

Intellectual Property and Technology Law Update

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US Supreme Court Rules in *Alice Corp. v. CLS Bank International* Case Regarding Software Patentability

The U.S. Supreme Court has ruled in the anxiously awaited *Alice Corp. v. CLS Bank International* case (13-298). The issue in this case was whether a computerized system, method, and computer-readable medium for intermediated settlement of financial transactions was a patentable invention. The Court ruled unanimously that it is not.

Many observers have looked upon this case as a potential threat to the patentability of software since the U.S. Court of Appeals for the Federal Circuit issued its *en banc* decision. The U.S. Supreme Court first found that the intermediated settlement concept is an abstract idea, which is excluded from patent eligibility under 35 USC §101 of the patent code, and “a fundamental economic practice long prevalent in our system of commerce.” The Court then considered whether the claimed computer implementation, either in its individual functions or the combination of functions, contained an “inventive concept” sufficient to transform the claimed abstract idea into a patent-eligible application. The examples provided with respect to a sufficient invention concept were an improvement in the functioning of the computer itself or an improvement in any other technology or technical field. Here, the Court found each of the claimed computer functions to be well-understood, routine and conventional activities previously known in the industry, and that the ordered combination of the functions added nothing to the functions as considered separately.

In the wake of this decision, applicants can expect a high level of scrutiny from patent examiners that handle software related applications. When an inventor and practitioner draft patent claims, they should pay particular attention to the inclusion of claim language and supporting description in the patent specification that particularly point out an improvement to the computer’s function or a technical field that derives from either the individual function steps or the combination of steps. Providing this support from the start will make responding to a subject matter eligibility rejection an easier task.

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