

## Enfish & TLI: The CAFC in Line with the Supreme Court's MBA Framework

Sigram Schindler,  
TU Berlin & TELES Patent Rights International GmbH

### I. Overview about this *Enfish&TLI* Comment

By its decisions in *Enfish v. Microsoft* of 12.05.2016 and in *TLI v. ...* of 17.05.2016 the CAFC clarifies the benchmark for a legal dispute about an alleged invention's patent-eligibility.<sup>[290]</sup> They therewith get the CAFC in line with the Supreme Court's *MBA* framework,<sup>1.a)</sup> made-up from its unanimous *KSR/Bilski/ Mayo/Myriad/Biosig/Alice* decisions, introducing many uncertainties into the patent community.<sup>1.b)</sup>

This '*Enfish&TLI* comment' will briefly<sup>1.f)</sup> show that now the CAFC by them removes some of these notional<sup>1.c)</sup> uncertainties.<sup>1.b)</sup> The CAFC's *Enfish* opinion namely stops the misbelief in the legality of an ETCI's •claim interpretation à la BRIPT<sup>0</sup> and •claim construction in "free-style" – while its *TLI* opinion indeed sharpens and confirms *Enfish* (though the former is not noticed by the CAFC, see Section II.3).

To this end, Section II shows: both the CAFC's opinions explicitly – or only implicitly – state the necessity of first determining an ETCI's •1"inventive concept(s), inC(s)" (for enabling ETCI's correct and complete description, thus therein (not thereof<sup>1.g)</sup>) enforcing •2"levels of abstraction", by its so determined inC(s) its •3"claim interpretation", finally by its so determined claim interpretation its •4"claim construction".<sup>1.h)</sup>

Section III finally suggests how to transfer this advanced patent knowhow<sup>[292]</sup> into broad practical use, in and via the USPTO.<sup>1.i)</sup> Namely, by automatically guiding its future users: From their today's classical patent knowhow to this *MBA* framework based advanced patent knowhow – by practically applying all the latter's refinements by a series of tests (e.g. of the "FSTP-Test"<sup>1.a)</sup> in MRF<sup>[281]</sup> version), thus showing them the persuasive convenience/quality/efficiency/safety of testing ETCIs under the *MBA* framework.

<sup>1</sup> .a *Mayo* [here: *Mayo/Biosig/Alice, MBA*] framework is a notion introduced by the Supreme Court, meaning SPL's 'post-*MBA* pragmatics'.<sup>1.b)</sup> SPL stands for 'Substantive Patent Law' (interpreted by the *MBA* framework), e.g. 35 USC §§ 101/102/103/112, or EPA §§ 52-57/83/84.

ET/CT abbreviates 'emerging/classical technology', ETCI/CTCI 'ET/CT based claimed invention', FSTP 'Facts Screening/Transforming/Presenting'.

.b All 6 decisions are triggered by problems introduced by ETCIs into SPL precedents about them – ETCIs' properties are namely game changers, as being model based and hence potentially highly preemptive<sup>[260]</sup> – and provide the Supreme Court's trail blazing solutions to these problems.

But hitherto, the CAFC's interpretation of this *MBA* framework did not resolve uncertainties in the US patent community<sup>[271]</sup> about notions<sup>1.c)</sup> that the Supreme Court introduced by this *MBA* framework into SPL precedents about ETCIs or it thus put anew into question (as evidently being dubious) – especially as to determining, for an ETCI, its "inventive concept(s)",<sup>[271]</sup> "claim interpretation",<sup>[279]</sup> "definiteness",<sup>1.d)</sup> and "patent-eligibility".<sup>1.e)</sup>

.c A 'term' is an arbitrary 'identifier' alias 'name' alias 'acronym'. A pair <'term', its 'meaning'> is called 'notion', denoted by its term/name. A term/name may be unspecific or a structured string, such as a sentence, e.g. a claim' wording. A notion's meaning, assigned to its term/name, is called its 'semantics', if refined for an application's need, its 'pragmatics'. Making/Creating new meanings/semantics/pragmatics is called 'semiotics'. Thus, the *MBA* framework performs 'SPL semiotics' by refining the classical SPL notions/pragmatics, as SPL needs for protecting ETCIs.<sup>1.b)</sup>

Interpreting a term stands for determining the term's meaning by deriving it from its "semantics base" alias "interpretation base", i.e. for assigning to it semantics/pragmatics. If this term is an ETCI's claim wording, this basis is ETCI's inventor within the framework disclosed by ETCI's specification, as it is understood by the 'person of pertinent ordinary skill and creativity, pposc' – as required by the Supreme Court's *KSR* and *Biosig* decisions. .

