
Planning for the Brave New World: Are Business Method Patents Going to be Second Class Citizens?

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Patents addressed to products in the financial services industry and other types of so-called business method patents have become important tools used by industry members to protect their innovations over the past 10 years. Recently, the patent reform lobby has leveled significant criticism against business method patents and has urged Congress to pass patent reform legislation. The Supreme Court has taken notice, making statements in several recent opinions that appear critical of these patents. Yet, financial services companies need patent protection to protect their innovations just like other types of firms. This article explores the role of intellectual property, particularly patents, in protecting financial services innovation, the developing case law that may change the patent landscape, and how financial services companies can plan for changes in the treatment of these types of patents.

The Beginning

For many years, the US Patent & Trademark Office (PTO) has granted financial method patents (often referred to as business method patents). Many believe that the recent growth in business method patents was the result of the *State Street Bank v. Signature Financial Group*¹ decision from the Federal Circuit Court in 1998. The *State Street Bank* invention was a pure financial method invention: a “hub & spoke” investment structure for mutual funds to pool assets within a portfolio. However, the reality is that *State Street* simply rejected the concept of a business method exception in the Patent Law; the PTO had been issuing business method patents for many years prior to that decision.

Certainly, the *State Street* decision heightened awareness that business methods can be patented. As a result, banks and other financial services companies (FSCs) have responded by filing for patents to protect their intellectual property (IP). Some FSCs have sought patents primarily for defensive purposes, that is, so that they can strike back with their own patents if an aggressor sues them. Other

FSCs seek patents for more offensive-minded purposes, for example, so that they can protect the market share of their products/services covered by the patents.

The increase in the number of filings and in the number of issued business method patents has led to concern among some observers, particularly within the patent reform lobby, that has coalesced in recent years. Some commentators believe that business method inventions do not involve the kind of hard technology that the patent system should be protecting. They assert that business method patents are often overbroad and frequently invalid, creating a “thicket” of “bad patents”² that, in the aggregate, stifle innovation instead of fostering it. Some of these critics even lump in software, arguing that both software and business methods³ should be taken out of the realm of patentable subject matter.

Those concerned that business method patents impose inefficient transaction costs that burden innovation point to some high-profile infringement suits as evidence. One example would be the patent infringement suits based on the check-imaging patents⁴ asserted by DataTreasury Corp. against Bank One, First Data Resources, Bank of America, Citigroup, Wachovia, Wells Fargo, and others. DataTreasury claimed that these patents covered some basic check-imaging operations that banks have performed for many years. Although these patents were hotly disputed as being invalid based on old prior art, a number of companies ended up paying for licenses or otherwise settling these suits with some kind of payment to DataTreasury.

Sympathy for the Criticisms of Business Method Patents

In the recent past, the US Supreme Court could be expected to review one or two patent decisions each term. That has not been the case the past several years, as the Supreme Court has accepted review of a number of cases spanning a wide range of patent issues. Moreover, the Supreme Court has shown much less deference to the Federal Circuit not only in accepting these cases for review but by going on to reverse long-standing Federal Circuit precedent and often criticizing the junior court’s jurisprudence in the process.

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In several recent decisions, the Supreme Court has signaled some agreement with the assertion that business method patents may be throwing the patent system out of equilibrium. For example, in *eBay, Inc. v. MercExchange, L.L.C.*,⁵ which addressed standards for injunctions, Justice Kennedy (in his concurrence joined by Justices Breyer, Stevens, and Souter) made the following statement, which was at least partly directed to business method patents like the patent at stake in the *MercExchange*:⁶

In cases now arising trial courts should bear in mind that in many instances the nature of the patent being enforced and the economic function of the patent holder present considerations quite unlike earlier cases. An industry has developed in which firms use patents not as a basis for producing and selling goods but, instead, primarily for obtaining licensing fees. [] For these firms, an injunction, and the potentially serious sanctions arising from its violation, can be employed as a bargaining tool to charge exorbitant fees to companies that seek to buy licenses to practice the patent. [] When the patented invention is but a small component of the product the companies seek to produce and the threat of an injunction is employed simply for undue leverage in negotiations, legal damages may well be sufficient to compensate for the infringement and an injunction may not serve the public interest. *In addition injunctive relief may have different consequences for the burgeoning number of patents over business methods, which were not of much economic and legal significance in earlier times. The potential vagueness and suspect validity of some of these patents may affect the calculus under the four-factor test.*⁷

