



ARE Patent Law Alert: U.S. Supreme Court Affirms Bilski, But Sets The Course Clear For Business Methods Patents

June 28, 2010

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(June 28, 2010). Today, the U.S. Supreme Court decided *Bilski v. Kappos*, No. 08-964, 561 U.S. ____ Slip Opinion (2010) (“*Bilski III*”) substantially confirming the position urged in the [Amicus Curiae Briefs to the U.S. Supreme Court submitted by our firm on behalf of Double Rock Corporation, Island Intellectual Property LLC, Lids Capital LLC, Intrasweep LLC, Access Control Advantage, Inc., Ecomp Consultants, Pipeline Trading Systems LLC, Rearden Capital Corporation, Craig Mowry, and PCT Capital LLC](#). [Charles R. Macedo](#), Partner; [Anthony F. Lo Cicero](#), Partner; and [Norajean McCaffrey](#), Associate of Amster Rothstein & Ebenstein LLP are counsel of record on that submission. Our firm advocated a similar position to the U.S. Court of Appeals to the Federal Court in our [Amicus Curiae Brief submitted on behalf of Reserve Management Corporation, PCT Capital LLC, Rearden Capital Corporation, and Sales Optimization Group](#). [Charles R. Macedo](#), Partner; [Anthony F. Lo Cicero](#), Partner; and [Jung S. Hahm](#), Associate of Amster Rothstein & Ebenstein LLP are counsel of record on that submission.

In today’s decision, the Supreme Court in the majority opinion authored by Justice Kennedy held:

- i. The “Machine-or-Transformation” test is not the sole test for determining patentable subject matter as found by the Federal Court;
- ii. Business methods are not per se unpatentable subject matter, conversely, as we advocated, the majority recited that the statutes explicitly recognize at least in some instances business methods;
- iii. The *Bilski* claims themselves were not patent-eligible subject matter because they merely sought to patent an abstract idea; and
- iv. The Federal Court’s rights to further develop other limiting criteria is not precluded by this judgment.

Notably, no dissenting opinion was filed in today decision, however, Justice Stevens provides a lengthy concurring opinion expressing his views that Business Methods should be unpatentable per se.



We view the Supreme Court's decision as vindication of the positions we took in our Amicus Curiae Briefs and are pleased with the results. See IPLaw 360, July 2009, "How The Supreme Court Should Resolve Bilski"

For more information on the Bilski decision or on patent-eligible subject matter, please feel free to contact us.

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