```
 1      IN THE SUPREME COURT OF THE UNITED STATES

 2   - - - - - - - - - - - - - - - - - x

 3   BERNARD L. BILSKI AND RAND A.      :

 4   WARSAW,                            :

 5            Petitioners              :

 6       v.                            :  No. 08-964

 7   DAVID J. KAPPOS, UNDER             :

 8   SECRETARY OF COMMERCE FOR          :

 9   INTELLECTUAL PROPERTY AND          :

10   DIRECTOR, PATENT AND               :

11   TRADEMARK OFFICE.                  :

12   - - - - - - - - - - - - - - - - - x

13                        Washington, D.C.

14                        Monday, November 9, 2009

15

16            The above-entitled matter came on for oral

17   argument before the Supreme Court of the United States

18   at 1:00 p.m.

19   APPEARANCES:

20   J. MICHAEL JAKES, ESQ., Washington, D.C.; on behalf of

21       the Petitioners.

22   MALCOLM L. STEWART, ESQ., Deputy Solicitor General,

23       Department of Justice, Washington, D.C.; on behalf of

24       the Respondent.

25
```

1

1   C O N T E N T S

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1   P R O C E E D I N G S

2   (1:00 p.m.)

3   CHIEF JUSTICE ROBERTS: We will hear

4   argument this afternoon in Case 08-964,

5   Bilski v. Kappos.

6   Mr. Jakes.

7   ORAL ARGUMENT OF J. MICHAEL JAKES

8   ON BEHALF OF THE PETITIONERS

9   MR. JAKES: Mr. Chief Justice, and may it

10   please the Court:

11   The Federal Circuit's rigid and narrow

12   machine-or-transformation test for all patent-eligible

13   methods should be reversed. The requirement that any

14   and all methods must be either tied to a particular

15   machine or transform specific subject matter doesn't

16   find any basis in either the language of Section 101 or

17   anywhere in the patent statute.

18   It's not required by this Court's

19   precedence, and it's contrary to the established

20   principle that Section 101 should be read broadly to

21   accommodate unforeseen advances in the useful arts.

22   There are recognized exclusions from Section 101 from

23   that broad language, such as laws of nature, natural

24   phenomenon, and abstract ideas. Those may not be

25   patented.

1   But these exceptions, which are drawn from

2   the Court's precedent, including this Court's Diehr

3   case, also finds support in the statutory language,

4   which says that any process must be new and useful.

5   So the prohibition against patenting laws of

6   nature or abstract principles, it applies equally to all

7   four categories of subject matter under 101, but, here,

8   the Federal circuit has created a new test just for

9   processes that are not bound in the statute or required

10   by this Court's decision.

11   JUSTICE SCALIA: Well, if the government

12   says that the -- that the term on which it hangs its hat

13   is the term useful arts and that that meant, originally,

14   and still means manufacturing arts, arts dealing with

15   workmen, with -- you know, inventors, like Lorenzo

16   Jones, not -- not somebody who writes a book on how to

17   win friends and influence people.

18   What is wrong with that analysis, that

19   that's what "useful arts" meant, that it always --

20   always was thought to deal with machines and inventions?

21   MR. JAKES: Certainly, "useful arts"

22   encompasses industrial processes, manufacturing

23   processes, but it has never been limited just to those

24   types of processes. I'll admit that during the

25   Industrial Revolution most of the inventions concerned

1   machines and manufacturing processes. But we have cited

2   counter-examples that show that business was also within

3   the useful arts.

4   It's also up to Congress to decide how to

5   implement the patent system and the statutory --

6   JUSTICE BREYER: Well, if you leave

7   something out, Congress can put it back in, tailoring

8   the protection to what they feel is necessary. But if

9   it covers everything under the sun, I've never seen a

10   case where Congress would take something out.

11   Now, if we are relying on Congress, I guess

12   the circuit would say, let's go narrow, and we

13   wouldn't -- you know -- since you referred to Congress,

14   I thought I would bring that up and see what you think.

15   MR. JAKES: Congress has acted in certain

16   circumstances. One of them is in section 273, to

17   provide prior user rights for business methods. Another

18   area is 287(c), where medical activities are also

19   exempted from remedies under the statute.

20   There has been a bill introduced to exempt

21   tax avoidance methods, but that has not yet been passed.

22   JUSTICE GINSBURG: But you say you would say

23   tax avoidance methods are covered, just as the process

24   here is covered. So an estate plan, tax avoidance, how

25   to resist a corporate takeover, how to choose a jury,

1   all of those are patentable?

2   MR. JAKES: They are eligible for patenting

3   as processes, assuming they meet the other statutory

4   requirements.

5   JUSTICE BREYER: So that would mean that

6   every -- every businessman -- perhaps not every, but

7   every successful businessman typically has something.

8   His firm wouldn't be successful if he didn't have

9   anything that others didn't have. He thinks of a new

10   way to organize. He thinks of a new thing to say on the

11   telephone. He thinks of something. That's how he made

12   his money.

13   And your view would be -- and it's new, too,

14   and it's useful, made him a fortune -- anything that

15   helps any businessman succeed is patentable because we

16   reduce it to a number of steps, explain it in general

17   terms, file our application, granted?

18   MR. JAKES: It is potentially patentable,

19   yes.

20   JUSTICE BREYER: Okay. Well then, if that

21   were so, we go back to the original purpose of the

22   Constitution. Do you think that the framers would have

23   wanted to require anyone successful in this great, vast,

24   new continent because he thinks of something new to have

25   had to run to Washington and to force any possible

1   competitor to do a search and then stop the wheels of

2   progress unless they get permission?

3   Is that a plausible view of the patent

4   clause?

5   MR. JAKES: No, Your Honor. I wouldn't

6   characterize it that way, but I do believe that --

7   JUSTICE SOTOMAYOR: So how do we limit it to

8   something that is reasonable? Meaning, if we don't

9   limit it to inventions or to technology, as some amici

10   have, or to some tie or tether, borrowing the Solicitor

11   General's phraseology, to the sciences, to the useful

12   arts, then why not patent the method of speed dating?

13   MR. JAKES: Well, first of all, I think,

14   looking at what are useful arts, it does exclude some

15   things. It does exclude the fine arts. Speaking,

16   literature, poems, I think we all agree that those are

17   not included, and there are other things as well. For

18   example, a corporation, a human being, these are things

19   that are not covered by the statutory categories.

20   JUSTICE SOTOMAYOR: So why are human

21   activities covered by useful arts?

22   MR. JAKES: Human activities are covered.

23   JUSTICE SOTOMAYOR: Well, you are saying

24   they are covered, but why should they be?

25   MR. JAKES: I believe the statute provides

1   for them to be covered by defining them as a process. I

2   can give you a -- one good example, which would be a

3   surgical method performed by a doctor. Those are

4   patentable. They are patent eligible. In section

5   287(c), Congress has carved out and said, you can't go

6   after the doctor for infringement, but that is an

7   entirely human activity, and it has long been

8   patentable.

9   JUSTICE SOTOMAYOR: Do you think that there

10   is some benefit to society from patenting a method to

11   cure someone that involves just human activity, as

12   opposed to some machine, substance, or other apparatus

13   to help that process?

14   MR. JAKES: Yes.

15   JUSTICE SOTOMAYOR: Do you believe that that

16   was the intent of the patent law?

17   MR. JAKES: I believe that falls within the

18   useful arts, and I believe that there is an advantage to

19   that. There are really two advantages to the patent

20   system. One is encouraging people to come up with new

21   things, such as a surgical method or method of hedging

22   consumption risk.

23   The other is the disclosure aspect. A

24   doctor might choose to keep it secret.

25   JUSTICE BREYER: So you are going to answer

1   this question yes. You know, I have a great, wonderful,

2   really original method of teaching antitrust law, and it

3   kept 80 percent of the students awake. They learned

4   things --

5   (Laughter.)

6   JUSTICE BREYER: It was fabulous. And I

7   could probably have reduced it to a set of steps and

8   other teachers could have followed it. That you are

9   going to say is patentable, too?

10   MR. JAKES: Potentially.

11   JUSTICE BREYER: Okay. Fine. Now, suppose

12   I reject that view, hypothetically, and suppose I were

13   to take the view that this is way too far, that that is

14   not the purpose of the statute. Suppose for

15   hypothetical's sake I'm still a little nervous about

16   that -- that circuit's decision there. Have you any

17   suggestion for me?

18   MR. JAKES: I think that we should go back

19   to the first principles that were enunciated in Diehr

20   and other cases, that abstract ideas per se are not

21   patentable. That's my position, and what I would

22   advocate in this case and any case, as long as you're --

23   CHIEF JUSTICE ROBERTS: What -- I'm looking

24   at your Claim 1, in Joint Appendix page 19 to 20. How

25   is that not an abstract idea? You initiate a series of

1   transactions between commodity providers and commodity

2   consumers. You set a fixed price at the consumer end,

3   you set a fixed price at the other end, and that's it.

4   I mean, I could patent a process where I do

5   the same thing. I initiate a series of transactions

6   with sellers. I initiate a series of transactions with

7   buyers. I buy low and sell high. That's my patent for

8   maximizing wealth.

9   I don't see how that's different than your

10 claim number 1.

11   MR. JAKES: If that was a novel and

12 unobvious method, then it should be patentable, but it's

13 eligible as subject matter --

14   CHIEF JUSTICE ROBERTS: Well, but your Claim

15 1 it seems to me is classic commodity hedging that has

16 been going on for centuries.

17   MR. JAKES: Your Honor, if that were true,

18 then we should run afoul of the obviousness provision

19 under section 103. Now, the Patent Office did initially

20 allow some of our claims over the prior art.

21   JUSTICE KENNEDY: But you know, the

22 insurance industry -- the insurance business, as we know

23 it, really began in England in 1680, when they

24 discovered differential calculus, and they had

25 expectancy and actuarial tables, actuarial for life,

1   expectancy for shipping, and this really created a whole

2   new industry.

3   In your view, I think, clearly those would

4   be patentable, the -- the explanation of how to compile

5   an actuarial table and -- and apply it to risk. That

6   certainly would be patentable under your view, and

7   it's -- it's difficult for me to think that Congress

8   would want to -- would have wanted to give only one

9   person the capacity to issue insurance.

10   MR. JAKES: I think that method would be

11   patent eligible. But, as you said, it would have to be

12   reduced to a concrete set of steps, like our claim 1.

13   Now, claim 1 may be written in broad terms and it may

14   some day run into the prior art, but it does require

15   people to do actual things.

16   I think even the Patent Office agreed that

17   there are physical steps in our method here. And in the

18   insurance method --

19   CHIEF JUSTICE ROBERTS: I'm sorry.

20   Just what are the physical steps? Initiating a series

21   of transactions between commodity provider and market

22   participants?