In the recent *LabCorp v. Metabolite*⁸ decision involving the LabCorp patent for detecting vitamin deficiencies, Justice Breyer vigorously dissented (joined by Justices Stevens and Souter) from the dismissal of the appeal as having been “improvidently granted.” Justice Breyer indicated that there were pressing policy issues on the proper boundaries for patentable subject matter to be addressed:

The relevant principle of law “[e]xclude[s] from . . . patent protection . . . laws of nature, natural phenomena, and abstract ideas.” [] The principle means that Einstein could not have “patent[ed] his celebrated law that $E = mc^2$; nor could Newton have patented the law of gravity.” [] Neither can one patent “a novel and useful mathematical formula” [] . . . the motive power of electromagnetism

or steam [] . . . “the heat of the sun, electricity, or the qualities of metals” [].⁹

The justification for the principle does not lie in any claim that “laws of nature” are obvious, or that their discovery is easy, or that they are not useful. To the contrary, research into such matters may be costly and time-consuming; monetary incentives may matter; and the fruits of those incentives and that research may prove of great benefit to the human race. Rather, the reason for the exclusion is that sometimes *too much* patent protection can impede rather than “promote the Progress of Science and useful Arts,” the constitutional objective of patent and copyright protection. U.S. Const., Art. I, § 8, cl. 8.¹⁰

Thus, the Court has recognized that “[p]henomena of nature, though just discovered, mental processes, and abstract intellectual concepts are . . . the basic tools of scientific and technological work.” []. It has treated fundamental scientific principles as “part of the storehouse of knowledge” and manifestations of laws of nature as “free to all men and reserved exclusively to none.” [] And its doing so reflects a basic judgment that protection in such cases, despite its potentially positive incentive effects, would too often severely interfere with, or discourage, development and the further spread of useful knowledge itself.¹¹

I believe that important considerations of the public interest—including that of clarifying the law in this area sooner rather than later—argue strongly for our deciding the question presented now.¹²

The *LabCorp* dissent was not just ruminating about the outer boundaries of patentable subject matter; it placed the Federal Circuit’s *State Street* decision and business method patents in the cross-hairs:

In either event, a decision from this generalist Court could contribute to the important ongoing debate, among both specialists and generalists, as to whether the patent system, as currently administered and enforced, adequately reflects the “careful balance” that “the federal patent laws . . . embod[y].” [] [citing Justice Kennedy’s concurring opinion in *eBay v. MercExchange* criticizing business method patents and the patent licensing industry]; FTC, ch. 4, at 1-44 [addressing business method patents]; Pollack, *The Multiple Unconstitutionality of Business Method Patents: Common Sense, Congressional Consideration, and Constitutional History*, 28 Rutgers Computer

& Technology L.J. 61 (2002) [other cites omitted] [all emphasis added].¹³

The respondents argue, however, that the correlation is nonetheless patentable because . . . considered as a whole, it . . . “produces a ‘useful, concrete, and tangible result,’” namely, detection of a vitamin deficiency [citing *State Street*] Neither does the Federal Circuit’s decision in *State Street Bank* help respondents. That case does say that a process is patentable if it produces a “*useful, concrete, and tangible result.*” []. *But this Court has never made such a statement and, if taken literally, the statement would cover instances where this Court has held the contrary.*¹⁴ [Emphasis added]

Thus, the Supreme Court has at least several justices who believe that the scope of what is proper patentable subject matter needs to be reined in and, thus, restrict the issuance of business method patents.

Patent Protection Is Important to the Financial Services Sector

The Supreme Court and patent reform lobby are criticizing business patents, but the financial services sector may not be listening. For example, a quick search of the patent databases¹⁵ reveals that prominent banks are expending significant resources in seeking business method patents:

- American Express has more than 65 issued patents and more than 150 published patent applications in the United States alone.
- MasterCard has 33 issued patents.
- VISA has more than 45 published patent applications.
- Capital One has 20 issued patents and more than 45 published applications.
- Bank of America has 12 published applications.
- First Data Resources has 24 issued patents and several pending applications.
- Wells Fargo has 16 issued patents and several pending applications.
- Schwab has at least 23 issued patents.

Why is the financial services sector aggressively seeking patents? The short answer is sound business judgment:

Executives and general counsel believe that their companies need patents to protect their innovations.

The fuller answer is a bit more complex, of course. Part of the increase in business method patent applications by FSCs is attributable to the heightened awareness brought on by *State Street*. As the authors can attest from personal experience, many bank executives simply did not know that their computer-implemented business method innovations could be patented. Traditionally, FSCs have protected their innovations through trade secrets, not the patent law.

