Supreme Court Rules Software and Business Methods Can Still Be Patented

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On June 28, the last day of its current term, the United States Supreme Court ruled, in the much-anticipated *Bilski* patent case, that software and business methods may still be patented. The Court approved the use of the so-called "machine-or-transformation" test, i.e., whether the claimed invention is tied to a particular machine or apparatus or whether it transforms a particular article into a different state or thing, in evaluating the viability of software and business method patent applications, but refused to recognize that test as the sole one for patentability.

Consistent with other recent patent-related cases, the Court indicated its preference for flexible, rather than rigid, tests for determining patentability. It maintained a long-standing tenet of patent law that determinations of whether an invention includes patent-eligible subject matter should focus on whether the claimed invention is a process, machine, manufacture, or composition of matter, with three specific exceptions: laws of nature, physical phenomena, and abstract ideas.The Court explained that the term "process" does not exclude business methods. It ruled, however, that the claimed invention in *Bilski* (a concept of hedging risk in energy markets) was not patentable since it could most appropriately be categorized merely as a mathematical formula or abstract idea.

Observers hoping for certainty in the Court's decision are bound to be disappointed, while those pursuing business methods patents may be encouraged in their efforts. For now, the complex battles surrounding these patents will continue to be waged case-by-case.