23   MR. JAKES: That would be one.

24   CHIEF JUSTICE ROBERTS: You get on the phone

25   and you call the baker and you get on the phone and you

1   call the grocer and say: I can set up a deal for both

2   of you?

3   MR. JAKES: It could be. It could be done

4   that way because it does take a person acting to do

5   that. It's not purely --

6   JUSTICE KENNEDY: And so in the insurance

7   case it takes a person to go over to the Bureau of

8   Statistics and compile statistics on -- on life -- on

9   life expectancy.

10   MR. JAKES: That could be. Now, the patent

11   on the data, that's another category that's not included

12   in the subject matter of those four categories. The

13   data itself is not patentable, but if it is a series of

14   steps, it should be eligible as long as it meets the

15   other statutory requirements as a process.

16   There is nothing in the useful arts -- now,

17   we have heard the word "technology." That can be a

18   difficult term, because technology in its broadest sense

19   means the application of knowledge as opposed to general

20   knowledge.

21   JUSTICE GINSBURG: Isn't that the basis on

22   which the patent law rests in Europe, in other

23   countries? They do not permit business method patents.

24   It has to be tied to technology, to science or

25   technology. So if other systems are able to work with

1   the notion of technology-based, why not ours?

2   MR. JAKES: I would agree, Your Honor.

3   There are those systems that do have a requirement like

4   that. Ours does not. Ours speaks in very broad

5   terms about having --

6   JUSTICE GINSBURG: But I was talking about

7   -- you said that technology-based, that wouldn't work

8   because there are so many definitions. I'm simply

9   asking you the question: Does it work with these other

10   systems? That they -- they exclude business methods,

11   they include technology-based --

12   MR. JAKES: That's right. But they have

13   also defined "technology" in such a way as to exclude

14   business methods. And I don't think we can do that.

15   The fields of operations research,

16   industrial engineering, even financial engineering,

17   there has been an explosion in these particular fields,

18   and to now call them non-technological because they

19   didn't exist over 100 years ago wouldn't make --

20   JUSTICE SOTOMAYOR: Are you suggesting they

21   didn't exist because we didn't give them patents

22   100 years ago?

23   MR. JAKES: No.

24   JUSTICE SOTOMAYOR: Or they exist because

25   computers have increased --

1   MR. JAKES: It's very much related to our

2   current economy and state of technology, with computers

3   and the Internet and the free flow of information. But

4   that's what --

5   JUSTICE SOTOMAYOR: But a patent limits the

6   free flow of information. It requires licensing fees

7   and other steps, legal steps. So you can't argue that

8   your definition is improving the free flow of

9   information.

10   MR. JAKES: Your Honor, I would, because of

11   the disclosure requirement of the patent laws. It

12   requires people to disclose their inventions rather than

13   keeping them secret, so there is a second benefit to the

14   patent system just other than encouraging people to

15   invent, and that is to have that information get to the

16   public generally. And in exchange for that --

17   JUSTICE SCALIA: Even though the public

18   can't use it, right, until the patent expires?

19   MR. JAKES: Until the patent expires, if a

20   valid patent issues on that, yes.

21   But that's our system. We do give exclusive

22   rights in exchange for that information being provided

23   to the public.

24   JUSTICE STEVENS: May I ask this question?

25   What do you think the strongest case from our

1   jurisprudence is to support your position?

2   MR. JAKES: I would say it's the Diehr case.

3   JUSTICE STEVENS: Which one?

4   MR. JAKES: Diehr. Diamond v. Diehr.

5   JUSTICE STEVENS: Diehr?

6   MR. JAKES: Yes.

7   JUSTICE STEVENS: That was nothing like this

8   patent.

9   MR. JAKES: No, it's not, but I think it --

10   JUSTICE STEVENS: There's language in the

11   opinion.

12   MR. JAKES: It outlines the general

13   principles and also tells us that there are only these

14   specific things that are not included within the subject

15   matter.

16   JUSTICE STEVENS: But is it correct that

17   there's none -- none of our cases have ever approved a

18   rule such as you advocate?

19   MR. JAKES: I don't think this particular

20   subject matter has been ruled on by the Court.

21   Now, in Dann v. Johnston in the 70s, there

22   was a case that could have been decided on the grounds

23   that it was a method of doing business, and instead the

24   Court close to decide that case based on obviousness.

25   And really --

1   JUSTICE SCALIA: You know, you mention that

2 there are all these -- these new areas that didn't exist

3 in the past because of modern business and what-not, but

4 there are also areas that existed in the past that don't

5 exist today. Let's take training horses. Don't you

6 think that -- that some people, horse whisperers or

7 others, had some, you know, some insights into the best

8 way to train horses? And that should have been

9 patentable on your theory.

10   MR. JAKES: They might have, yes.

11   JUSTICE SCALIA: Well, why didn't anybody

12 patent those things?

13   MR. JAKES: I think our economy was based on

14 industrial process.

15   JUSTICE SCALIA: It was based on horses, for

16 Pete's sake. You -- I would really have thought

17 somebody would have patented that.

18   MR. JAKES: There are also issues with

19 enforcement. I can't really answer why somebody

20 wouldn't have.

21   There are teaching methods that were

22 patented. There are a number of them that we've

23 included in our brief where there were patents issued

24 for teaching methods, and I don't think that we've had a

25 serious enforcement problem with people being sued for

16

1   using teaching methods. But there have been those

2   people who have sought to patent them rather than keep

3   them as secrets or just use them.

4   JUSTICE SCALIA: How old -- how old were

5   those, those cases?

6   MR. JAKES: They range. Some of them go

7   back quite a ways, to the last century.

8   JUSTICE STEVENS: May I ask this general

9   question, too? I have always admired Judge Rich, who

10   was very active in drafting the '52 amendments.

11   MR. JAKES: Yes.

12   JUSTICE STEVENS: Has he written anything on

13   this particular issue.

14   MR. JAKES: He has written a number of

15   things. And I think one of the things that the

16   Solicitor General quotes in their brief is from an

17   article that he wrote.

18   But he also wrote the Alappat decision and

19   the State Street Bank case as well. And those I think,

20   stand as his views, his latest views on what was

21   patent-eligible subject matter, looking at the State

22   Street Bank case.

23   JUSTICE KENNEDY: In the Diehr case, the

24   Court said that in the end the abstract idea must be in

25   a process that, oh, implements a proposal that the

1   patent laws were designed to protect, which brings you

2   almost back to the beginning.

3   MR. JAKES: It does.

4   JUSTICE KENNEDY: You don't -- you don't

5   know much from that language. But that was something

6   that you could touch, that you could see, that looked

7   like a machine, the substance was different before the

8   process and after the process. And -- and none of

9   that's applicable here. It's --

10   MR. JAKES: The Diehr invention was an

11   industrial process of the conventional type, because it

12   was a method of curing rubber. But today the raw

13   materials are just as likely to be information or

14   electronic signals, and to simply root us in the

15   industrial era because that's what we knew I think would

16   be wrong and contrary to the forward-looking aspect of

17   the patent law.

18   JUSTICE SOTOMAYOR: Well, isn't the

19   manipulation of electronic signals a substance that is

20   different in kind from just a method of how to go about

21   doing business or a method of how to approach a

22   particular problem?

23   Isn't there -- isn't that what the Federal

24   Circuit was trying to explain, which is that there has

25   to be something more substantive than the mere exchange

1   of information; that it has to involve -- it used the

2   word "transformation." It hasn't defined the outer

3   limits of what it means by that.

4   MR. JAKES: I think there is a difference.

5   But by rigidly looking at that transformation test, what

6   you do is you exclude lots of other things where the

7   transformation is not required --

8   JUSTICE BREYER: That's exactly what I --

9   maybe I can get you to inadvertently help my -- my

10   hypothesis you don't like. That's why I say it's

11   inadvertent.

12   You said there are two things. There are

13   actually four things in the patent law which everyone

14   accepts. There are two that are plus and two that are

15   minus. And the two that are plus is by giving people a

16   monopoly, you get them to produce more. As you said,

17   you get them to disclose.

18   The two minuses are they charge a higher

19   price, so people use the product less; and moreover, the

20   act of getting permissions and having to get permission

21   can really slow things down and destroy advance. So

22   there is a balance.

23   In the nineteenth century, they made it one

24   way with respect to machines. Now you're telling us:

25   Make it today in respect to information. And if you ask

1   me as a person how to make that balance in respect to

2   information, if I am honest, I have to tell you: I

3   don't know. And I don't know whether across the board

4   or in this area or that area patent protection will do

5   no harm or more harm than good.

6   So that's the true situation in which I find

7   myself in respect to your argument. And it's in respect

8   to that, I would say: All right, so what do I do?

9   MR. JAKES: I think the answer is to follow

10   the statute.

11   JUSTICE BREYER: Well, thank you. I thought

12   that was the issue, not the answer.

13   (Laughter.)

14   MR. JAKES: Congress has spoken in broad

15   terms and given us those four categories, and by looking

16   at those I think that answers the question.

17   JUSTICE SOTOMAYOR: But it doesn't, because

18   we don't work in a vacuum. We work in a context.

19   MR. JAKES: Yes.

20   JUSTICE SOTOMAYOR: And so it begs the

21   question, because we go around in a circle: What does

22   "process" mean in a patent law that was passed in 1952

23   that had one set of manufacturing and other items that

24   are technologically tied and this is not? So how do we

25   discern Congress's intent, other than by the use of the

1   word "process" in context?

2   MR. JAKES: I think that "process" is not by

3   itself. It says "any new and useful process." And so

4   we have -- we can look at those words and understand

5   that natural phenomena, laws of nature, which are not

6   really new because they are part of the storehouse of

7   knowledge available to everyone, and "useful," meaning

8   there has to be a practical application.

9   JUSTICE SOTOMAYOR: But the word "knowledge"

10   is not used in there. So it's not just useful

11   knowledge.

12   MR. JAKES: No.

13   JUSTICE SOTOMAYOR: It's useful knowledge in

14   relationship to something.

15   MR. JAKES: Practically applied, yes, in the

16   real world, whether that's the exchange of information

17   or electronic data transformation. One of the problems

18   with the transformation test is that it would exclude

19   some valuable inventions that I think everyone would

20   agree are technological under any test such as data

21   compression, such as FM radio. Even Bell's claim, the

22   claim to transmitting sound using undulating current,

23   wouldn't necessarily pass the transformation test. So I

24   think we need to look at --

25   JUSTICE KENNEDY: But it would be different,

1   it seems to me, than what you are -- let's assume you

2   can't patent an alphabet. I assume that is true. And

3   you can take an alphabet to make beautiful words, and --

4   and so forth. You -- you want to say that these --

5   these electronic signals can be used in a way just like

6   the alphabet can be used.

