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## Business Methods and Software Remain Patentable: Supreme Court Rejects Rigid Eligibility Test

Today, in *Bilski v. Kappos*, the Court declined to find that business methods are, per se, unpatentable. In rejecting Bilski's patent claims, the Supreme Court re-affirmed the long standing exclusion against patenting "abstract ideas." The Court explicitly noted that the patent act allows for the patenting of methods of doing business.

The Court is unaware of any argument that the ordinary, contemporary, common meaning, of "method" excludes business methods. ...

The term "method," which is within § 100(b)'s definition of "process," may include at least some methods of doing business.

The Supreme Court rejected the lower court's rigid "machine-or-transformation" test as the only test for patentability, and concluded that a broader array of standards should be used in judging if an invention is patentable.

The machine-or-transformation test is not the sole test for patent eligibility under § 101. In holding to the contrary, the Federal Circuit violated ... principles of statutory interpretation: Courts "should not read into the patent laws limitations and conditions which the legislature has not expressed."

The Court declined to create new impediments to patentability.

Chadbourne's friend-of-the-court brief filed on behalf of the Regulatory Datacorp, Inc. et al. ("RDC") anticipated that Congress's definition of "process" under 35 USC § 100(b) could be determinative of the outcome of the decision, allowing patentability of business methods and software inventions, but not of abstract ideas.

Our brief argued, persuasively as it turns out, that "[t]he express inclusion of 'new uses' within the definition of patentable subject matter is important because it provides a clear textual basis for an important class of modern inventions." As a result, according to our brief and as the Court concluded, the broad contention that the term 'process' categorically excludes business methods was "precluded".

The Supreme Court brief was prepared by a team from Chadbourne & Parke LLC including John A. Squires, Walter G. Hanchuk, Charles M. Fish, John Kheit and Professor John F. Duffy of George Washington University School of Law. And in a rare procedure at the appellate court

leading up to the Supreme Court's review, RDC's brief below was invited to oral argument with the parties to the en banc Federal Circuit.

Going forward, the Supreme Court's analysis in this case, including the application of the "abstract idea" exclusion to the Bilski claims, should prove helpful to clients and practitioners in evaluating the patentability of business method inventions.

Read a copy of the *Bilski v. Kappos* [brief](#) and [opinion](#).

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