From: kzahorec [e-mail redacted]
Sent: Monday, September 27, 2010 11:02 AM
To: Bilski_Guidance
Subject: patents - determining subject matter eligibility

Dear USPTO representative, Peter Pappas, or Jennifer Rankin Byrne,

I am a practicing software engineer, electrical engineer, and inventor working for a fortune 100 company here in the U.S. I am also a private citizen who uses technology extensively at home and enjoys the free and unrestricted use of free and open source software (FOSS), such as Linux. I have an undergraduate degree in Electrical Engineering, and an advanced degree in Computer Information Systems.

It is positively surprising to me how business and corporate interests have lobbied and succeeded in expanding patentable subject matter to its present state. Patents have been granted on subject matter that should never have been considered. The damage this has caused our country is unsurmountable and creates unnecessary burden and costs to practicing professionals and business. This in turn stifles innovation and impedes the incredibly productive exchange of ideas and solutions in our society. As a society, we suffer tremendously as a result of this. We have been, in essence, expanding patentable subject matter at the expense of freedom and innovation. This is the exact opposite to what patents were meant to do. Instead, we enrich the few at the expense of the many in an unfair and unjust way--this is just plain wrong.

I have been reading with interest much of the debate concerning the subject of patent-ability of abstract ideas and methods. In particular, the Bilsky decision helped to clarify but not answer all that we needed answered in this complex subject matter. Here are my responses to the questions posed.

"1. What are examples of claims that do not meet the machine-or-transformation test but nevertheless remain patent-eligible because they do not recite an abstract idea?"

All patentable subject matter should be limited to a physical transform. It should be a "specific thing", not an idea or process. Ideas and process are abstract by definition and should not be subject to patent. Therefore we are talking about very specific physical things here, such as a specialized tool, or apparatus. Abstract ideas, such as software, business methods, mathmatical models, should all be excluded from patentable subject matter.

"2. What are examples of claims that meet the machine-or-transformation test but nevertheless are not patent-eligible because they recite an abstract idea?"

There should be no claims permitted that represent only abstract ideas. A single or collection of ideas is an abstract. Ideas alone should not be patent-eligible.

Any claims presenting software running on a general purpose computing machine, such as a PC, should not be permitted patentable subject matter. I have read long-winded arguments concerning the contents of general purpose memory or processor registers as a means of claiming physical transformation. I have read arguments concerning the distribution of magnetic fields, bits, and bytes, on a general purpose storage device as a means to claim physically transitive. This type of foolery should not be permitted as patentable subject matter as it in no way suggests a physical transformation as should be required.

"3. The decision in Bilski suggested that it might be possible to "defin[e] a narrower category or class of patent applications that claim to instruct how business should be conducted," such that the category itself would be unpatentable as "an attempt to patent abstract ideas." Bilski slip op. at 12. Do any such "categories" exist? If so, how does the category itself represent an "attempt to patent abstract ideas?""

If we are to begin placing patents on process abstracts, then we would be opening a Pandora's box of confusion and will hinder competition and create burdens on our society that will sink us as a competing force in the world. We should not be considering expanse of patentable subject matter in this regards. We should instead be considering how to reduce patentable subject matter, simplify the patent process, and work more towards the free and open exchange of ideas and technology to drive the innovation we so desperately need in this country.

In general concerning the determination of patentable subject matter; I implore you to consider the interests of the public in much higher regard as opposed to specific corporate interests posing as "unbiased" legal representatives. The advancement of our society in an ever more competitive world requires the open and free exchange of ideas--not the unjust burden of dealing with the litigation and costs of patents that should never have been granted.

Thank you,
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