As other industries have long known, however, trade secret protection has significant drawbacks. First, the innovation must be kept confidential, which is not feasible for some types of products. If the invention is a back-office process used internally, keeping it confidential is feasible. If the invention is a front-office process used to deliver goods or services to the bank’s customers, confidentiality may be impossible. In that case, there is virtually no protection under the trade secret law for the bank’s innovation once it is taken to market.

Another disadvantage of trade secret protection is that it is subject to permissible reverse engineering. Assume that a bank develops a groundbreaking new technology for contactless credit cards using an innovative wireless infra red technology. Though protected by trade secrets, the design of this new technology can be lifted by a competitor that acquires and reverse engineers the product to determine how it works. The competitor is then free to market copies of the product that the bank-inventor may have spent years developing, evaluating, and taking to market.

Not only is trade secret protection fundamentally ineffective to protect many FSC innovations, but the nature of products and services provided by the financial sector has changed in a manner that makes patents more important. Specifically, the financial services sector is now one of the largest users and developers of software and computer systems. As a result, banks and other FSCs are innovating and creating technology at an unprecedented pace for that industry. In short, FSCs need patents because they are creating more innovation and technology than at any time in history.

The role of IP protection, particularly patents, in the financial services sector is not much different from other industries. FSCs use patents to protect the innovations in their core products from being copied by others. For example, American Express has sought and received patent protection for its popular Blue Card product.¹⁶ FSCs also use patents in deals—whether an M&A to sell an entire company or spin off a single division, or a run-of-the-mill technology licensing deal—to enhance the net value proposition of those deals.

Though a cliché, today's economy is an information-based economy where the most important asset is intellectual capital, ideas. Where intellectual capital is key, the way to attract investment, whether from venture capital firms, angel investors, or from a guardian parent corporation funding a new initiative, is to show that you have IP protection for those ideas. Thus, patents have become critical in spearheading many new financial services sector initiatives.

Using American Express as an example again, it has created an affiliate, American Express Incentive Services L.L.C. (AEIS), which is a joint venture of American Express (Amex) and Maritz, Inc. AEIS sells various types of incentive cards under its DirectSpend program for customizing the receipt of and redemption of points or awards.¹⁷ What is the key asset Amex claims to protect DirectSpend? Two Maritz patents that have been licensed to Amex.¹⁸ Amex has not only used those patents to brand its product and protect it from copyists but also has engaged in a litigation and licensing program through AEIS and Maritz to enforce those patents and extract revenue.¹⁹ For example, these patents were asserted in *Maritz v. Interpublic Group*²⁰ and *Maritz v. C/Base*.²¹

Another example of banks using IP to protect their innovations is the MasterCard PayPass product, a contactless RFID “waive & pay” credit device for which exists several relevant patents.²²

In sum, patents are now playing a role in the financial services sector that is not much different from other industries. Banks and other FSCs are using patents to protect their innovations and the new products that incorporate them.

How to Pursue Business Method Patents in a Post-KSR World

The Supreme Court's expression of concern in *eBay* and *LabCorp* about the overall balance of the patent system and about business method patents was not idle talk. In an opinion issued April 30, 2007, the Supreme Court went on to reverse long-standing Federal Circuit precedent on the law of obviousness.²³

In *KSR v. Teleflex*,²⁴ the Supreme Court addressed perhaps the most fundamental (and at the same time, elusive) inquiry in the patent law: How different does an invention have to be from the prior art in order to meet the nonobviousness requirement²⁵ in order to receive a patent?

The nonobviousness inquiry is particularly challenging when a patent application is faced with a rejection by the PTO based on a combination of prior art references. Many inventions, some would say all inventions, are combinations of prior art elements. More to

the point, a skilled patent examiner can nearly always cobble together a rejection by breaking a claim down into its constituent elements, locating a prior art reference for each element, and then asserting that it would be obvious to combine those references as set forth in the claim.

The Federal Circuit has long guarded against such “hindsight reconstruction” by requiring some “teaching, suggestion, or motivation”²⁶ (the so-called TSM test) for combining prior art references in the manner urged by the examiner in order to support an obviousness rejection.

