CLS Bank v. Alice Decision Addresses Key Patent Eligibility Questions for Computer-Implemented Business and Financial Methods Post-*Bilski*

On March 9, 2011, the U.S. District Court for the District of Columbia dismissed all claims of patent infringement brought under four patents directed to computer-implemented methods, systems, and products for exchanging a financial obligation, because each of the patent claims was directed to an "abstract idea" and was invalid because it was directed to non-patentable subject matter. The decision is significant because, among other things, it addressed numerous questions left unanswered by the U.S. Supreme Court's decision last year in *Bilski v. Kappos*, 130 S. Ct. 3218 (2010), including the scope of unpatentable abstract ideas involving business and financial concepts, the effect of implementing business methods on a general purpose computer, and the patentability of computer-readable storage media with computer-readable program code for implementing such business methods.

CLS Bank had initiated the suit as a declaratory judgment plaintiff seeking a declaration that the patents were invalid and not infringed. Alice Corp. counterclaimed and asserted that the patents were valid and infringed. CLS successfully moved to have the claims of patent infringement dismissed on summary judgment. CLS Bank was represented by Kaye Scholer.

The patent claims asserted in the case involved methods of exchanging obligations between parties if there is adequate value in accounts maintained by an independent institution, computerized systems that implement the methods, and computer products employing software to carry out the methods. The methods and systems used by CLS and subject to the claims of patent infringement are used to settle most of the world's foreign exchange transactions, with an average daily value of about $4 trillion.

The District Court held that a method of doing business "directed to an abstract idea of employing an intermediary to facilitate simultaneous exchange of obligations in order to minimize risk" is a "basic business or financial concept" similar to the hedging method invalidated by the Supreme Court in *Bilski*. Importantly, the District Court held that such a method was not rendered patentable when the method was implemented electronically on a general purpose computer, and further, that "a computer system merely 'configured' to implement an abstract method is no more patentable than an abstract method that is simply 'electronically' implemented." The Court's decision, in *CLS Bank v. Alice Corp.*, 2011 WL 802079 (D.D.C. March 9, 2011), while subject to appeal to the Federal Circuit, is likely to have broad significance, especially in areas such as financial services, data processing, and the pharmaceutical industry where methods of doing business, including those using computers and implemented by software, are prominent.

In dismissing all of the patent claims — including not only the method claims, but the system claims and product claims as well — under the abstract idea exception to patentability, the Court addressed questions as to the scope of the abstract idea exception that had not been addressed either by the Federal Circuit or by the Supreme Court in their respective *Bilski* decisions. If the *CLS Bank v. Alice* decision is affirmed by the Federal Circuit, it will discourage practitioners from attempting to recast business methods in other

forms, will make it more difficult for business and financial method and system claims to pass muster, and will provide much-needed guidance in this important field.

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