.d by CAFC's ignoring the Supreme Court's *Biosig* decision (explicitly clarifying both notions), just as its *Mayo/Alice* decisions (implicitly clarifying them). The CAFC in some of its decisions even managed to explicitly refer to the Supreme Court's *Mayo/Alice* decisions but nevertheless to totally "abstract from them" – though, in a fashion now by *Enfish* explicitly qualified as legal error as contradicting the *MBA* framework.

These legal errors as such were already identified by the author, e.g. in the CAFC's last *Myriad* and other by the author criticized decisions<sup>[160]</sup>. Though, he thereby used a slightly different rationale – by assuming that legal reasoning as to testing ETCIs under SPL would not be "poisoned" by therein taking into account also the necessary Rationality of such testing,<sup>2.a)</sup> i.e. without thereby deviating a single millimeter from what the Supreme Court's SPL interpretation<sup>1.c)</sup> by mathematical AI based Rationality necessarily<sup>2.a)</sup> implies anyway.

.e Except the CAFC's *DDR* decision – the CAFC's *Enfish* opinion now being a clear confirmation of its *DDR* decision.

*Enfish* even uses significantly more of the *MBA* framework than *DDR*, due to the additional issues raised by *Enfish's* ETCI before the District Court.

.f Due to the careful reasoning in both opinions (yet see Section II.3) – and the assumption that the reader is familiar with them, just as with relevant FSTP-papers – it will suffice just to refer to the paragraphs in these opinions for providing by Section II the respective evidences.

.g Recognized<sup>[271]</sup> as a stumbling block for understanding the *MBA* framework as to § 112(6/f) in "software ETCIs", now clarified by the *Enfish* opinion.

.h That these 3 steps comprise the '2-step-algorithm' outlined by the *MBA* framework and repeated by both these CAFC decisions and the USPTO's resp. guidelines<sup>[235]</sup> is outlined in Section II.2

Here it suffices to note that all these SPL notions are insolubly intermeshed with each other, i.e. none of them is for an ETCI rationalizable<sup>2.a)</sup> without all its other ones. In particular: It is wishful thinking (i.e. of highly speculative Metaphysics<sup>2.a)</sup>) to believe, an ETCI's whatsoever property were rationally<sup>2.a)</sup> decidable, without rationally<sup>2.a)</sup> knowing all its other "*MBA* framework" properties.

i. as outlined in<sup>[271Sec.II.3]</sup> and earlier in<sup>[9.b]</sup>, here by Section III further clarifying these outlines.

## II. Both CAFC Decisions Acknowledge the Necessity of SPL Testing an ETCl by its "inCs"

The last but one paragraph in Section I explained what Section II shall show, only: That the CAFC's opinion in *Enfish* (just as in *TLI*) no longer bases its whole SPL test of an ETCl solely on the ETCl's limitations – but instead on the ETCl's "inventive concept(s), inC(s)".

Thus, an ETCl's "inventive concept(s), inC(s)" as such is(are) not discussed here (as done already e.g. in<sup>[271]</sup>), nor why the *MBA* framework requires an ETCl's claim interpretation to be founded on the ETCl's inCs, nor why these inCs enforce "levels of abstraction"<sup>[271]</sup> in it, ... – namely, for enabling rationalizing an ETCl<sup>2.a)</sup> and its FSTP-Test<sup>3.e)</sup> and thus vastly or even fully automatizing it (see Section III).