7   And many of the scientific briefs say that

8   their process is different, that they are taking

9   electronic signals and turning them into some other sort

10   of signal. But that's not what you are doing.

11   MR. JAKES: That may be, but those signals

12   could also be transmitted. On -- on your question about

13   the alphabet you said look at the Morse claim 5, which

14   was an alphabet to Morse Code. That's exactly what it

15   was.

16   CHIEF JUSTICE ROBERTS: So you reject -- you

17   reject the substitute. You think you can patent an

18   alphabet because it is a process of forming words.

19   MR. JAKES: It could be, yes. Now, I think

20   you run into all kinds of other problems. And that's

21   really where the focus of the patent statute should be,

22   so that we have the fair give-and-take, the bargain that

23   is necessary, that we -- too much overpatenting as

24   opposed to too little. The test there is obviousness.

25   That's where it takes place, not at this threshold.

1   JUSTICE SOTOMAYOR: Morse's Code was not

2   obvious.

3   MR. JAKES: What is that?

4   JUSTICE SOTOMAYOR: Morse's Code was not

5   obvious, and yet --

6   MR. JAKES: No, it wasn't.

7   JUSTICE SOTOMAYOR: As I understand that

8   case, the only thing patented was the use of his code

9   with respect to the telegraph machine that he proposed.

10   The Patent Office rejected -- maybe I am reading the

11   case wrong, but it rejected all of the claims except

12   those that related to the use of the code with a

13   particular machine.

14   MR. JAKES: It -- it does say used in

15   connection with telegraphy.

16   JUSTICE SOTOMAYOR: Of his claims --

17   MR. JAKES: Yes.

18   JUSTICE SOTOMAYOR: -- that was the only one

19   that was accepted, correct?

20   MR. JAKES: Right.

21   JUSTICE SOTOMAYOR: The same thing with --

22   well, Bell's patent was --

23   MR. JAKES: In Morse's claims, I believe it

24   was claim 8 was the one that was rejected, and the rest

25   of them were accepted. Claim 8 was the very broad claim

1   to transmitting information over a distance, however

2   accomplished.

3   JUSTICE SOTOMAYOR: Let's not skip over

4   that, because the rest of the claim in Bell related to

5   how to transmit over the wire, correct?

6   MR. JAKES: His disclosure did, but his

7   actual claim was interpreted as being using undulating

8   current to transmit sound, however that was

9   accomplished. It was very broad, and that's why --

10   JUSTICE SOTOMAYOR: And that was what was

11   rejected.

12   MR. JAKES: No. Bell's claim was not

13   rejected. That one was approved, yes. The Morse claim,

14   claim 8, was the broad claim that really we would

15   probably look at today as being -- as having inadequate

16   disclosure because --

17   JUSTICE SCALIA: Well, it was -- it was

18   transforming sound into electrical current and then at

19   the other end electrical current back into sound. I

20   mean it met the transformation test, didn't it?

21   MR. JAKES: It might have. It might have.

22   JUSTICE SCALIA: It clearly did.

23   MR. JAKES: Well, it's not that clear from

24   the Federal Circuit's transformation test whether that

25   would apply or not, because although the Federal Circuit

24

1   has said transformation of data might qualify, it said

2   it has to represent something physical, something -- a

3   real object. And sound doesn't necessarily have to be

4   that. Sound can be generated artificially. So --

5   JUSTICE SCALIA: Sound -- sound is not

6   physical, and electric current is not physical?

7   MR. JAKES: I think electric current is

8   physical.

9   JUSTICE SCALIA: Yes, I think so.

10   MR. JAKES: Yes.

11   JUSTICE SCALIA: Sound is, too.

12   MR. JAKES: It can be, but when it's

13   transmitted over a wire, it's not. It's something else.

14   It's an electrical current then.

15   JUSTICE SCALIA: Sound is not transmitted

16   over the wires. Sound has been transformed into

17   current, and current is transmitted over the wire and

18   then transformed back at the other end into sound.

19   MR. JAKES: Yes, and I would agree --

20   JUSTICE SCALIA: I think it clearly --

21   clearly would have been covered by -- by the test the

22   government --

23   MR. JAKES: I think that's more in the

24   nature of transmission, much like our data transmission.

25   You might transmit data in a packet without actually

25

1   changing the underlying data, and that should be allowed

2   as well.

3   If there are no questions, I will reserve

4   the rest of my time. Thank you.

5   CHIEF JUSTICE ROBERTS: Thank you, Mr.

6   Jakes.

7   Mr. Stewart.

8   ORAL ARGUMENT OF MALCOLM L. STEWART

9   ON BEHALF OF THE RESPONDENT

10   MR. STEWART: Mr. Chief Justice, and may it

11   please the Court:

12   Let me start by following up on the

13   discussion of the Morse and the telephone cases, because

14   it's certainly our view that those would come out the

15   same way under our test as -- as they actually did in

16   practice.

17   JUSTICE SCALIA: I certainly hope so.

18   MR. STEWART: And you know, Justice Scalia,

19   you mentioned how to win friends and influence people.

20   I think at a certain level of generality you could

21   describe both Dale Carnegie and Alexander Graham Bell as

22   people who devised methods of communicating more

23   effectively.

24   The reason that Bell's method was patentable

25   was that it operated in the realm of the physical. Bell

1   had devised a process implemented through machines by

2   which sound was transformed into electronic current.

3   The current was then transmitted over a distance and

4   transformed back into sound.

5   Innovations as to new techniques of public

6   speaking, new techniques of negotiations, techniques

7   that go to the substance of what is said may be

8   innovative. They may be valuable. They are not patent

9   eligible because they don't deal in the realm of the

10   physical --

11   So while the industrial processes that we

12   discussed at some length in our brief were at the time

13   of the framing the paradigmatic patent eligible

14   processes, they were -- they are not the only processes

15   that can be patented.

16   JUSTICE ALITO: Near -- near the end of your

17   brief you argue that -- that the patent here is -- is

18   not -- is unpatentable on the independent ground that it

19   would preempt the abstract idea of hedging consumption

20   -- consumption risk. If you -- if you are right about

21   that, is this a good case for us to get into the -- into

22   the very broad issue that Petitioner has raised?

23   MR. STEWART: I -- I think we would

24   certainly prefer to win on our primary ground, and let

25   me say a couple of things about that. First, we would

1   fairly vigorously resist the notion that the rule that

2   was announced by the Federal circuit is rigid or

3   inflexible. That is, all that the Federal circuit has

4   really said is that to have a patent-eligible process

5   you have to identify some link to a machine or a

6   transformation of matter. And the Federal circuit has

7   said with respect to some processes the link to the

8   machine may be so attenuated, the machine part of the

9   process may be such a small segment of the process as a

10   whole, that this wouldn't be enough. But the Federal

11   circuit said: We leave for another day the hard

12   questions that will arise when part of the process is

13   machine-implemented and another part is not.

14   And in order for the PTO and the Federal

15   circuit to go about the business of devising more

16   precise rules as to when particular links to machines

17   are sufficient to create patent eligibility, we first

18   need to establish the -- the basic principle that some

19   link to a machine or transformation is necessary. So I

20   think we -- we have made the alternative argument in our

21   brief, and I think it is a basis for affirmance.

22   But if the Court decided the case on that

23   basis, we would lose at least the -- the limited clarity

24   that the Federal circuit's opinion has provided; that

25   is, it would still be open to people in the future to

28

1   devise new contractual arrangements designed to allocate

2   risks, new methods of teaching antitrust, and --

3   JUSTICE SOTOMAYOR: How about if we say

4   something as simple as patent law doesn't cover business

5   matters instead of what the Federal circuit has begun to

6   say, which is technology is tied to a machine or a

7   transformation of the substance, but I have no idea what

8   the limits of that ruling will impose in the computer

9   world, in the biomedical world, all of the amici who are

10   talking about how it will destroy industries? If we ar

11   unsure about that, wouldn't the safer practice be simply

12   to say it doesn't involve business methods?

13   MR. STEWART: I think that would be

14   incorrect, and it would create problems of its own.

15   That is, the -- the innovation that was held to be

16   patent eligible in State Street Bank was not a process.

17   The Federal circuit was not construing the statutory

18   term "process." It was construing the statutory term

19   "machine." And it said, in essence, a computer that has

20   been programmed to perform various calculations in

21   connection with the operation of this business is a

22   machine.

23   It went on to say the opposing party in that

24   case had not raised any objection under section 102 or

25   103, and, therefore, the Federal circuit --

1   JUSTICE SOTOMAYOR: No ruling in this case

2   is going to change State Street. It wasn't looking at

3   process or the meaning of "process." It was looking at

4   something else.

5   MR. STEWART: Well, again, I think that the

6   invention that was held to be patent eligible in State

7   Street is commonly described as a business method, even

8   though it was held to be patent eligible as a machine

9   rather than as a process.

10   So to say that business methods are

11   categorically ineligible for patent protection would

12   eliminate new machines, including programmed computers,

13   that are useful because of their contributions to the

14   operation of businesses. And similarly, the court --

15   the Federal Circuit in other cases has held that a claim

16   to new and innovative computer software may be held

17   patentable as a process, as a method of accomplishing

18   particular tasks through the use of a computer and those

19   might be business-related tasks. So to say that

20   business methods were ruled out would itself be a fairly

21   sweeping holding.

22   JUSTICE SCALIA: Also you could say business

23   methods apart from machines are not patentable. How

24   about that?

25   MR. STEWART: If the Court said that in the

1   limited area of business methods, if there is no machine

2   or transformation there is no patent eligibility --

3   JUSTICE BREYER: Suppose you say this. I'm

4   just sort of testing things out. Start with Diehr. I

5   mean, and Diehr has these words in it, similar words, it

6   just says e.g. -- are you following me?

7   MR. STEWART: Yes.

8   JUSTICE BREYER: Now, you say what is it

9   they have done in this case in the Federal Circuit?

10   They have pulled back. That's a move. That's a move.

11   They pulled back insofar as they are pulling back from

12   business methods, not machines, dah, dah, dah, dah, dah.

13   Okay, we see no problem with that.

14   Now, they have left much unresolved. One,

15   transformation; how broad or narrow is that? We don't

16   know. Many people's problems will be solved if it's

17   broad on the one hand or narrow in the other.

18   Two, are you automatically patented -- in

19   the patent statute, if you just sort of reduce this to a

20   machine by adding a computer on at the end? They've

21   flagged that as a problem. They haven't answered it.

22   Could there ever be a situation where it doesn't meet

23   this test but still is patentable? We are not sure.

