From: Merrick Lozano [e-mail redacted]
Sent: Monday, September 27, 2010 1:47 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: Comments on Bilski Decision

Dear USPTO,

I would like to share my story as it relates to software patents privately with you, and the Free Software Foundation. Below I discuss legal matters that are still pending - please accept my feedback privately - without sharing it publicly.

Before the world wide web had taken off as a commercial medium, I was in high school taking an economics course at a community college. My professor marveled at how the internet was going to change everything because access to information would be free now. I come from a very modest family, but my professor was correct - with a couple of computers and $2,000 my brother and I were able to start a news release distribution service that focused on search engine visibility. There are over 75,000 companies that have signed up to use our service today.This business (PR Leap) now feeds my family and my brothers family. The process we used to build out the software that powers PR Leap was not unique - over a dozen other newswires that existed at the time all employed a similar method and all of them are still around today innovating with new products.

This year my company, based in California, was sued in Eastern Texas by a non-practicing entity in a patent infringement case related to :

http://dockets.justia.com/docket/texas/txedce/2:2010cv00210/123654/

As we navigate through this process it's become obvious to us that the system is being gamed by a cottage industry of "patent trolls" who know that the strength of their patent only matters when deciding how much to settle for. They know that even when prior art exists invalidating large portions of their patent, the cost of re-examining a patent can be costlier than just settling the lawsuit early on. In our case one of the defendants in our case easily found prior art in one afternoon that pre-dates patent 6,370,535.

This defendant published his findings here: http://www.pressreleasedistributors.org/priorart.html . You can read more about his story here:

http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202463426889

We are currently left with no choice but to answer to these invalid claims, and in the future we hope that the USPTO stops issuing software patents. In the absence of that, our company will have no choice but to spend money seeking our own patents rather than spending money building new products that would in turn allow us to employ more people.

We believe our experience validates the assertions of the Free Software Foundation below:

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.

Sincerely,

Merrick Lozano
Co-Founder
Condesa / PR Leap