Elaborating on this explanation<sup>2.b)</sup>, Section II.1 briefly indicates for *Enfish*'s opinion – but holding also for any opinion about any ETCl – that if therein the above 4 •<sup>i</sup>-requirement-statements are met by the ETCl at issue, then the decision based on this opinion has a good chance to be in line with the *MBA* framework.<sup>2.c)</sup> All today's decisions consider this "good chance" to be an assessment that this is so.<sup>2.d)</sup>

Section II.2 for convenience repeats the FSTP-Test from<sup>[271]</sup>, and also explains what the fundamental distinction is between deriving an SPL decision about an ETCl the today usual way only, i.e. as the CAFC in *Enfish* exemplarily showed, and alternatively<sup>2.c)</sup> by additionally applying the FSTP-Test to the so far not yet rationalized opinion about this ETCl for rationalizing this opinion and hence this ETCl.

Section II.3 then shows by the *TLI* opinion what dramatic simplification is achievable for it by supporting the initial and indispensable facts finding about an ETCl (here the *TLI*-ETCl) – as described by the •<sup>1</sup>-/<sup>•2</sup>-/<sup>•3</sup>-statements of speculative Metaphysics<sup>2.a)</sup> – right from its beginning by the FSTP-test<sup>1</sup>.

<sup>2</sup> .a For clearly understanding – not just vaguely – what exactly is done by our brain in testing an ETCl for its satisfying SPL, requires clarifying the 4 notions<sup>1.a)</sup> "transcendental"/"metaphysical"/"rational"/"reasonable", i.e. Kant's approach to thinking<sup>[203,230,282]</sup> based on these 4 qualities, in turn being based on the notions "necessity" and "sufficiency". Thereby here thinking is reduced to thinking only about "testing an ETCl for its SPL satisfaction".<sup>[237]</sup>

These 4 terms indicate that the so identified 4 notions<sup>1.a)</sup> are intended for this underlined use only – just as the below recursive definitions by axioms of the meanings assigned to these 4 terms.

Up-front is noticed that these definitions enable "rationalizing items' knowledge representations" by their knowledge representations' transformations from "their originally speculative metaphysical knowledge representations", in particular and abbreviated rationalizing the notion "directed to".<sup>[142]</sup>

A "transcendental"/"metaphysical"/"rational" item (e.g. notion, property, ) of an ETCl is not/partially/fully correctly&completely pposc intelligible. Any fully mathematically described – for short: mathematical – item is assumed to be intelligible; yet nothing mathematical of it (though necessary) needs to be seen for its intelligibility.<sup>[273]</sup> Its stages of intelligibility suppose some decomposability of no/some/any part of it into an equivalent conjunction of its properties axiomatically defined by MII definable models<sup>[273]</sup> – subject to certain mathematical limitations imposed on MII models.<sup>[142]</sup>

An ETCl's "Rationality" comprises any of its such items with notional properties necessary and sufficient for identifying it completely, "Metaphysics" any item with at least 1 only necessary notional property (i.e. not rationally identifying it), "Reason" alias "Reasonality" any item of Rationality or scientific Metaphysics (i.e. of non-speculative = "alternativeless" Metaphysics). An item without a necessary property is of "Transcendency". "Rationality"/"Metaphysics"/"Reason"(= "Reasonality") is the set of all rational/metaphysical/reasonal notions, called rational/metaphysical/reasonal "Knowledge" about this ETCl. While Reasonality and Rationality mathematically have evidently different meanings, in this context they are seen as being the same, i.e. as synonyms. Thus – as with Kant – only one term is used, here: Rationality (while he needed for his generality the broader notion Reason).

A "rationalized item" is a set of items wholly encapsulated within a set of rational notions, each defined by an axiom, rendering this item's conjunctive notion ∈ Rationality potentially non-decomposable and totally hiding any transcendent or speculative item(s) it shields – if any comprised.

Any ∈ Rationality (by Kant: ∈ Reasonality/Rationality) comprises, additional to its cognitive meaning, also ethical meaning here irrelevant.<sup>[237]</sup>

This rationalization of an item is achieved by a set of models metaphysically assumed to be capable of realizing the set of items to be "rationalized". Any rational item – allegedly correctly&completely intelligible by a human being, such as the fictive pposc<sup>1.c)</sup> – results from his/her brain having internalized that this model "trivially" has this highly speculative metaphysical capability to realize it. But that is how rationality works, understood only since the 19<sup>th</sup>/20<sup>th</sup> century and its recognizing the capabilities of axiomatization of notions. Nevertheless, this rationalization of ETCl's enables consistency in SPL precedents about them. How to represent model-independent "absolute rationality" hasn't been recognized yet – if it should exist.

