



In The Press: Federal Circuit seeks new patentability test in Bilski

- *Managing Intellectual Property*, 12 May 2008, Eileen McDermott, Washington D.C.

Twelve Federal Circuit judges last week questioned lawyers about the definition of terms such as “tangible”, “abstract”, “concrete” and “transformative”, in the closely watched hearing in *In re Bilski*, which could redefine what is patentable subject matter in the US.

During Thursday's rare *en banc* hearing, the judges focused on what the proper test should be for patentable subject matter under section 101 of the patent law, and also considered recent case law on business method patents.

The [US Court of Appeals for the Federal Circuit](#) judges heard arguments from the USPTO and the appellee as well as two *amici*.

The Court will consider five questions in its *en banc* rehearing, most of which relate to Section 101 of the US patent code. It will also ask whether it is appropriate to reconsider *State Street Bank & Trust Co v Signature Financial Group Inc* (which opened the door to business method patents in the US) and *AT&T Corp v Excel Communications, Inc* (which eliminated the requirement of physical elements or limitations for process claims) in this case and, if so, whether those cases should be overruled in any respect....

Federal Circuit seeks new patentability test in Bilski, 17 May 2008, Eileen McDermott, Washington, D.C.

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