an incentive to protect software companies' intellectual property from theft, and software patents serve as a huge drain on the industry as a whole, and are thus detrimental to both us software developers and to anyone who uses or could benefit from software (which is pretty much everyone these days).

In the event that patents are not excluded entirely, I would still hope that the USPTO would dramatically increase the application of the "obviousness" test for software patents; many software patents cover techniques that are likely to be independently discovered by any software developer attempting to solve the same sort of problem. Among other criteria, the likelihood of the technique being used by an independent developer to solve the same problem should be considered an integral part of the "obviousness" test, and only techniques that could not reasonably be arrived at independently should ever be considered as patentable. Simply applying that test properly would likely exclude the vast majority of software patents that are granted each year.

However, the Bilski ruling makes it clear that the patentability of software is a matter in which the USPTO has discretion, rather than

something required by existing patent laws, and I strongly urge the USPTO to exclude software from patent eligibility entirely on the grounds that software algorithms are purely mathematical constructs, which are not themselves patentable, and that the combination of any such algorithm with a computer is an obvious step that should not warrant patent protection.

Sincerely,
Alan Keefer