Introducing these qualities of thinking/rationales, here, is not caused by the author's philosophical ambitions. But: As we all know, self-reflectorily permanently remaining aware of them in our thinking about an issue substantially supports our brain in properly coordinating this thinking, often enabling it to prevent us from being confused in this thinking – as it otherwise were likely to happen, as we then potentially were unaware of the difference between allegedly synonymous statements.

This applies in particular to the necessarily precise and deterministic thinking about testing an ETCl for its satisfying SPL. The current/classical patent knowhow is not aware that some of its usual rationales concerning an ETCl – e.g. its claim interpretation, its claim construction, and even both mixing it up – is, as any ETCl is model based, of speculative metaphysical quality only. This disables, by the above definition of Rationality, any Rational discussion in particular about any SPL interpretation for adjust SPL precedents to the needs of ETCl (hitherto totally ignored), implying the Supreme Court's *MBA* framework, determined by it to this end. The cacophonous discussion about it is the result. Thus, here assessing that such SPL rationales are of Rational quality only is indispensable for achieving consistent and predictable SPL precedents about ETCl's – what the FSTP-Project is striving for.

.b All that Section II shall show for the CAFC's *Enfish* opinion is that all "•<sup>i</sup>-statements" are true, 1 ≤ i ≤ 4. To this end it only must show that for any •<sup>i</sup>-statement, this opinion must comprise at least 1 paragraph proving its truth. Then this opinion's so outlined ETCl has a good chance to pass the FSTP-Test, and thereafter were proven to be in line with the *MBA* framework's requirements – which is known to hold iff it does passes the FSTP-Test.<sup>[271]</sup>

.c In Section II.1 these 4 more detailed requirements are represented as 4 questions, to be answered by 'yes' iff the so represented requirement is met.

.d – erroneously assuming that SPL were, just as allegedly any other law, no exact science, an assumption falsified by the FSTP-Project evidently–

## II.1 The CAFC's *Enfish* Decision is in Line with the *MBA* Framework<sup>2,b)</sup>

Any below ●<sup>1</sup> - ●<sup>4</sup> line identifies by a pair (page#, ...) right of its ":" at least 1 of those sections<sup>3,a)</sup> of the CAFC's *Enfish* opinion that comprises a CAFC rationale that shows that it restates the requirement (identified by a resp. term<sup>1,c)</sup> left of its ":") that the *MBA* framework requires to be restated in an ETCI's test for SPL satisfaction – as this test's meeting this requirement is necessary for enabling this test to contribute to the determination whether this ETCI satisfies SPL (in the Supreme Court's *MBA* framework interpretation).

That these 4 *MBA* framework requirements now are stated also by the CAFC's *Enfish* opinion<sup>3,b)</sup> and indeed correctly applied therein<sup>3,c)</sup> – which is new<sup>1,e)</sup> – which is a necessary condition for the CAFC's finding that the *Enfish*-ETCI is patentable and patent-eligible. But caution is in place: Firstly, these are no sufficient such conditions,<sup>1,b)</sup> and secondly they evidently are qualitatively of speculative Metaphysics<sup>2,a)</sup>, i.e. do not enable rational decisions about the ETCI at issue (even if shown to be sufficient for it, too).

- <sup>1</sup> Is the ETCI correctly&completely describable by "inC(s)"? : **yes**, page 12, line 1<sup>3,a)</sup>
- <sup>2</sup> Are "levels of abstraction" determinable by these ●<sup>1</sup>-inC(s)? : **yes**, page 14, middle of middle paragraph<sup>3,a)</sup>
- <sup>3</sup> Is its "claim interpretation" depending on these ●<sup>1</sup>-inC(s)? : **yes**, page 14, last para. - page 15, 2. para. <sup>3,a)</sup>
- <sup>4</sup> Is its "claim construction depending on these ●<sup>1</sup>-inC(s) : **yes**, page 14, last para. - page 15, 2. para. <sup>3,a)</sup>

Painting a summary with a broad brush: The CAFC bases its *Enfish* decision on these 4 yes answers<sup>1,d)</sup> – representing its *Enfish* opinion in a condensed form – and abstains from rationalizing<sup>2,a)</sup> it by not applying the FSTP-Test to the *Enfish*-ETCI for rationalizing it, and hence also rationalizing its decision. I.e.: It leaves this decision in the speculative Metaphysics<sup>2,a)</sup> in which the *Enfish*-ETCI is specified in its patent – and in which today rest all ETCI specifications and all SPL precedents about them.