In *KSR v. Teleflex*, the Supreme Court rejected the Federal Circuit's TSM test for evaluating obviousness as being too rigid and formalistic. In so doing, Supreme Court held that obviousness must be evaluated under the flexible framework of *Graham v. John Deere*,²⁷ which sets forth the basic inquiry as: (1) determining the scope and content of the prior art; (2) identifying the differences between the claims at issue and the prior art; (3) ascertaining the level of ordinary skill in the art; and (4) considering any relevant secondary indicia of nonobviousness.

In directing a return to the *Graham* framework for obviousness, the Court expressed some concern about so-called combination inventions that are combinations of prior art elements. The Court also expressed the view that the patent system should protect “real innovation” as opposed to “ordinary advances.” These concerns may have driven the Court's instruction in *KSR* that the obviousness inquiry should consider the design and problem-solving skills, and the creativity, of the skilled artisan. In fact, the Court indicated that plain “common sense” can often identify an obvious invention. In sum, the TSM requirement has been replaced by a considerably more flexible and subjective inquiry that makes it much easier to find an invention to be obvious.

So how should banks and other FSCs pursue their business method patents in the post-*KSR* landscape? First, they should draft patent applications with claims that include at least some elements that are truly novel in that they are not found in the prior art. Such a “point-of-novelty” element might be set forth as a component in a financial processing system (e.g., a server that performs function A), a step in a financial process (e.g., the step of performing operation A), or a “wherein” clause that qualifies how the system or method operates (e.g., “wherein the processor receives, processes, and executes the equities trade without any human intervention whatsoever”).

Another precaution is to draft both the application and the claims to provide support for arguing that the invention has a synergistic effect or functional shift

that goes beyond the mere combination of prior art elements with a predictable result. Drafting the application in this manner will provide traction for arguing against an obviousness rejection based on some of the *Sakraida*²⁸ “fuctional shift”/synergy dicta on combination inventions in Supreme Court’s *KSR* decision.

Planning for Changes in § 101 That May Affect Business Method Patents

There is a group of three cases that could potentially change the landscape of what is proper patentable subject matter under 35 U.S.C. § 101: *Ex parte Bilski*²⁹ (Federal Circuit), *In re Comiskey*³⁰ (Federal Circuit), and *In re Nuijten*³¹ (Federal Circuit).

In *Ex parte Bilski*, the Federal Circuit is reviewing an informative opinion (non-precedential decision) issued by the Board of Patent Appeals that is notable in departing from the Federal Circuit’s *State Street* decision (the § 101 test is “useful, concrete, and tangible”) and from the PTO’s own post-*Lundgren* Interim Guidelines for assessing business method inventions. In *Bilski*, the Board concluded that a § 101 process must meet a transformation test of transforming or reducing tangible subject matter or intangible subject matter to a different state or thing. *Bilski* seems to relegate the *State Street* useful-concrete-and-tangible standard to a special case only applicable to computer-implemented processes.

*In re Comiskey*³² involves a business method invention that does not require a machine to carry out the invention for mandatory arbitration resolution. The rejection that the applicant appealed was limited to a prior art rejection; there was no statutory subject matter rejection. Yet, after the issue was first raised at oral argument, the Federal Circuit decided *sua sponte* to request supplemental briefs from the Solicitor and the appellant on the § 101 statutory subject matter issue. The Solicitor has argued a restrictive transformation-of-matter requirement for processes similar to that forwarded by the *Bilski* majority. The applicant has asserted that the invention meets the useful-concrete-and-tangible standard, does not run afoul of the abstract-ideas/law-of-nature/natural phenomena exclusions, and thus passes § 101 muster.

The *In re Nuijten* case involves whether signals *per se* are patentable subject matter, as opposed to methods of using signals, a system for processing signals, and so forth. The PTO has followed a textualist approach in arguing that signals themselves do not meet any of the § 101 categories, particularly, they are not compositions of matter or articles of manufacture. However, there are strong arguments that modern science would say that signals *are* composed of matter, thus, falling within the

composition of matter category. Additionally, the articles-of-manufacture category broadly refers to things that are produced or made, and modern electronics provides for signals to be produced consistent with that definition.

How should banks and other FSCs plan for the potential effect of these statutory subject matter cases on their business method patent applications? The best insurance is to draft business method applications to include as much structure and concrete detail as possible. Although not all business method inventions *have* to be implemented using a computer, most business method inventions *can* be implemented using computers. As a precaution, therefore, the specification and at least some of the claims should be drafted to include computer hardware (*e.g.*, “A computer-implemented method for predicting stock prices, comprising,” “calculating a predicted stock price using a processor,” and so forth).