24   MR. STEWART: Let me take those points --

25   JUSTICE BREYER: Do you see what I'm trying

1   to do? I'm trying to note the things that have been

2   raised in these 80 briefs, insofar as possible say there

3   is a lot there for the future that we can't really

4   decide but say as a pull back, okay.

5   MR. STEWART: Let me address those points in

6   order. The first thing is that in Diehr when you had

7   the e.g. cite, it was "e.g. transforming an article into

8   a different" state of -- state or thing. And I think

9   the obvious inference is "e.g." was used because the

10   other prong of the machine-or-transformation test is use

11   as a machine. That is, in the context of Mr. Morse's

12   invention or Mr. Bell's invention, there is

13   transformation of a sort, but it wouldn't naturally be

14   characterized as transformation of matter.

15   Those things were held to be patent eligible

16   not because they transformed matter, but because they

17   involved the use of a machine. And so, what the Court

18   in Diehr said transformation of a matter or an article

19   into a different state or thing is the clue to the

20   patentability of a process that doesn't involve a

21   particular machine.

22   And the -- the type of process it had in

23   mind was the process that was described in Corning v.

24   Burden or the process in Cochrane v. Deener, situations

25   in which an individual had devised a method of, in one

32

1   sense -- one case, it was manufacturing flour, and in

2   another case it was rolling puddle bowls, of

3   manufacturing items. And that person said, here is the

4   series of steps that you have to go through, but it is

5   not essential that you use any particular tool or

6   machine for each of these steps. That was why the

7   word --

8   CHIEF JUSTICE ROBERTS: Mr. Stewart, I

9   thought I understood your argument up until the very

10   last footnote in your brief. And you say this is not --

11   simply the method isn't patentable because it doesn't

12   involve a machine. But then you say but it might be if

13   you use a computer to identify the parties that you are

14   setting a price between and if you used a microprocessor

15   to calculate the price. That's like saying if you use a

16   typewriter to type out the -- the process then it is

17   patentable. I -- I -- it -- that takes away everything

18   that you spent 53 pages establishing.

19   MR. STEWART: Well, I guess there -- there

20   were two different places, I believe, at which we

21   identified ways in which this sort of hedging scheme

22   might be made patent eligible. The first is we

23   described a hypothetical interactive website in which

24   people -- parties and counterparties could essentially

25   find each other by the computer and could agree to terms

1   on that basis. And in that situation, the -- the

2   computer would be at the heart of the innovation. It

3   would be --

4   CHIEF JUSTICE ROBERTS: No, no. That's just

5   saying instead of looking at the -- in the Yellow Pages,

6   you look on the computer; and that makes all the

7   difference to you?

8   MR. STEWART: I think an -- an interactive

9   computer technique, one in which you sign on and can

10   find people without tracking them down specifically, can

11   simply identify yourself on the website as somebody

12   whose interested in engaging in a particular transaction

13   and a potential counterparty can find you, is different

14   from the Yellow Pages.

15   But I guess the fundamental point I would

16   make is -- and this is really responsive to the second

17   part of Justice Breyer's question -- I think it is both

18   a virtue and a vice of the test that the Federal Circuit

19   has announced and that we are advocating that it doesn't

20   solve all the hard questions. That is, the Federal

21   Circuit has said since this particular patent applicant

22   didn't identify any machine or any transformation that

23   would be necessary to the accomplishment of its method,

24   that person is out of luck, and therefore, it's

25   inappropriate for us to go on to decide kind of the

1   precise level of substantiality that a

2   machine-or-transformation must play --

3   CHIEF JUSTICE ROBERTS: But if you look at

4   your footnote, that involves the most tangential and

5   insignificant use of a machine. And yet you say that

6   might be enough to take something from patentability to

7   not patentable.

8   MR. STEWART: And all we've said is that it

9   might be enough; that is, hard questions will arise down

10 the road as to where do you draw the line, to what

11 extent must the machine or the transformation be

12 central --

13   CHIEF JUSTICE ROBERTS: So you think it's a

14 hard question. If you develop a process that says look

15 to the historical averages of oil consumption over a

16 certain period and divide it by 2, that process would

17 not be patentable. But if you say use a calculator,

18 then it -- then it is?

19   MR. STEWART: I think if it's simply using a

20 calculator for its preexisting functionality to crunch

21 numbers, very likely that would not be enough. But what

22 we see in some analogous areas is that the computer will

23 be programmed with new software, it will be given

24 functionality it didn't have before in order to allow it

25 to perform a series of calculations, and that gets

1   closer to the line. And again --

2   CHIEF JUSTICE ROBERTS: Well, your

3   footnote -- I don't mean to dwell on it -- it says to

4   identify counterparties to the transactions. So that if

5   what you're trying to get is the -- the baker who sells

6   bread, because you are going to hook him up with the

7   grocer who sells, you know, in the grocery store, if you

8   punched in in your search station, you know, give me all

9   the bakers in Washington, that would make it patentable?

10   MR. STEWART: Again, we are -- we are not

11   saying it would be patent eligible. We would have to

12   review those facts, and the PTO would have to review

13   those facts in the context of an actual application.

14   I guess the point I'm trying to make is

15   simply that we don't want the Court, for instance, in

16   the area of software innovations or medical diagnostic

17   techniques to be trying to use this case as the vehicle

18   for identifying the circumstances in which innovations

19   of that sort would and would not be patent eligible,

20   because the case really doesn't present any -- any

21   question regarding those technologies. And therefore,

22   we --

23   JUSTICE SOTOMAYOR: Now, if it veers the

24   other way, which is by saying that we exclusively rely

25   on the machine-or-transformation test, that we're

1   precluding applications of the patent law in those

2   fields, the things we can't imagine. Once you announce

3   an exclusive test, you're shoe-horning technologies that

4   might be different.

5   MR. STEWART: I guess I would say a couple

6   of different things. The first is that it seems

7   unlikely, even with new and rapidly emerging

8   technologies, that somebody would come up with a system

9   that seems for patent purposes analogous to the

10   inventions that have been patent eligible in the past

11   that didn't involve any machine and that didn't involve

12   any transformation.

13   Having said that, I would note that in both

14   Benson and in Flook the Court held open the possibility

15   that some unforeseen event could take place that

16   would -- as to which the application would be patent

17   eligible, even though the machine-or-transformation

18   test --

19   JUSTICE SOTOMAYOR: So help us with a test

20   that doesn't go to the extreme the Federal Circuit did,

21   which is to preclude any other items, something we held

22   open explicitly in two other cases, so we would have to

23   backtrack and say now we are ruling that we were wrong,

24   and still get at something like this?

25   MR. STEWART: Well, I think the Court could

1   say -- could do essentially what was done in Benson and

2   Flook, namely acknowledge that there had never been a

3   case up to this point in which a process had been held

4   patent eligible that didn't involve a machine or a

5   transformation. It could leave open the possibility

6   that some new and as yet unforeseen technology could

7   necessitate the creation of an exception.

8   But -- and the point we would also make is

9   this seems to be a very unlikely candidate for such an

10   exception, because the hedging method that Petitioners

11   have -- for which they have sought a patent is in no

12   sense different in kind from risk management techniques

13   that have been undertaken for centuries.

14   JUSTICE SOTOMAYOR: Well, that -- that goes

15   back to, not 101 but 102 and 103. That goes back to

16   obviousness or the standard weeding mechanisms for

17   patent.

18   MR. STEWART: Well, this may or may not be a

19   novel or nonobvious method. But even if we assume that

20   this is obvious for purposes of Section 103, in that it

21   represent as sufficient advance over the prior art, that

22   people skilled in the art would not necessarily have

23   come up with it, it still is a different in kind from

24   risk management techniques that have taken place in this

25   country for -- for 200 years. It is -- it is --

1   JUSTICE GINSBURG: Mr. Stewart, did you --

2 does the government put forward this

3 machine-or-transformation test? Was that your test, or

4 was it the Federal circuit's on its own?

5   MR. STEWART: The Federal circuit, sua

6 sponte, set the case for hearing en banc. I believe the

7 case had been argued to a panel, but had not been

8 decided, and the Federal circuit set the case for

9 reargument en banc, posed a number of questions to

10 the -- the parties and the government did advocate the

11 machine-or-transformation test.

12   JUSTICE GINSBURG: Tell me what --

13   CHIEF JUSTICE ROBERTS: I'm sorry. Did or

14 did not?

15   MR. STEWART: Did, it did advocate the

16 machine-or-transformation.

17   JUSTICE GINSBURG: You did -- and if you

18 read Judge Mayer's opinion, it has a simplicity to it.

19 It says, if it's technology, then its within the realm

20 of patent, and if it's not technology, it isn't, if it

21 is based on science or technology, and that seems to be

22 what is used in other places.

23   MR. STEWART: I don't know that our tests --

24 I think our test, in a sense, has a shorthand version of

25 that. I don't know that focusing the inquiry directly

1   on whether technology is involved would make the inquiry

2   easier, and that is so for two reasons.

3   First, people could dispute whether

4   particular advances are properly regarded as

5   technological advances, and second, we would still have

6   the difficult problems that the Chief Justice has

7   referred to, where you have a process that is described

8   as involving technology at some step along the way, and

9   courts will still have to make the determination, is

10   that sufficiently substantial step to make the process,

11   as a whole, a technological one.

12   So I don't think that, by adopting a

13   technological arts test, the Court would avoid the

14   difficulties that it has appropriately identified with

15   the machine-or-transformation test. The other thing I

16   would say about the machine-or-transformation test is

17   this is not a government position of recent vintage;

18   that is, the government's brief to this court in

19   Gottschalk v. Benson, or its reply brief which was filed

20   around 1971, basically said that, although this Court

21   has never announced machine-or-transformation of the

22   test, that is the principle that can be abstracted from

23   the totality of the Court's decisions.

24   JUSTICE KENNEDY: Was the State Street case

25   a machine-or-transformation test?

40

1   MR. STEWART: It would.

2   JUSTICE KENNEDY: You talk about the State

3   Street case in your brief, and it's complicated because

4   of the Federal statute that follows it, but if you had

5   just the facts of State Street before us, and forgetting

6   the Federal statute was enacted after it, how would you

7   decide this case?

8   MR. STEWART: Oh, it would come out the same

9   way. I mean, State Street Bank --

10   JUSTICE KENNEDY: That's what I thought.

11   And is it -- is it machine-or-transformation, in your

12   view?