## II.2 The Significance of the FSTP-Test<sup>[271]</sup> for any ETCI, e.g. the CAFC's *Enfish*&*TLI* decisions

This section keeps painting with a broad brush for facilitating grasping, what FSTP/Patent/Innovation-Technology is going for, at all. Thereby 3 statements of increasing power may be helpful:

- I) **The FSTP test is a rational refinement of the "TS test"**.<sup>3,d)</sup>
- II) **The FSTP test is a rational exhaustive refinement of the TS test.**
- III) **The FSTP test is the only rational exhaustive refinement of the TS test.**<sup>3,e)</sup>

Mathematically, I)-III) will be proven in<sup>[142]</sup>. Intuitively, an idea about them is gained when envisioning that the TS test<sup>3,d)</sup> is (almost completely) located on its O-level of human notional resolution, and comprises all ETCI's O-level descriptions, i.e. all ETCI's O-KRs (= all ETCI's O-level knowledge representation). By contrast, the FSTP<sup>3,d)</sup> is (almost completely) located on the A-/E-levels of notional resolution, both by de-

<sup>3</sup> .a an exhaustion of this CAFC opinion need to be performed for finding all such CAFC references – a single one suffices for indicating the crucial fact.  
 .b – which is nothing new, as virtually all patent-eligibility court decisions, not only those by the CAFC, pretended for some time already that they were obeying the *MBA* framework and then proceeded as the CAFC<sup>1,d)</sup> –  
 .c i.e., their meanings are determined as indicated by the Supreme Court, which is disclosed by the CAFC's applying them in analyzing an ETCI allegedly as required by the *MBA* framework.

This Supreme Court indication as to its *MBA* framework is only of principal nature, expecting the *MBA* framework based patent knowhow development by the courts and the patent community would elaborate on this indication as necessary<sup>2,a)</sup> for rationalizing it – as the following metaphor confirms.

JUSTICE BREYER [69]: "*Different judges can have different interpretations. All you're getting is mine, okay?*"

*I think it's pretty easy to say that Archimedes can't just go to a boat builder and say, apply my idea. All right. Everybody agrees with that. But now we try to take that word "apply" and give content to it. And what I suspect, in my opinion, Mayo did and Bilski and the other cases is sketch an outer shell of the content, hoping that the experts, you and the other lawyers and the – the circuit court, could fill in a little better than we had done the content of that shell. So, so far you're saying, well, this is close enough to Archimedes saying "apply it" that we needn't go further.*" <sup>3,a)</sup>

.d "TS test" stands for the *MBA*-framework's/CAFC's/USPTO's famous "Two Step" test. The TS test just as the FSTP test is, for all ETCIs, a test scheme<sup>[271,tm4)]</sup> (defined to be, for any ETCI, the set of all TS tests resp. FSTP tests), TS tests only on the O-level, FSTP tests only on the A-/E-levels.

e. If the Supreme Court's TS test (evidently on an ETCI's O-level) is taken as representing the "outer shell"<sup>3,c)</sup> of its *MBA* framework, then the FSTP test (evidently on its A-/E-levels) is representing "the content" being FSTP technology – induced by Archimedes' idea and his "apply it", which definitively worked beautifully. I.e.: I)-III) is an incarnation of the Supreme Court's expectations as presented by the metaphor<sup>3,c)</sup>, modulo isomorphisms the only one.

definition of refinement<sup>3.d)</sup> stepwise increasingly refining all ETCI's O-KRs (determined by the TS test) into the resp. ETCI's A-KRs/E-KRs (determined by the FSTP test). Thus, the intuitive total picture is: Any ETCI has a so defined O-KR, A-KR, and E-KR (and this picture is also mathematically correct<sup>142)</sup>).

