From: mike [mailto:wmichaeltrout[e-mail redacted]
Sent: Friday, September 24, 2010 3:18 PM
To: Bilski_Guidance; [e-mail redacted]
Subject: i am in full support of the free software foundations positions on software patents

Following the Supreme Court's decision in *Bilski v. Kappos*, theUnited States Patent and Trademark Office (USPTO) plans to release newguidance as to which patent applications will be accepted, and whichwill not. As part of this process, they are seeking input from thepublic about how that guidance should be structured.

Normally when the USPTO solicits feedback like this, they hear almost exclusively from patent attorneys who have a vested interest in making sure that patents are granted as broadly as possible. And this process will be overseen by David Kappos, the current director of the USPTO and formerly an attorney at IBM in charge of their heavy-handed patent strategy. The company obtained large numbers of software patents with his oversight (and has continued to do so after his departure).

It's not hard to guess what this guidance will look like if we leave this process in their hands. But there's no rule that says only patent attorneys can offer feedback. Patent examiners are civil servants and accountable to the public at large. The USPTO should hear from software users and developers, who acutely feel the effects of software patents that limit what they can do with their computers and free software.

> 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.

mike