13   MR. STEWART: Well, it was machine -- that

14   is, in State Street Bank, the claim was not to a process

15   within the meaning of Section 101. The claim was not to

16   a method of accomplishing things by means of a computer,

17   which would be, potentially, a process. It was to the

18   computer itself, the programmed computer, that the

19   innovation in State Street Bank was that the devising of

20   new computer programs that allowed the computer to

21   perform various tasks in association with the carrying

22   out of the hub-and-spokes investment -- investment

23   method. And, certainly --

24   CHIEF JUSTICE ROBERTS: So what did that --

25   what did that transform?

1   MR. STEWART: It didn't transform anything,

2 but it would fit -- the transformation part would be

3 irrelevant because the machine-or-transformation test

4 is, in our view, the appropriate rubric to apply in

5 construing the statutory term process, that is, when the

6 person doesn't say, I have invented a new machine, but,

7 rather, says, I've identified a new process for

8 accomplishing things.

9   If a person claims to be -- to have invented

10 a new machine, then that -- it is either a machine or it

11 isn't. A computer is certainly a machine. Really, the

12 only -- I think the --

13   JUSTICE STEVENS: I don't understand how

14 that can be a patent on a machine if the only thing

15 novel is the process that the machine is using.

16 Isn't -- isn't the question -- really, the question

17 there was whether the new process was patentable.

18   MR. STEWART: Well, I think what -- the

19 argument that the other side, the person challenging the

20 patent in State Street could have made, but apparently

21 didn't, was the person could have said, of course, the

22 computer is a machine, but a computer programmed with

23 new software to perform different functions is not a new

24 machine.

25   It's not a different machine from the one

1   that has always -- not always, but that has already

2   existed, and therefore, it doesn't satisfy Section 1 or

3   Section -- 102 or Section 103, but that --

4   JUSTICE KENNEDY: Well, that was one of the

5   reasons I asked you about it, I suppose. Just looking

6   at the whole case, do you think the State Street

7   holding -- the State Street invention was patentable?

8   MR. STEWART: It was -- the way I would put

9   it is: The State Street Bank analysis of the question

10   that was actually presented to it was correct; that is,

11   the argued was made, the programmed computer is

12   patentable as a --

13   JUSTICE KENNEDY: How would you come out in

14   the State Street case today, if all of the arguments

15   were made under your test?

16   MR. STEWART: Well, under our test, we would

17   come out the same way because the computer would be a

18   machine. The only question would be whether the

19   programming of the computer with new software caused it

20   to be a patentable different machine from the one that

21   existed previously.

22   Now -- now, we do think that software

23   innovations can have the effect of causing the computer

24   to be a different, special purpose computer, as the

25   phrase --

1   JUSTICE STEVENS: I'm sorry. I must be

2   awfully stupid. You say it would come out the same way.

3   In the same way the court did or this way you argued?

4   MR. STEWART: I think the same -- the

5   Federal circuit's decision in State Street would come

6   out the same way under our test.

7   JUSTICE STEVENS: And you think it should?

8   You think it should?

9   MR. STEWART: Yes, but, again, the point I

10   would emphasize --

11   JUSTICE STEVENS: I don't understand why

12   that isn't just the application of a process, which --

13   which is not itself patentable subject matter, to a

14   particular machine that can use process --

15   JUSTICE KENNEDY: That's -- that's a problem

16   I have.

17   MR. STEWART: Well, I guess -- let me

18   backtrack. If you look at the text of the statute that

19   is reproduced at Page 2 of -- of the Blue Brief, and it

20   says -- it's right in the middle of the page. "Whoever

21   invents or discovers any new and useful process,

22   machine, manufacture, or composition of matter is

23   potentially entitled to" --

24   JUSTICE BREYER: So I thought you were

25   saying that the correct argument for the people

1   attacking the patent in that case was to say, this is

2   not a machine. The machine there is a computer. This

3   is a program that changes switches, and that is a

4   different process for the use of the machine.

5   Now, whether that process is or is not

6   patentable depends upon a lot of things that we don't

7   have to go into in this case. Is that right?

8   MR. STEWART: I don't -- no.

9   JUSTICE BREYER: Okay. Well, then what is

10   right?

11   MR. STEWART: I don't think that's what I

12   saw saying. What I was saying is that -- and I guess

13   the -- the first point I would make is, when somebody

14   claims to have invented a new machine, the

15   transformation test really has nothing to do with the

16   inquiry because a -- a better television or a better DVD

17   player can be patented as a machine, even though

18   transformation of matter is no --

19   JUSTICE STEVENS: It's not on a computer,

20   which the only difference from the old computer is it's

21   using a new program. You can't say that's a new

22   machine.

23   MR. STEWART: Well, but my -- I think --

24   first, I think you can because I think if you -- if you

25   improved the hardware of the computer in order to enable

45

1   it to perform --

2   JUSTICE STEVENS: But that patent didn't

3   require any change in the hardware, as I remember it

4   correctly.

5   MR. STEWART: But I -- but I think the

6   argument that has been made with success -- and PTO

7   agrees with this -- is that programming a computer by

8   means of software to produce -- to perform new functions

9   can create a novel --

10   JUSTICE BREYER: But then all we do is every

11   example that I just gave, that I thought were examples

12   that certainly would not be patented, you simply patent

13   them. All you do is just have a set of instructions for

14   saying how to set a computer to do it. Anyone can do

15   that. Now, it's a machine.

16   So all the business patents are all right

17   back in. Now, that -- what I think we were looking

18   for was -- or at least I was -- was why that isn't so,

19   and how you are going to later, down the road, deal with

20   this situation of all you do is you get somebody who

21   knows computers, and you turn every business patent into

22   a setting of switches on the machine because there are

23   no businesses that don't use those machines.

24   MR. STEWART: Well, first of all the only

25   ruling that we're -- backtrack a bit, to say, we oppose,

1   sir, in this case because we recognize that there are

2   difficult problems out there in terms of patentability

3   of software innovations and medical diagnostics.

4   JUSTICE KENNEDY: You thought we -- you

5   thought we would mess it up.

6   MR. STEWART: I didn't think --

7   (Laughter.)

8   MR. STEWART: We didn't think the Court

9   would mess it up. We thought that this case would

10   provide an unsuitable vehicle for resolving the hard

11   questions because the case doesn't involve computer

12   software or medical diagnostic techniques, and

13   therefore, we thought the Court would arrive at the

14   position that I think, at least some members are feeling

15   that you have arrived at, that you will decide this

16   case, and most of the hard questions remain unresolved.

17   And, frankly, we think that's true.

18   JUSTICE GINSBURG: But this case could be

19   decided without making any bold steps.

20   MR. STEWART: Again, I don't -- I don't

21   think it would be a bold step to say that

22   machine-or-transformation is the test. That is, we have

23   gone for --

24   JUSTICE GINSBURG: But even the Federal

25   circuit didn't say it was a retest. It said it is for

1   now. We know that things that we haven't yet

2   contemplated may be around the corner, and when they

3   happen, we will deal with them.

4   MR. STEWART: And we would -- we would be

5   entirely content with a ruling like that. And we would

6   say that the claimed hedging method here is not the sort

7   of Space Age innovation that might cause Justices to

8   say: This is just different in kind from anything that

9   the drafters of the patent statute could have imagined.

10   The other point I would make about the

11 programmed computer is, to follow up on my television

12 and DVD example, that when you claim a machine or a

13 manufacture, as the committee reports to the 1952 act

14 said, those words are broad. They encompass everything

15 under the sun that is made by man. And so a television

16 is indisputably a machine, even though its function is

17 not to transform matter. It's only when you get to the

18 term "process" that you are left with -- that the

19 machine-or-transformation test kicks in.

20   And really, the argument on the other side

21 is: The term "process" in ordinary speech is extremely

22 broad. It can literally be read to encompass any series

23 of steps, whether or not linked to technology, whether

24 or not linked to a machine or transformation. And the

25 other side argues you should construe it that way in the

1   patent statute.

2   I guess the -- the three reasons we would

3   say that's not so are: First, under the canon of

4   noscitur a sociis, it is appropriate to construe the

5   term "process" in conjunction with the other terms.

6   Those other terms are broad, but they all refer to

7   physical objects that don't exist in nature and are

8   created by man. And a huge array of very productive,

9   innovative activity doesn't culminate in the creation of

10   any new physical substance, and the word "process"

11   surely was intended to add something, but it would be

12   quite strange to construe the word "process" to

13   encompass the whole range of human endeavor when the

14   other words are limited to the creation of new things in

15   the physical.

16   The second thing is that when this Court in

17   the past has explained the term "process," it's always

18   linked it to the operation of machines, as in the

19   telephone cases in Morse, or to the transformation of

20   matter in ways that may not be dependent on a particular

21   machine.

22   And the third thing I would say is that in a

23   sense, there is a strong dog that didn't bark in the

24   night quality to our argument. That is, even though the

25   Court has never said in so many words that a method of

1   allocating risk by contract is a patent-eligible

2   process, the economic history of this country really

3   would have been fundamentally different if it had been

4   believed from the outset that innovations of this

5   character could be patented and potential competitors

6   could be foreclosed from engaging in the same method.

7   If the Court has nothing further?

8   CHIEF JUSTICE ROBERTS: Thank you, Counsel.

9   Mr. Jakes, you have four minutes remaining.

10   REBUTTAL ARGUMENT OF J. MICHAEL JAKES

11   ON BEHALF OF THE PETITIONER

12   MR. JAKES: Thank you, Mr. Chief Justice.

13   The Federal Circuit did announce this test

14   as the sole test for all processes. It said it applied

15   no matter what the process was, so we do have to face

16   these difficult questions.

17   I think the question can be avoided, because

18   we don't need a rigid test of this type based on

19   machine-or-transformation. The question we are looking

20   at and should be looking at is: Are we trying to patent

21   an abstract idea?

22   Now, the government has gone farther than

23   that and really wants to exclude methods of organizing

24   human behavior. I think that's the way they describe

25   it. That's really the business method rejection in

1   other words. And I think that runs contrary to section

2   273 of the statute, which recognized that there were

3   business methods that could fall within the patent

4   statute, and as a result prior user rights should be

5   granted.

6   To speak briefly about the State Street Bank

7   case that was a type of business method that was

8   implemented on a machine. The Federal Circuit said it

9   didn't matter. They weren't looking at whether it was

10   in machine form or method form. Their reasoning would

11   have applied the same either way, and to do otherwise

12   would be to place form over substance. And in a sense,

13   that's what some of the transformation debate is about.

14   It's form over substance. Why should transformation be

15   the key? The key should be: Is it a practical

16   application of a useful result?

17   Our method, we believe, is a practical

18   application. As the patent office has said, it does

19   involve physical steps. I think that was one of the

20   clues that the patent office has relied on in saying

21   whether or not something is abstract. Since it is not

22   an abstract method, it's rooted in the real world, we

23   think it should be eligible to have its examination at

24   the patent office and it shouldn't be thrown out on an

25   arbitrary test.