Finally note: While the TS test (and the whole MBA framework) is declarative alias non-procedural and of speculative Metaphysics, the FSTP test is procedural<sup>4.a)</sup> and of Rationality. Consequently, applying the TS test to an ETCI also is non-procedural and of speculative Metaphysics, which by definition of Rationality excludes rationally arguing about the TS test or its application to an ETCI. I.e., the past controversies about the TS test had to arise, by Rationality<sup>2.a)</sup>, and are definitively excluded<sup>3.e)</sup> for the FSTP test.

In determining the *Enfish*-ETCI's patent-eligibility, the CAFC opinion still had to stay in speculative Metaphysics and hence to take the latter's high risks, which yet may be completely excluded by proving by the FSTP test ( $\equiv$  rationalized TS test) this ETCI's indeed patent-eligibility – as FSTP-test6 would detect.<sup>4.a)</sup>

This stereotype in user controlled automatic testing ETCIs under SPL might be the only way of successfully managing the fast dissemination of advanced patent knowhow to a large crowd (see Section III).

1) (a) input:	COM(ETCI#)	::=	values of $I, N, K^1, \dots, K^N$ , and user-names for the ETCI and (optional) for $\forall \epsilon$ of the set $A\text{-crC} ::= \{A\text{-crC}0n \mid 1 \leq n \leq N\} \cup E\text{-crC} ::= \{E\text{-crC}0nk \mid 1 \leq n \leq N \wedge 1 \leq k \leq K^n\}$ ;
(b) justof $\forall 1 \leq n \leq N$ :	A-crC0n	=	$\wedge^{1 \leq k \leq K^n} E\text{-crC}0nk, 1 \leq n \leq N$ , whereby $A\text{-crC}0n ::= A\text{-crC}0n \bmod \{\forall \epsilon \in E\text{-ncrC}0n\}$ ;
(c) justof $\forall \epsilon \in \text{COM(ETCI\#)}$ :	COM(ETCI#)		is (definite over posc) $\wedge (E\text{-COM}(\langle \text{TT}0, \Phi \rangle \#)$ describes a useful $\wedge E\text{-COM(ETCI\#)}$ describes a new & useful invention);
(d) justof:	<b>Biosig-test</b>	is passed:	iff this COM(ETCI#) is definite $\wedge$ complete;
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2) justof $\text{COM(ETCI\#)}$ :	<b>ETCI Disclosure-test</b>	is passed:	iff $\forall \epsilon \in \text{COM(ETCI\#)}$ are lawfully disclosed: $\text{COM(ETCI\#)} \Rightarrow \text{COM(ETCI)}$ ;
3) justof $\forall 1 \leq n \leq N$ :	<b>ETCI Enabling-test</b>	is passed:	iff $\forall \epsilon \in A\text{-crC}0n$ its implementability is disclosed "for being E-crC tested";
4) justof:	<b>Bilski-test</b>	is passed:	iff $E\text{-crC} \setminus E\text{-crC} \bmod (A^{\#}) \neq \Phi$ ;
5) justof:	<b>Mayo-Myriad-test</b>	is passed:	iff $\forall \epsilon \in E\text{-crC} ::= \forall \epsilon \in \{E\text{-crC} \text{ unlimitedly preemptive}\}$ are identifiable;
6) justof:	<b>Alice-test</b>	is passed:	iff (1)-5) hold $\wedge \nexists \epsilon \in (E\text{-crC} \setminus \forall \epsilon \in E\text{-crC})$ that is unlimitedly preemptive;
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7) justof $\forall 1 \leq n \leq N \wedge 1 \leq k \leq K^n$ :	<b>Independence-test</b>	is passed:	iff $\forall \epsilon \in \{E\text{-crC}0nk \mid 1 \leq n \leq N \wedge 1 \leq k \leq K^n\}$ are independent of each other;
8) justof $\forall 1 \leq i \leq n \leq N \wedge 1 \leq k \leq K^n$ :	<b>KSR(RS)-test</b>	is passed:	iff $\forall \text{ANM}(i, n, k) ::=$ if $(E\text{-crC}ink = E\text{-crC}0nk$ or equal within their tolerances) then "A" else "N";
9)	<b>Graham(RS)-test</b>	is passed:	iff $\langle \forall n^k \epsilon = A \rangle \notin \{\forall AC \text{ over ANM}\}$ .

