

## A PS to my Epilog for the PE-Problem

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This PS to my epilog is an urgent clarification to the email, which I sent to you on Mo – I hope it helps to grasp what actually is happening to today's usual view at the PE problem. As this "PE subject matter" view at it, due to its highly speculative Metaphysics has been detrimentally affecting the innovation business around the globe, and the alternative view at it of the Supreme Court's *MBA* framework, i.e. of its *Alice* decision, is fully Rationalized and hence quite simple to perform, it is worthwhile noticing that these views are totally swapped.

This PS is a continuation for the Part II of my epilog and therefore just extends my preceding numbering schemes (and smoothen its references).

For \*) and \*) see Part I

### To Whom it may Concern<sup>11.a)</sup>

John Duffy provided an excellent analysis<sup>b)</sup> of the last 10 years' antagonism<sup>c)</sup> between, on one hand, the Supreme Court with its *MBA* framework<sup>d)</sup> in favor of ETCIs – starting 2005 with the Supreme Court's *KSR* case in which John Duffy's view prevailed – and, on the other hand, the CAFC with its catastrophic SPL precedents about ETCIs peaking in the CAFC's *Alice* decision, commented on in<sup>e)</sup>. As reason of this antagonism he identified the CAFC's sharply deviating, by its "*literalistic claiming*" method, from the Supreme Court's longtime practiced and semiotically<sup>f)</sup> different "*peripheral claiming*" method<sup>g)</sup>.

John Duffy's analysis of these legal failures – objectively caused by the advent of ETCIs and currently perhaps slightly decreasing<sup>h)</sup> – is by the author enriched as vastly supported by comparing them to this antagonism's O-/A-/E-level<sup>g)/i)</sup> analysis, thus mutually justifying these comments on it in<sup>[300,301,321]</sup>.

<sup>11</sup> .a: The reason of this email is already explained in its address and repeated here, for the case that both are separated.

This PS is necessitated by a comment, which I yesterday received – at the USPTO's reception on the occasion of the 5<sup>th</sup> anniversary of the AIA in DC – on my above quoted email, saying that it is "... *one of many voices about the state of the PE-problem*". This comment is not the entire truth: While it indeed is one of many voices, it evidently also is a total game changer and hence deserves a second thought – at least, whether it is correct, at all. For providing certainty about this, here comes a brief summary of a pertinent publication by John Duffy in June, which implicitly confirms the correctness of my epilog to the hitherto view at the PE-problem. He does not comment the state of the PE-problem that dramatically as I did in my above quoted email, but is politically more correct yet in its consequence equally rigorous.

Originally I had planned to include John Duffy's implicit correctness confirmation of my epilog to the PE-problem – i.e. to its existence as a dangerous problem difficult to overcome – into Part III of my epilog to it, as announced in its Part II. Yet, due to this yesterday comment on my epilog – perhaps indicating that more recipients would take it that easy – I changed my mind and convey to you below, together with my very brief summary of John Duffy's comment on the PE-problem also the reason, why his philosophical "essay" indeed must be perceived as a beautiful and thoughtful anticipation and hence confirmation of my somewhat dry as rigidly to Mathematical Epistemology adhering epilog to this for the innovation economy truly sweepingly disastrous view at the PE- problem. From the reach of his and my fully concurring comments on it follows that it probably is inappropriate to qualify them as "... *one of many voices*" about the state of the PE-problem.

/b: [314,315] /c: here principally simplified for sharpening [314/Sect. IIp.1221] /d: [300/1.a)] /e: [300,301] /f: [171] /g: this notion's meaning in<sup>[314]</sup> redefined rationally is seemingly equivalent to the author's O-level definition, explained in<sup>[321]</sup>. /h: [301/E-FIG3&L3] /i: [300/1.b)]

.h The usefulness and even indispensable necessity of the O-/A-/E-levels of refinement in claim interpretation & construction is explained by the following paragraphs also nontrivially<sup>[296/2.b)]</sup>, by means of the US GAAP (Generally Agreed Accounting Principles), comprising a company's "balance" statement, "profit&loss" statement, and "cash flow" statement. To this end we skip this notion's historic semiotic development over millennia of its 3 knowledge representations of a company's financial report – partially known by the early Egyptians already, until today stepwise refined such that any company on the US capital market may and must use it for representing the truth of its economic standing at a given point in time in the past – and focus on its "3 levels of abstractions".