The specification should describe both the operational steps that define the business method (*e.g.*, flow-charts) and the software that might be used to implement those steps. It is also advisable to draft the specification with an eye toward describing how certain data or other material information relevant to the financial services involved is transformed to different data or relevant information. Writing this kind of support into the patent specification can provide the applicant the ability to present amended claims addressing any transformation-of-matter requirement if the § 101 case law moves in that direction.

Planning for Clarifications in the Law on Direct Infringement Under § 271

The winds of change in the patent world these days blow in pretty much one direction, that which places limits on the potency of patents. On issues that are a close call, the patent bar can anticipate that more often than not the Federal Circuit will err on the side of circumscribing, not enhancing, the reach of patents.

Several recent cases on the law of direct and indirect infringement are very relevant to business method patents. Many business method patents involve interactions or communications between central locations (*e.g.*, a Web site, a customer service representative, a call routing location, etc.) and remote locations (*e.g.*, a customer using a PC to access the Web site, a customer using a phone to call the customer service representative, etc.). As a result, sometimes patent claims will be drafted setting forth activities that are performed by different actors in these systems. For example, a claim may recite a customer transmitting data to a server (actor is the customer), the server processing the data to generate a result (actor is the company running the Web site), and so forth.

These claims can be said to have the no-single-infringer defect. They can make direct infringement difficult to prove because there is no single legal actor that is performing all of the claim steps. For example, assume the claim has 5 steps, that party A performs steps 1-4 and that party B performs step 5. If party A and party B are agents of a common principal (e.g., employees of the infringing company), or if party A is causing party B to perform the step pursuant to contract, or if party B is otherwise an agent of party A, then there should be direct infringement under § 271(a) because a single legal entity is responsible for performing all steps.

On the other hand, if the party performing steps 1-4 is the company operating its Web site and the party performing step 5 is a consumer operating on an arms-length basis with the Web site, there is likely no direct infringement. Why? Because there is no single legal entity that is performing all of the steps of the method claim and the consumer cannot be said to be acting as the agent of the company or otherwise under the company's control.

For years, a novel theory known as joint infringement or divided infringement has sometimes been invoked by patent holders as supporting a direct infringement case when different parties perform different steps and when they are not in a principal-agent relationship.

Although it has never issued a holding adopting divided infringement, the Federal Circuit did comment favorably on a jury instruction incorporating the concept in *On Demand Machine v. Ingram*.³³ However, the Federal Circuit has recently decided to address the issue squarely in *BMC v. PaymentTech*,³⁴ which was argued on April 5, 2007.

Because the divided-infringement concept creates uncertainty, undermines the public notice function of the patent document, and expands the reach of the strict liability provision in § 271(a), it is extremely likely that the Federal Circuit will restrict or reject the divided-infringement theory outright.

Banks and other FSCs can avoid the no-single-infringer problem (and having to resort to divided infringement theories) by ensuring that their method claims are written to embrace a single actor for each claim. For example, there should be claims directed solely to actions performed by the server (actor is the company running the server). There can be different claims directed solely to actions performed by a consumer accessing the server (actor is the consumer).

Besides method claims, the patent application should present good system claims because they are not as susceptible to the no-single-infringer problem.

Business Method Patents Are Still Second Class Citizens Based On Their Allowance Rates

Even if new decisions from the Supreme Court and Federal Circuit do not markedly affect business method patents, remember, they are already second-class citizens in the eyes of the PTO.

Business method patents are notoriously difficult to get allowed in the PTO, which has set up a special group, Class 705, to deal with these types of applications. The allowance rates for Class 705 the last three years were 11 percent (2004), 19 percent (2005), and 19 percent (mid-2006).³⁵ Compare those low rates to the PTO's overall allowance rates of 63 percent (2004), 59 percent (2005), and 54 percent (2006).³⁶

Although the legal standard (useful, novel, and non-obvious) for business method patents is no different from other patents, the prosecution reality is that the PTO's examiners give business method applications considerably more scrutiny than other types of applications. Banks and other FSCs can plan for this by (1) making sure that the patent applications are detailed, thorough, and clear; (2) initially presenting focused, detailed claims instead of broad "opening gambit" claims; and (3) advancing prosecution by conducting personal interviews with examiners.

Closing Thoughts

Business method patents have become an important component of financial institution strategies for protecting innovation. Although emerging case law may place additional restrictions or hurdles for getting business method patents, financial institutions can plan ahead to ensure their business method applications provide fruitful protection even in a new regime.

