From: DesJardins, John [e-mail redacted]
Sent: Sunday, September 26, 2010 11:22 PM
To: Bilski_Guidance
Cc: [e-mail redacted]
Subject: Software Patents

Attn. Patent and Trademark Office,

As someone with 20 years of experience in the software industry, I am writing you to encourage you to rethink our current regulations and policies on software patents.

Software is simply the instructions which users of hardware choose to execute to control it. It is simply words for machines, and should no more be patentable than if we were to patent the English language. Patenting software is in effect like patenting communication. In effect, it is a kind of censorship. While it is perfectly reasonable to apply the rules of copywright to specific software just as you might apply it to a book or novel. But you cannot allow a patent on a literary form, allowing someone to own the whole concept of a novel or the concept of a song or movie. Nor can you patent a particular musical tone or sound.

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 a computer is a general purpose piece of equipment, much as a musical instrument, or a typewriter. You can certainly use it to author content, but this content is subject to copywright laws, not patents.

Best regards,
John