It is evident that the US GAAP's •balance statement is its O-level representation of this company's then overall economic situation in terms of its activa/assets and passiva/liabilities, hence usually comprising therein information of highly speculative Metaphysics, of lowly speculative Metaphysics, and immediately clearly comprehensible information of Rationality, •P&L statement is the A-level representation of its economic then situation's information of no additional highly speculative Metaphysics describing all other information either by low speculative Metaphysics or already fully rationally, and •CF statement is the E-level representation of such additional information now enriching also the P&L statement's information of low Metaphysics to fully rational information.

An ETCI's claim interpretation and claim construction never unfold the complexity of a normal public company's annual business report even if structured by US GAAP, but the complexity of small IT systems rigidly adhering to the specific system design principles defined by their Q-/A-/E-levels of notional resolutions of their components – being the "common sense per se" ordering principles, as we figure out during the 70s/80s. The Supreme Court by its *MBA* framework eventually is hinting at these "common sense per se" ordering principles – why the thus structured knowledge representation of claim interpretations and claim constructions is the only notional "safe haven" for them.

j being even mathematically provable correct, as indicated by this PS'es next paragraph.

While the author's approach to this by John Duffy on the SPL's O-level clearly identified antagonism problem by the latter's

- O-/A-/E-level analysis – which incrementally refines the notional resolution of the "mathematical knowledge representation, KR" (an AIT flavor<sup>[301/1.a)]</sup>) about 35 USC §§ 101^102^103^112, thus achieving its full Rationality<sup>[9.b][291/2.a)]</sup> – locates any, mostly necessarily notionally very coarse O-level attempt to achieve a dependable claim interpretation and claim construction for an ETCl as being of highly speculative Metaphysics quality, which indeed characterizes the practically often unavoidable colloquial starting point for representing an ETCl by its claim's and its specification's wording and graphics, also of "*literalistic claiming*" just as of "*peripheral claiming*".

John Duffy's such approach

- remains on the notionally coarse O-level – i.e. spares for some ETCl's the PE-problems potentially tedious refinements to the A- and E-levels of notional resolution, if possible at all<sup>[5.6]</sup> – by performing, as just explained, their "*literalistic claiming*" vs "*peripheral claiming*" analysis in highly speculative Metaphysics quality only, but nevertheless gaining valid cognitions<sup>[11.J]</sup>, for legal personal probably often easier to grasp than the O-/A-/E-level refinement technique or even smoothening the way to familiarize with the latter. Note that such O-level cognitions hence are for the US patent community, in particular its "only legal" members and/or for most examiners of invaluable help, in particular as these cognitions are, as to analyzing and qualifying an ETCl, just as dependably significant as the four just quoted §§ of 35 USC.

The latter statement is explained by means of situations occurring in any ETCl's PE test: It therein is by the *MBA* framework required from both approaches, to first somehow derive from an ETCl's O-level specification its O-level inC(s). The O-/A-/E-level approach

- in this first step then would content itself with just one vague O-inC and proceed to refining it into A-inCs as it strives for quickly getting to the E-level for identifying which of the E-inCs are modelling a natural phenomenon or an abstract idea or a combination of which itself identifying an abstract idea. By contrast, peripheral claiming would already on the O-level go for several such identifications as it knows that these are needed in the second step, which in simple ETCl's often would succeed, thus keeping this first step simple (as not needing any refinements).
- in the then second step must identify, what ETCl's nPE technical teaching TT0 is, the latter's application, and whether the latter comprises an E-inC being independent of all TT0 E-inCs. This E-level activity may have little intuitive support, yet the same activity on the O-level may intuitively be evident.

A more detailed discussion of the by so understood "*peripheral claiming*" achievable didactic advantages in dependably dealing with analyzing ETCl's will be provided by<sup>[321]</sup> – in particular for construing a prima facie PE test. Yet, any doubt can only be eliminated by the full Rationalization of the PE test by the EDA-Test.

The FSTP-Project's Reference List

FSTP = Facts Screening/Transforming/Presenting (Version of 22.9.2016)

Most of the FSTP-Project papers below are written in preparation of the text book [182] – i.e. are not intended to be fully self-explaining independently of their predecessors.

[2] AIT: "Advanced Information Technology" alias "Artificial Intelligence Technology" denotes cutting edge IT areas, e.g. KnowledgeRepresentation/Description Logic/Natural Language (NL)/Semantics/Semiotics/System Design, just as MAI: "Mathematical Artificial Intelligence", the resilient fundament of AIT.
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