Notes

1. *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368 (Fed. Cir. 1998).
2. See, e.g., Mark A. Lemley and Kimberly A. Moore, "Ending Abuse of Patent Continuations," 84 *B.U. L. Rev.* 63, 65 (2004) (applying the undefined label "bad patents" in the context of continuation patents).
3. This article does not attempt to define "business method." That is simply one more reason why the idea of excluding business methods from the scope of patentable subject matter is a bad idea; it is near impossible to come up with a definition that could be applied in any consistent, logical, and fair way. Nearly all computer-implemented inventions are a business method in one way or another.
4. US Pat. No. 5,910,988, entitled "Remote Image Capture with Centralized Processing and Storage," was filed in 1997 and issued in 1999; and US Pat. No. 6,032,137 (same name), which was filed in 1998 and issued in 2000.

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5. eBay, Inc. v. MercExchange, L.L.C., 547 U.S., 126 S. Ct. 1837 (2006).
 6. Full disclosure: Our prior firm, Hunton & Williams, represented MercExchange in the dispute with eBay.
 7. eBay Inc., 126 S. Ct. at 1842 [cites omitted, emphasis added].
 8. Laboratory Corp. of American Holdings v. Metabolite Labs., Inc., 548 U.S., 126 S. Ct. 2921 (2006).
 9. LabCorp, 126 S. Ct. at 2922.
 10. *Id.*
 11. *Id.* at 2923.
 12. *Id.* at 2926.
 13. *Id.* at 2929.
 14. *Id.* at 2927-2928.
 15. The numbers are from a search of the PTO databases in July 2006.
 16. See http://home3.americanexpress.com/corp/pc/2003/clear_card.asp (Nov. 5, 2003, Press Release) [retrieved Apr. 5, 2007].
 17. See <http://www.aeis.com/home/Products/ProductPreferenceCard/index.htm> [retrieved Apr. 5, 2007].
 18. See *id.*; US Patent Numbers 5,689,100 and 5,956,695.
 19. See <http://www.bizjournals.com/stlouis/stories/2005/11/21/daily26.html> (Nov. 22, 2005, article by *St. Louis Business Journal*) (accessed on Apr. 5, 2007): "The Fenton, Mo.-based company, a joint venture between American Express and Maritz, Inc., said Maritz extended the rights to the patent to American Express Incentive Services (AEIS) to use exclusively. AEIS can also license the patent to other people in the industry, said Sheree Herr, vice president of employee development, human resources and legal management."
 20. Maritz, Inc. v. Carlson Cos., No. 4:02-CV-161 (E.D. Mo.) (filed in 2002).
 21. Maritz, Inc. v. C/Base, Inc., No. 406-CV-761 CAS (E.D. Mo.) (filed in 2006).
 22. US Pat. No. 6,857,566; US Pub. No. 2007/0012763.
 23. KSR Int'l Co. v. Teleflex Inc., XX U.S. at _____ (No. 04-1350) (U.S. April 30, 2007).
 24. *Id.*
 25. 35 U.S.C. § 103.
 26. See, e.g., *In re Dembiczak*, 175 F.3d 994, 998 (Fed. Cir. 1999).
 27. *Graham v. John Deere Co.*, 383 U.S. 1, 13-18 (1966).
 28. *Sakraida v. AG Pro, Inc.* 425 U.S. 273 (1976) (combination inventions require some functional shift or synergistic result).
 29. *Ex parte Bilski* (BPAI 2006).
 30. *In re Comiskey*, No. 2006-1286 (Fed. Cir.) (2006).
 31. *In re Nuijten*, No. 2006-1301 (Fed. Cir.) (2006).
 32. Full disclosure: Our prior firm, Hunton & Williams, represented Comiskey in this appeal.
 33. *On Demand Machine Corp. v. Ingram Indust., Inc.*, 442 F.3d 1331, 1344-1345 (Fed. Cir. 2006).
 34. *BMC Resources, Inc. v. PaymentTech, L.P.*, No. 2006-1503 (Fed. Cir.) (2006).
 35. Spring 2006 Business Methods Partnership Meeting; May 3, 2006; Alexandria, VA (PTO).
 36. "United Patent & Trademark Office Patent Public Advisory Committee Annual Report," Nov. 30, 2006; at 5 n. 11 (see www.uspto.gov/web/offices/com/advisory/reports/ppac_2006annualrpt.pdf).