1   CHIEF JUSTICE ROBERTS: The -- the physical

2   step that your process involves is picking -- picking up

3   the phone and calling people on both sides of the

4   transaction.

5   MR. JAKES: It could be. It also requires

6   the sale of a commodity on a fixed price. That is

7   something that takes place in the real world as opposed

8   to a mental process within somebody's head. Purely

9   mental processes that are done just solely in someone's

10   mind, I think we all agree, those are not

11   patent-eligible. That's not our method.

12   CHIEF JUSTICE ROBERTS: Thank you, Counsel.

13   The case is submitted.

14   (Whereupon, at 1:55 p.m., the case in the

15   above-entitled matter was submitted.)

16

17

18

19

20

21

22

23

24

25

biomedical 29:9
bit 46:25
Blue 44:19
board 20:3
bold 47:19,21
book 4:16
borrowing 7:10
bound 4:9
bowls 33:2
bread 36:6
BREYER 5:6
   6:5,20 8:25 9:6
   9:11 19:8
   20:11 31:3,8
   31:25 44:24
   45:9 46:10
Breyer's 34:17
brief 16:23
   17:16 27:12,17
   28:21 33:10
   40:18,19 41:3
   44:19
briefly 51:6
briefs 22:7 32:2
bring 5:14
brings 18:1
broad 3:23
   11:13 13:4
   20:14 23:25
   24:9,14 27:22
   31:15,17 48:14
   48:22 49:6
broadest 12:18
broadly 3:20
Burden 32:24
Bureau 12:7
business 5:2,17
   10:22 12:23
   13:10,14 15:23
   16:3 18:21
   28:15 29:4,12
   29:21 30:7,10
   30:20,22 31:1
   31:12 46:16,21
   50:25 51:3,7
businesses 30:14
   46:23

businessman
   6:6,7,15
business-related
   30:19
buy 10:7
buyers 10:7

─────── **C** ───────

C 2:1 3:1
calculate 33:15
calculations
   29:20 35:25
calculator 35:17
   35:20
calculus 10:24
call 11:25 12:1
   13:18
calling 52:3
candidate 38:9
canon 49:3
capacity 11:9
Carnegie 26:21
carrying 41:21
carved 8:5
case 3:4 4:3 5:10
   9:22,22 12:7
   14:25 15:2,22
   15:24 17:19,22
   17:23 23:8,11
   27:21 28:22
   29:24 30:1
   31:9 33:1,2
   36:17,20 38:3
   39:6,7,8 40:24
   41:3,7 43:6,14
   45:1,7 47:1,9
   47:11,16,18
   51:7 52:13,14
cases 9:20 15:17
   17:5 26:13
   30:15 37:22
   49:19
categorically
   30:11
categories 4:7
   7:19 12:12
   20:15

category 12:11
cause 48:7
caused 43:19
causing 43:23
central 35:12
centuries 10:16
   38:13
century 17:7
   19:23
certain 5:15
   26:20 35:16
certainly 4:21
   11:6 26:14,17
   27:24 41:23
   42:11 46:12
challenging
   42:19
change 30:2
   46:3
changes 45:3
changing 26:1
character 50:5
characterize 7:6
characterized
   32:14
charge 19:18
Chief 3:3,9 9:23
   10:14 11:19,24
   22:16 26:5,10
   33:8 34:4 35:3
   35:13 36:2
   39:13 40:6
   41:24 50:8,12
   52:1,12
choose 5:25 8:24
circle 20:21
circuit 4:8 5:12
   18:24 24:25
   28:2,3,6,11,15
   29:5,17,25
   30:15 31:9
   34:18,21 37:20
   39:5,8 47:25
   50:13 51:8
circuit's 3:11
   9:16 24:24
   28:24 39:4

   44:5
circumstances
   5:16 36:18
cite 32:7
cited 5:1
claim 9:24 10:10
   10:14 11:12,13
   21:21,22 22:13
   23:24,25,25
   24:4,7,12,13
   24:14,14 30:15
   41:14,15 48:12
claimed 48:6
claims 10:20
   23:11,16,23
   42:9 45:14
clarity 28:23
classic 10:15
clause 7:4
clear 24:23
clearly 11:3
   24:22 25:20,21
close 15:24
closer 36:1
clue 32:19
clues 51:20
Cochrane 32:24
code 22:14 23:1
   23:4,8,12
come 8:20 26:14
   37:8 38:23
   41:8 43:13,17
   44:2,5
COMMERCE
   1:8
committee
   48:13
commodity 10:1
   10:1,15 11:21
   52:6
commonly 30:7
communicating
   26:22
competitor 7:1
competitors
   50:5
compile 11:4

   12:8
complicated
   41:3
composition
   44:22
compression
   21:21
computer 29:8
   29:19 30:16,18
   31:20 33:13,25
   34:2,6,9 35:22
   41:16,18,18,20
   41:20 42:11,22
   42:22 43:11,17
   43:19,23,24
   45:2,19,20,25
   46:7,14 47:11
   48:11
computers
   13:25 14:2
   30:12 46:21
concerned 4:25
concrete 11:12
Congress 5:4,7
   5:10,11,13,15
   8:5 11:7 20:14
Congress's
   20:25
conjunction
   49:5
connection
   23:15 29:21
Constitution
   6:22
construe 48:25
   49:4,12
construing
   29:17,18 42:5
consumer 10:2
consumers 10:2
consumption
   8:22 27:19,20
   35:15
contemplated
   48:2
content 48:5
context 20:18

21:1 32:11
36:13
continent 6:24
contract 50:1
contractual 29:1
contrary 3:19
18:16 51:1
contributions
30:13
conventional
18:11
corner 48:2
Corning 32:23
corporate 5:25
corporation
7:18
correct 15:16
23:19 24:5
43:10 44:25
correctly 46:4
Counsel 50:8
52:12
counterparties
33:24 36:4
counterparty
34:13
counter-exam...
5:2
countries 12:23
country 38:25
50:2
couple 27:25
37:5
course 42:21
court 1:1,17
3:10 15:20,24
17:24 26:11
28:22 30:14,25
32:17 36:15
37:14,25 40:13
40:18,20 44:3
47:8,13 49:16
49:25 50:7
courts 40:9
Court's 3:18 4:2
4:2,10 40:23
cover 29:4

covered 5:23,24
7:19,21,22,24
8:1 25:21
covers 5:9
create 28:17
29:14 46:9
created 4:8 11:1
49:8
creation 38:7
49:9,14
crunch 35:20
culminate 49:9
cure 8:11
curing 18:12
current 14:2
21:22 24:8,18
24:19 25:6,7
25:14,17,17
27:2,3

——————————
D
——————————
D 3:1
dah 31:12,12,12
31:12,12
Dale 26:21
Dann 15:21
data 12:11,13
21:17,20 25:1
25:24,25 26:1
dating 7:12
DAVID 1:7
day 11:14 28:11
deal 4:20 12:1
27:9 46:19
48:3
dealing 4:14
debate 51:13
decide 5:4 15:24
32:4 34:25
41:7 47:15
decided 15:22
28:22 39:8
47:19
decision 4:10
9:16 17:18
44:5
decisions 40:23

Deener 32:24
defined 13:13
19:2
defining 8:1
definition 14:8
definitions 13:8
Department
1:23
dependent
49:20
depends 45:6
Deputy 1:22
describe 26:21
50:24
described 30:7
32:23 33:23
40:7
designed 18:1
29:1
destroy 19:21
29:10
determination
40:9
develop 35:14
devise 29:1
devised 26:22
27:1 32:25
devising 28:15
41:19
diagnostic 36:16
47:12
diagnostics 47:3
Diamond 15:4
Diehr 4:2 9:19
15:2,4,4,5
17:23 18:10
31:4,5 32:6,18
difference 19:4
34:7 45:20
different 10:9
18:7,20 21:25
22:8 32:8,19
33:20 34:13
37:4,6 38:12
38:23 42:23,25
43:20,24 45:4
48:8 50:3

differential
10:24
difficult 11:7
12:18 40:6
47:2 50:16
difficulties
40:14
directly 39:25
DIRECTOR
1:10
discern 20:25
disclose 14:12
19:17
disclosure 8:23
14:11 24:6,16
discovered
10:24
discovers 44:21
discussed 27:12
discussion 26:13
dispute 40:3
distance 24:1
27:3
divide 35:16
doctor 8:3,6,24
dog 49:23
doing 15:23
18:21 22:10
drafters 48:9
drafting 17:10
draw 35:10
drawn 4:1
DVD 45:16
48:12
dwell 36:3
D.C 1:13,20,23

——————————
E
——————————
E 2:1 3:1,1
easier 40:2
economic 50:2
economy 14:2
16:13
effect 43:23
effectively 26:23
either 3:14,16
42:10 51:11

electric 25:6,7
electrical 24:18
24:19 25:14
electronic 18:14
18:19 21:17
22:5,9 27:2
eligibility 28:17
31:2
eligible 6:2 8:4
10:13 11:11
12:14 27:9,13
29:16 30:6,8
32:15 33:22
36:11,19 37:10
37:17 38:4
51:23
eliminate 30:12
emerging 37:7
emphasize
44:10
en 39:6,9
enable 45:25
enacted 41:6
encompass
48:14,22 49:13
encompasses
4:22
encouraging
8:20 14:14
endeavor 49:13
enforcement
16:19,25
engaging 34:12
50:6
engineering
13:16,16
England 10:23
entirely 8:7 48:5
entitled 44:23
enunciated 9:19
equally 4:6
era 18:15
ESQ 1:20,22 2:3
2:5,8
essence 29:19
essential 33:5
essentially 33:24