FIG2: **The FSTP-Test – Checking an ETCI for its Meeting all 9 Requirements Stated by the MBA Framework** (number consistent to<sup>1271)</sup>)

**Legend2:** The horizontal dashed line separates – for an ETCI alias pair of  $\langle$ an invention/TT0, its application/A $\rangle$  alias "patent (non)eligible subject matter" – its refined claim interpretation (above it) from its refined claim construction (below it). The latter potentially skips test4-test8 (in particular below the horizontal double line iff  $RS = \Phi$ ).<sup>4.a)</sup>

### II.3 The CAFC's TLI Decision also is in Line with the MBA Framework<sup>4.b)</sup>

After this clarification of the FSTP-Test it is evident that applying it to the TLI-ETCI would dramatically simplify the CAFC's TLI decision. All that needs to be taken from its opinion is its technically correct (as known by the pposc<sup>1.c)</sup>) statement (page 12, last para.) that the TLI-ETCI embodies no inC.<sup>4.b)</sup> Hence the TLI-ETCI does not pass the FSTP-Test as it is unable to pass FSTP-test1. I.e., the TLI-ETCI is not patent-eligible – as totally non-inventive.<sup>4.c)</sup>

<sup>4</sup> **a** The executability of the FSTP test – even fully automatic where purely Rational, otherwise semi-automatic anyway – is its huge advantage over the in no way in reality executable TS test. Thus, immediately after having in speculative Metaphysics determined some COM(ETCI#) of the ETCI at issue, the FSTP test on this combination of ETCI's inCs may be started (which would greatly simplify e.g. the CAFC's *Enfish* opinion, and the more its TLI opinion, as Section II.3 explains). The above intuitive reasoning showed, where this COM(ETCI#) comes from and why the FSTP test only seemingly omits the O-level. **b** – though due to another reason than that one, on which the CAFC decision is based: TLI discloses solely non-inCs, i.e. non-inventive concepts, as known by the pposc<sup>4.c)</sup> – "per se" totally irrelevant for SPL; and an inventive combination of some of them, implying an inC, is nowhere disclosed in the TLI-ETCI specification. Nevertheless: The CAFC also in its TLI opinion explicitly confirms the necessity of an ETCI's inC(s) for its being patent-eligible. **c** Hitherto, this trivial patent-eligibility exemption – consistent to the iff term in<sup>2.b)</sup>, i.e. to the FSTP test's applicability domain – was unnoticed. Thus, the CAFC's TLI decision – here arguing exactly as the FSTP test – sharpened the patent-eligibility benchmark, if it declared this to be a serious legal error. This were totally rational<sup>2.a)</sup> – as patents granted on totally non-inventive subject matter otherwise were potentially protected by *Teval*<sup>217)</sup>, not mentioning it.

### III. USPTO's EPQI "Master Review Form, MRF" and Disseminating SPL Knowhow

The IES<sup>[9]5.a)</sup> may seamlessly interoperate, via the Internet, with the USPTO's EPQI<sup>[281]</sup> as to all SPL issues, e.g. in prosecuting patent applications&reexaminations,<sup>5.b)</sup> thus broadly & fast disseminate its SPL knowhow:

Thus MRF-based communications would enormously facilitate the international mass market getting familiar with classical patent knowhow – by starting testing a CTCl or an ETCl, in whatever state of its development, by applying to it by default only the classical claim interpretation & construction tests.<sup>5.c)</sup>

Thus MRF-based communications would also enormously facilitate getting familiar, on top of that, with the more crucial *MBA* framework based patent knowhow alias advanced Innovation/Patent Technology – internationally of greatest interest for inventors/R&D-managers/SPL-experts/PTO-examiners.<sup>5.d)</sup>

Both cases namely established, for any user whatever, a smooth approach to getting acquainted with

- initially tentative and later in-depth/safe-side understanding of the MRF's Q/A part (questioning the outcome of the ETCl's classical claim interpretation&construction, in particular on the basis of the MPEP, IEG, and related USPTO support material), by thereafter
- automatically and proactively tightly guiding this user through this complete *MBA-framework-based* test – this refined claim interpretation&construction for this ETCl, being required by the Supreme Court to be used in testing ETCl's for satisfying SPL – and thereby
- enabling this user to be context sensitively taken back any time by the IES to the peer Q/A part of the MRF support and potentially commented on by the user for conveniently reiterating her previous such input for assessing the consistency of both kinds of claim interpretation & construction and for communicating on questions raised by the examiner.

