

One Minute Memo[®]



Supreme Court Declines to Issue Bright Line Test for Software Patents

By *Ilan Barzilay* and *Patrick T. Muffo*

On June 19, the Supreme Court returned its decision in *Alice Corp. v. CLS Bank*, declining to adopt any bright line test to determine what kind of software inventions are patent-eligible.

In the decision, the Supreme Court applied the long-standing, but still murky, rule preventing patenting of “abstract ideas” to strike down the patent claims at issue. While the Court held that implementing an abstract idea on a general purpose computer does not render the invention patent-eligible, the Court passed on fleshing out what constitutes an abstract idea, stating “we need not labor to delimit the precise contours of the ‘abstract ideas’ categories in this case.”

Instead, the fact-heavy opinion includes a detailed analysis of Alice’s patents, which were directed to a computer-implemented method for mitigating “settlement risk” in a financial transaction. Specifically, the Court noted that the patent did not include any “additional features” evidencing an “inventive concept” that would transform the abstract idea of intermediated settlement into a patent-eligible invention.

This follows a deeply fractured Federal Circuit *Alice* opinion, where the ten-member *en banc* panel released seven different opinions. None of the seven opinions had majority support, and the law of patent-eligibility of software patents has remained unsettled since the Federal Circuit’s opinion. While many were hoping the Supreme Court would set forth a more clear test, the Court instead issued a fact-specific opinion that failed to address how future software patent claims would be judged for patent-eligibility. A concurrence from Justice Sotomayor suggested that business-method patents could eventually be in danger, but that concurrence failed to gather majority support.

As a result, no clarity was gained as to what constitutes patent-eligible subject matter for software patents. The Court did not categorically exclude software patents, but the exact delineation of patent eligibility remains an open question.

Ilan Barzilay is a partner in Seyfarth’s Boston office and *Patrick T. Muffo* is an associate in the firm’s Chicago office. If you would like further information, please contact your Seyfarth attorney with whom you work, or Ilan Barzilay at ibarzilay@seyfarth.com or Patrick T. Muffo at pmuffo@seyfarth.com.
www.seyfarth.com

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