38:1
establish 28:18
established 3:19
establishing
33:18
estate 5:24
Europe 12:22
event 37:15
exactly 19:8
22:14
examination
51:23
example 7:18
8:2 46:11
48:12
examples 46:11
exception 38:7
38:10
exceptions 4:1
exchange 14:16
14:22 18:25
21:16
exclude 7:14,15
13:10,13 19:6
21:18 50:23
exclusions 3:22
exclusive 14:21
37:3
exclusively
36:24
exempt 5:20
exempted 5:19
exist 13:19,21
13:24 16:2,5
49:7
existed 16:4
43:2,21
expectancy
10:25 11:1
12:9
expires 14:18,19
explain 6:16
18:24
explained 49:17
explanation
11:4
explicitly 37:22

explosion 13:17
extent 35:11
extreme 37:20
extremely 48:21
e.g 31:6 32:7,7,9

————— F —————

fabulous 9:6
face 50:15
facts 36:12,13
41:5
fair 22:22
fairly 28:1 30:20
fall 51:3
falls 8:17
far 9:13
farther 50:22
Federal 3:11 4:8
18:23 24:24,25
28:2,3,6,10,14
28:24 29:5,17
29:25 30:15
31:9 34:18,20
37:20 39:4,5,8
41:4,6 44:5
47:24 50:13
51:8
feel 5:8
feeling 47:14
fees 14:6
fields 13:15,17
37:2
file 6:17
filed 40:19
financial 13:16
find 3:16 20:6
33:25 34:10,13
finds 4:3
fine 7:15 9:11
firm 6:8
first 7:13 9:19
27:25 28:17
32:6 33:22
37:6 40:3
45:13,24 46:24
49:3
fit 42:2

fixed 10:2,3 52:6
flagged 31:21
Flook 37:14
38:2
flour 33:1
flow 14:3,6,8
FM 21:21
focus 22:21
focusing 39:25
follow 20:9
48:11
followed 9:8
following 26:12
31:6
follows 41:4
footnote 33:10
35:4 36:3
force 6:25
foreclosed 50:6
forgetting 41:5
form 51:10,10
51:12,14
forming 22:18
forth 22:4
fortune 6:14
forward 39:2
forward-looki...
18:16
four 4:7 12:12
19:13 20:15
50:9
framers 6:22
framing 27:13
frankly 47:17
free 14:3,6,8
friends 4:17
26:19
function 48:16
functionality
35:20,24
functions 42:23
46:8
fundamental
34:15
fundamentally
50:3
further 50:7

future 28:25
32:3

————— G —————

G 3:1
general 1:22
6:16 12:19
15:12 17:8,16
generality 26:20
generally 14:16
General's 7:11
generated 25:4
getting 19:20
GINSBURG
5:22 12:21
13:6 39:1,12
39:17 47:18,24
give 8:2 11:8
13:21 14:21
36:8
given 20:15
35:23
give-and-take
22:22
giving 19:15
go 5:12 6:21 8:5
9:18 12:7 17:6
18:20 20:21
27:7 28:15
33:4 34:25
37:20 45:7
goes 38:14,15
going 8:25 9:9
10:16 30:2
36:6 46:19
good 8:2 20:5
27:21
Gottschalk
40:19
government
4:11 25:22
39:2,10 40:17
50:22
government's
40:18
Graham 26:21
granted 6:17

51:5
great 6:23 9:1
grocer 12:1 36:7
grocery 36:7
ground 27:18,24
grounds 15:22
guess 5:11 33:19
34:15 36:14
37:5 44:17
45:12 49:2

————— H —————

hand 31:17
hangs 4:12
happen 48:3
hard 28:11
34:20 35:9,14
47:10,16
hardware 45:25
46:3
harm 20:5,5
hat 4:12
head 52:8
hear 3:3
heard 12:17
hearing 39:6
heart 34:2
hedging 8:21
10:15 27:19
33:21 38:10
48:6
held 29:15 30:6
30:8,15,16
32:15 37:14,21
38:3
help 8:13 19:9
37:19
helps 6:15
high 10:7
higher 19:18
historical 35:15
history 50:2
holding 30:21
43:7
honest 20:2
Honor 7:5 10:17
13:2 14:10

hook 36:6
hope 26:17
horse 16:6
horses 16:5,8,15
hub-and-spokes
  41:22
huge 49:8
human 7:18,20
  7:22 8:7,11
  49:13 50:24
hypothesis
  19:10
hypothetical
  33:23
hypothetically
  9:12
hypothetical's
  9:15

I

idea 9:25 17:24
  27:19 29:7
  50:21
ideas 3:24 9:20
identified 33:21
  40:14 42:7
identify 28:5
  33:13 34:11,22
  36:4
identifying
  36:18
imagine 37:2
imagined 48:9
implement 5:5
implemented
  27:1 51:8
implements
  17:25
impose 29:8
improved 45:25
improving 14:8
inadequate
  24:15
inadvertent
  19:11
inadvertently
  19:9

inappropriate
  34:25
include 13:11
included 7:17
  12:11 15:14
  16:23
including 4:2
  30:12
incorrect 29:14
increased 13:25
independent
  27:18
indisputably
  48:16
individual 32:25
industrial 4:22
  4:25 13:16
  16:14 18:11,15
  27:11
industries 29:10
industry 10:22
  11:2
ineligible 30:11
inference 32:9
inflexible 28:3
influence 4:17
  26:19
information
  14:3,6,9,15,22
  18:13 19:1,25
  20:2 21:16
  24:1
infringement
  8:6
initially 10:19
initiate 9:25
  10:5,6
Initiating 11:20
innovation
  29:15 34:2
  41:19 48:7
innovations
  27:5 36:16,18
  43:23 47:3
  50:4
innovative 27:8
  30:16 49:9

inquiry 39:25
  40:1 45:16
insights 16:7
insignificant
  35:5
insofar 31:11
  32:2
instance 36:15
instructions
  46:13
insurance 10:22
  10:22 11:9,18
  12:6
INTELLECT...
  1:9
intended 49:11
intent 8:16
  20:25
interactive
  33:23 34:8
interested 34:12
Internet 14:3
interpreted 24:7
introduced 5:20
invent 14:15
invented 42:6,9
  45:14
invention 18:10
  30:6 32:12,12
  43:7
inventions 4:20
  4:25 7:9 14:12
  21:19 37:10
inventors 4:15
invents 44:21
investment
  41:22,22
involve 19:1
  29:12 32:20
  33:12 37:11,11
  38:4 47:11
  51:19
involved 32:17
  40:1
involves 8:11
  35:4 52:2
involving 40:8

irrelevant 42:3
issue 11:9 17:13
  20:12 27:22
issued 16:23
issues 14:20
  16:18
items 20:23 33:3
  37:21

J

J 1:7,20 2:3,8
  3:7 50:10
Jakes 1:20 2:3,8
  3:6,7,9 4:21
  5:15 6:2,18 7:5
  7:13,22,25
  8:14,17 9:10
  9:18 10:11,17
  11:10,23 12:3
  12:10 13:2,12
  13:23 14:1,10
  14:19 15:2,4,6
  15:9,12,19
  16:10,13,18
  17:6,11,14
  18:3,10 19:4
  20:9,14,19
  21:2,12,15
  22:11,19 23:3
  23:6,14,17,20
  23:23 24:6,12
  24:21,23 25:7
  25:10,12,19,23
  26:6 50:9,10
  50:12 52:5
Johnston 15:21
Joint 9:24
Jones 4:16
Judge 17:9
  39:18
jurisprudence
  15:1
jury 5:25
Justice 1:23 3:3
  3:9 4:11 5:6,22
  6:5,20 7:7,20
  7:23 8:9,15,25

  9:6,11,23
  10:14,21 11:19
  11:24 12:6,21
  13:6,20,24
  14:5,17,24
  15:3,5,7,10,16
  16:1,11,15
  17:4,8,12,23
  18:4,18 19:8
  20:11,17,20
  21:9,13,25
  22:16 23:1,4,7
  23:16,18,21
  24:3,10,17,22
  25:5,9,11,15
  25:20 26:5,10
  26:17,18 27:16
  29:3 30:1,22
  31:3,8,25 33:8
  34:4,17 35:3
  35:13 36:2,23
  37:19 38:14
  39:1,12,13,17
  40:6,24 41:2
  41:10,24 42:13
  43:4,13 44:1,7
  44:11,15,24
  45:9,19 46:2
  46:10 47:4,18
  47:24 50:8,12
  52:1,12
Justices 48:7

K

Kappos 1:7 3:5
keep 8:24 17:2
keeping 14:13
KENNEDY
  10:21 12:6
  17:23 18:4
  21:25 40:24
  41:2,10 43:4
  43:13 44:15
  47:4
kept 9:3
key 51:15,15
kicks 48:19

kind 18:20
  34:25 38:12,23
  48:8
kinds 22:20
knew 18:15
know 4:15 5:13
  9:1 10:21,22
  16:1,7 18:5
  20:3,3 26:18
  31:16 36:7,8
  39:23,25 48:1
knowledge
  12:19,20 21:7
  21:9,11,13
knows 46:21

L

L 1:3,22 2:5
  26:8
language 3:16
  3:23 4:3 15:10
  18:5
latest 17:20
Laughter 9:5
  20:13 47:7
law 8:16 9:2
  12:22 18:17
  19:13 20:22
  29:4 37:1
laws 3:23 4:5
  14:11 18:1
  21:5
learned 9:3
leave 5:6 28:11
  38:5
left 31:14 48:18
legal 14:7
length 27:12
let's 5:12 16:5
  22:1 24:3
level 26:20 35:1
licensing 14:6
life 10:25 12:8,9
limit 7:7,9
limited 4:23
  28:23 31:1
  49:14

limits 14:5 19:3
  29:8
line 35:10 36:1
link 28:5,7,19
linked 48:23,24
  49:18
links 28:16
literally 48:22
literature 7:16
little 9:15 22:24
long 8:7 9:22
  12:14
look 21:4,24
  22:13 24:15
  34:6 35:3,14
  44:18
looked 18:6
looking 7:14
  9:23 17:21
  19:5 20:15
  30:2,3 34:5
  43:5 46:17
  50:19,20 51:9
Lorenzo 4:15
lose 28:23
lot 32:3 45:6
lots 19:6
low 10:7
luck 34:24

M

machine 3:15
  8:12 18:7 23:9
  23:13 28:5,8,8
  28:19 29:6,19
  29:22 30:8
  31:1,20 32:11
  32:17,21 33:6
  33:12 34:22
  35:5,11 37:11
  38:4 41:13
  42:6,10,10,11
  42:14,15,22,24
  42:25 43:18,20
  44:14,22 45:2
  45:2,4,14,17
  45:22 46:15,22

48:12,16,24
  49:21 51:8,10
machines 4:20
  5:1 19:24 27:1
  28:16 30:12,23
  31:12 46:23
  49:18
machine-impl...
  28:13
machine-or-tr...
  3:12 32:10
  35:2 36:25
  37:17 39:3,11
  39:16 40:15,16
  40:21,25 41:11
  42:3 47:22
  48:19 50:19
making 47:19
MALCOLM
  1:22 2:5 26:8
man 48:15 49:8
management
  38:12,24
manipulation
  18:19
manufacture
  44:22 48:13
manufacturing
  4:14,22 5:1
  20:23 33:1,3
market 11:21
materials 18:13
matter 1:16 3:15
  4:7 10:13
  12:12 15:15,20
  17:21 28:6
  32:14,16,18
  44:13,22 45:18
  48:17 49:20
  50:15 51:9
  52:15
matters 29:5
maximizing
  10:8
Mayer's 39:18
mean 6:5 10:4
  20:22 24:20