Thus IES'es MRF-communications evidently established, also for its "high potential" users<sup>5.e)</sup>, a clearly innovations fostering environment for drafting, under automatic *MBA-framework-based* guidance/control /supervision, ETCl's specifications accordingly<sup>[260]</sup>. This made it very awarding for examiners, to cooperate with whomsoever on crucial issues encountered – thus accelerating this knowhow dissemination.

<sup>5</sup> .a The "Innovation Expert System, IES", supporting using the FSTP-Test by cutting edge AIT<sup>[2]</sup> for a variety of purposes in everyday patent business – especially for drafting and/or prosecuting legally maximally robust patents on ETCl's as well as for litigations about them – shall become ready for being broadly used by the end of 2017, though friendly testers of the IES prototype as described in<sup>[261,283-285]</sup> should get access to it by the end of this year.

.b Here it is assumed, the MRF<sup>[281]</sup> program part concerning an ETCl being prosecuted will be accessible to its stakeholder(s) as regards the MRF's SPL sections. Up to entitlements, this IES user could thus cooperate end-to-end, asynchronously or synchronously in realtime, with the USPTO about such MRF sections.

.c I.e.: An IES/FSTP user may run the FSTP-Test also on a CTCl or an ETCl but treating it as CTCl – simply by ignoring the separation line between CTCl's and model-based ETCl's, i.e. taking its O-/A-/E-inCs as being identical (as are the today common limitations) and staying with its classical claim interpretation's "limitations". In this case the FSTP-Test is evidently considerably simplified. Yet, this may render meaningless successfully passing test1-test9, as this does not guarantee the total robustness of a patent granted for a thus tested ETCl/CTCl.

Proceeding as just outlined is nevertheless sometimes a practically important entry-level step in launching this ETCl's truly refined claim interpretation&construction, i.e. ETCl's SPL satisfaction test (in the Supreme Court's *MBA* framework<sup>1.a)</sup> interpretation), performed by an examiner/judge/... or before by its inventor/drafter/..., skipped by experienced IES users.

In this case, FSTP-test1(b) is trivially passed, but FSTP-test1(d) makes absolutely no sense, as there is no way of rationally deriving from a series of limitations, whether it yields a definite result or whether this result is what the inventor had in mind as his/her invention when she/he disclosed it in her/his resp. specification – as is evident for a model-based invention, i.e. ETCl.

Also e.g. FSTP-test3 is vastly meaningless alias of highly speculative Metaphysics<sup>2.a)</sup>, again due to not having a specification of the tested ETCl as a sum of its inventive increments alias inCs, but only as a conjunction of limitations of something not defined at all – just as FSTP-testo, o=4-9.

I.e.: It can be of no surprise that granting patents based on this highly speculative Metaphysics often leads to legal controversies. These can be avoided only by granting patents based on Rationality.<sup>2.a)</sup>

.d The market that the USPTO by its recent IEG<sup>[235.b]</sup> and the IEG updating MEMORANDUM<sup>[292]</sup> addressed – and that is comprised by the EPQI part referred to in this and in the preceding paragraph – is evidently primarily the US one. Yet, it may be expected that it will internationalize much faster than hitherto encountered, due to the leading position of the US in innovation business and now its internationally unique support by the •Supreme Court's *MBA* framework (as currently implemented by the CAFC) and • USPTO's openness, evidenced by its EPQI.

.e For them: Today, passing the FSTP-Test by an ETCl does not guarantee its total legal robustness. Namely: While today legal errors theoretically are already excludable completely (as far as this ETCl's finite problem has already been settled by the Supreme Court's precedents), factual statements about an ETCl would still depend on the pposc's statements about its crCs as interpreted by a District Court (*Teva* here clarified details.<sup>[217]</sup>)

Formal Semantics research<sup>[288]</sup>, will enable within a few years automatically and mathematically correctly translating an ETCl's factual statements written in MII<sup>[273]</sup> and integrate them into the FSTP-Test – rendering superfluous pposc's resp. confirmations, for certain<sup>[273]</sup> ETCl's all of them.

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FSTP = Facts Screening/Transforming/Presenting (Version of 25.05.2016)

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