31:5 36:3 41:9
meaning 7:8
  21:7 30:3
  41:15
means 4:14
  12:19 19:3
  41:16 46:8
meant 4:13,19
mechanisms
  38:16
medical 5:18
  36:16 47:3,12
meet 6:3 31:22
meets 12:14
members 47:14
mental 52:8,9
mention 16:1
mentioned
  26:19
mere 18:25
mess 47:5,9
met 24:20
method 7:12 8:3
  8:10,21,21 9:2
  10:12 11:10,17
  11:18 12:23
  15:23 18:12,20
  18:21 26:24
  30:7,17 32:25
  33:11 34:23
  38:10,19 41:16
  41:23 48:6
  49:25 50:6,25
  51:7,10,17,22
  52:11
methods 3:13,14
  5:17,21,23
  13:10,14 16:21
  16:24 17:1
  26:22 29:2,12
  30:10,20,23
  31:1,12 50:23
  51:3
MICHAEL 1:20
  2:3,8 3:7 50:10
microprocessor
  33:14

middle 44:20
mind 32:23
  52:10
minus 19:15
minuses 19:18
minutes 50:9
modern 16:3
Monday 1:14
money 6:12
monopoly 19:16
Morse 22:13,14
  24:13 26:13
  49:19
Morse's 23:1,4
  23:23 32:11
move 31:10,10

N

N 2:1,1 3:1
narrow 3:11
  5:12 31:15,17
natural 3:23
  21:5
naturally 32:13
nature 3:23 4:6
  21:5 25:24
  49:7
near 27:16,16
necessarily
  21:23 25:3
  38:22
necessary 5:8
  22:23 28:19
  34:23
necessitate 38:7
need 21:24
  28:18 50:18
negotiations
  27:6
nervous 9:15
never 4:23 5:9
  38:2 40:21
  49:25
new 4:4,8 6:9,10
  6:13,24,24
  8:20 11:2 16:2
  21:3,6 27:5,6

37:5,25 38:18
39:1,5,15,23
41:1,8,13 42:1
42:18 43:8,16
44:4,9,17 45:8
45:11,23 46:5
46:24 47:6,8
47:20 48:4
stop 7:1
store 36:7
storehouse 21:6
strange 49:12
Street 17:19,22
29:16 30:2,7
40:24 41:3,5,9
41:14,19 42:20
43:6,7,9,14
44:5 51:6
strong 49:23
strongest 14:25
students 9:3
stupid 44:2
sua 39:5
subject 3:15 4:7
10:13 12:12
15:14,20 17:21
44:13
submitted 52:13
52:15
substance 8:12
18:7,19 27:7
29:7 49:10
51:12,14
substantial
40:10
substantiality
35:1
substantive
18:25
substitute 22:17
succeed 6:15
success 46:6
successful 6:7,8
6:23
sued 16:25
sufficient 28:17
38:21

sufficiently
40:10
suggesting
13:20
suggestion 9:17
sun 5:9 48:15
support 4:3 15:1
suppose 9:11,12
9:14 31:3 43:5
Supreme 1:1,17
sure 31:23
surely 49:11
surgical 8:3,21
sweeping 30:21
switches 45:3
46:22
system 5:5 8:20
14:14,21 37:8
systems 12:25
13:3,10

———————
T

T 2:1,1
table 11:5
tables 10:25
tailoring 5:7
take 5:10 9:13
12:4 16:5 22:3
31:24 35:6
37:15
taken 38:24
takeover 5:25
takes 12:7 22:25
33:17 52:7
talk 41:2
talking 13:6
29:10
tangential 35:4
tasks 30:18,19
41:21
tax 5:21,23,24
teachers 9:8
teaching 9:2
16:21,24 17:1
29:2
technique 34:9
techniques 27:5

27:6,6 36:17
38:12,24 47:12
technological
21:20 40:5,11
40:13
technologically
20:24
technologies
36:21 37:3,8
technology 7:9
12:17,18,24,25
13:13 14:2
29:6 38:6
39:19,20,21
40:1,8 48:23
technology-ba...
13:1,7,11
telegraph 23:9
telegraphy
23:15
telephone 6:11
26:13 49:19
television 45:16
48:11,15
tell 20:2 39:12
telling 19:24
tells 15:13
term 4:12,13
12:18 29:18,18
42:5 48:18,21
49:5,17
terms 6:17
11:13 13:5
20:15 33:25
47:2 49:5,6
test 3:12 4:8
19:5 21:18,20
21:23 22:24
24:20,24 25:21
26:15 31:23
32:10 34:18
36:25 37:3,18
37:19 39:3,3
39:11,24 40:13
40:15,16,22,25
42:3 43:15,16
44:6 45:15

47:22 48:19
50:13,14,18
51:25
testing 31:4
tests 39:23
tether 7:10
text 44:18
thank 20:11
26:4,5 50:8,12
52:12
theory 16:9
thing 6:10 10:5
23:8,21 32:6,8
32:19 40:15
42:14 49:16,22
things 7:15,17
7:18 8:21 9:4
11:15 15:14
16:12 17:15,15
19:6,12,13,21
27:25 31:4
32:1,15 37:2,6
41:16 42:8
45:6 48:1
49:14
think 5:14 6:22
7:13,16 8:9
9:18 11:3,7,10
11:16 13:14
14:25 15:9,19
16:6,13,24
17:15,19 18:15
19:4 20:9,16
21:2,19,24
22:17,19 25:7
25:9,20,23
26:20 27:23
28:20,21 29:13
30:5 32:8 34:8
34:17 35:13,19
37:25 39:24
40:12 42:12,18
43:6,22 44:4,7
44:8 45:11,23
45:24,24 46:5
46:17 47:6,8
47:14,17,21

50:17,24 51:1
51:19,23 52:10
thinks 6:9,10,11
6:24
third 49:22
thought 4:20
5:14 16:16
20:11 33:9
41:10 44:24
46:11 47:4,5,9
47:13
three 49:2
threshold 22:25
thrown 51:24
tie 7:10
tied 3:14 12:24
20:24 29:6
time 26:4 27:12
today 16:5 18:12
19:25 24:15
43:14
tool 33:5
totality 40:23
touch 18:6
tracking 34:10
TRADEMARK
1:11
train 16:8
training 16:5
transaction
34:12 52:4
transactions
10:1,5,6 11:21
36:4
transform 3:15
41:25 42:1
48:17
transformation
19:2,5,7 21:17
21:18,23 24:20
24:24 25:1
28:6,19 29:7
31:2,15 32:13
32:14,18 34:22
35:11 37:12
38:5 42:2
45:15,18 48:24

Alderson Reporting Company

49:19 51:13,14
transformed
  25:16,18 27:2
  27:4 32:16
transforming
  24:18 32:7
transmission
  25:24,24
transmit 24:5,8
  25:25
transmitted
  22:12 25:13,15
  25:17 27:3
transmitting
  21:22 24:1
true 10:17 20:6
  22:2 47:17
trying 18:24
  31:25 32:1
  36:5,14,17
  50:20
turn 46:21
turning 22:9
two 8:19 19:12
  19:14,14,15,18
  31:18 33:20
  37:22 40:2
type 18:11 32:22
  33:16 50:18
  51:7
types 4:24
typewriter
  33:16
typically 6:7

——————————
U

underlying 26:1
understand 21:4
  23:7 42:13
  44:11
understood 33:9
undertaken
  38:13
undulating
  21:22 24:7
unforeseen 3:21
  37:15 38:6

United 1:1,17
unobvious 10:12
unpatentable
  27:18
unresolved
  31:14 47:16
unsuitable
  47:10
unsure 29:11
use 14:18 17:3
  19:19 20:25
  23:8,12 30:18
  32:10,17 33:5
  33:13,15 35:5
  35:17 36:17
  44:14 45:4
  46:23
useful 3:21 4:4
  4:13,19,21 5:3
  6:14 7:11,14
  7:21 8:18
  12:16 21:3,7
  21:10,13 30:13
  44:21 51:16
user 5:17 51:4

——————————
V

v 1:6 3:5 15:4,21
  32:23,24 40:19
vacuum 20:18
valid 14:20
valuable 21:19
  27:8
various 29:20
  41:21
vast 6:23
veers 36:23
vehicle 36:17
  47:10
version 39:24
vice 34:18
view 6:13 7:3
  9:12,13 11:3,6
  26:14 41:12
  42:4
views 17:20,20
vigorously 28:1

vintage 40:17
virtue 34:18

——————————
W

want 11:8 22:4
  36:15
wanted 6:23
  11:8
wants 50:23
WARSAW 1:4
Washington
  1:13,20,23
  6:25 36:9
wasn't 23:6 30:2
way 6:10 7:6
  9:13 12:4
  13:13 16:8
  19:24 22:5
  26:15 36:24
  40:8 41:9 43:8
  43:17 44:2,3,3
  44:6 48:25
  50:24 51:11
ways 17:7 33:21
  49:20
wealth 10:8
website 33:23
  34:11
weeding 38:16
went 29:23
weren't 51:9
we're 36:25
  46:25
we've 16:22,24
  35:8
what-not 16:3
wheels 7:1
whisperers 16:6
win 4:17 26:19
  27:24
wire 24:5 25:13
  25:17
wires 25:16
wonderful 9:1
word 12:17 19:2
  21:1,9 33:7
  49:10,12

words 21:4 22:3
  22:18 31:5,5
  48:14 49:14,25
  51:1
work 12:25 13:7
  13:9 20:18,18
workmen 4:15
world 21:16
  29:9,9 51:22
  52:7
wouldn't 5:13
  6:8 7:5 13:7,19
  16:20 21:23
  28:10 29:11
  32:13
writes 4:16
written 11:13
  17:12,14
wrong 4:18
  18:16 23:11
  37:23
wrote 17:17,18

——————————
X

x 1:2,12

——————————
Y

years 13:19,22
  38:25
Yellow 34:5,14

——————————
0

08-964 1:6 3:4

——————————
1

1 9:24 10:10,15
  11:12,13 43:2
1:00 1:18 3:2
1:55 52:14
100 13:19,22
101 3:16,20,22
  4:7 38:15
  41:15
102 29:24 38:15
  43:3
103 10:19 29:25
  38:15,20 43:3
1680 10:23

19 9:24
1952 20:22
  48:13
1971 40:20

——————————
2

2 35:16 44:19
20 9:24
200 38:25
2009 1:14
26 2:6
273 5:16 51:2
287(c) 5:18 8:5

——————————
3

3 2:4

——————————
5

5 22:13
50 2:9
52 17:10
53 33:18

——————————
7

70s 15:21

——————————
8

8 23:24,25 24:14
80 9:3 32:2

——————————
9

9 1:14