DISCLAIMERs

1. This paper is written in preparation of a text book about Innovation Science and Patent Law (see the FSTP-Projects Ref. List at its end) – i.e. it is just as all other papers from this series, not self-explanatory independent of its companion papers and is potentially subject to changes.

2. As it often refers to e.g. a footnote "u)" in[xyz], such references have the form "…. [xyz/u)]" – unless so referred to items are repeated here for clarification in a footnote.

3. This *AMDOCS*-Memo about the CAFC's 01.11.2016 split decision in the 'Amdocs' case ***solely shortly confirms my 27.10.2016 Memo*** that any CAFC PE decision about an ETCI is legally erroneous to the degree to which it fails to meet **ALL** requirements stated by the Supreme Court's *Alice* decision, i.e. its decision's analysis.

The AMDOCS Dissent Stirs up the Key Deficiency of the CAFC's pro-PE *Alice* Decisions, thus showing: The Time is Ripe for Ending the §101 Chaos – Properly and Finally!

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AMDOCS[1.a)] stirs up by its dissenting opinion ("**D**") the big deficiency of the CAFC's PE decisions, yet its majority opinion ("**M**") did not use it for progressing to meeting **ALL** *Alice* analysis's requirements.

Its D opinion[b)] evidently is enabled by a deep concern: That all pro-PE "legal argument chains, LACs" in the CAFCs recent PE decisions[c)] in absolutely no way confirm, its ETCI would "... ***transform THE NATURE of the*** [originally nPE invention] ***claim into a patent-eligible application***" that by an "***inventive concept***" is made "... ***SIGNIFICANTLY MORE than a patent upon the ineligible concept itself***"[c)]. This author fully shares this concern – not withstanding that the M opinion (almost) is correct.

Indeed, none of these pro-PE CAFC decisions[c)] uses in its LAC exactly these two key words defining this transformation of an nPE invention, prescribed by the *Alice* analysis for achieving its application's PE[300,301]. This is an extremely unusual phenomenon in US SPL precedents about ETCIs[d)]. Moreover, this indicates that none of these CAFC decisions' ETCIs (except that of *DDR*) has really been found to meet 100% of the requirements that the *Alice* analysis correctly recognized as necessary for excluding its threatening the US NPS[e)] the way that *Alice* shall bar[u)]. While these are legal errors justifying the above concern, transitionally this unfortunately occurs[e)].

Thus, AMDOCS calls for settling the PE problem as indicated by the CAFC's pro-PE decisions, concurring with the Supreme Courts' *Alice* analysis – as US economies require, now properly and finally.

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[1] **.a** This Memo is written in a hurry for being available for 3 meetings in Alexandria and DC on 14.-16.11.2016, interrupting my other work[182]. It hence discusses neither the similarities in the opinion about the Supreme Court's *Alice* analysis of the majority of the CAFC's recent *IV* decision and in the here D opinion of Circuit Judge J. Reyna, nor the deep differences between these two opinions.

.b Here its earlier often heard but today outdated reasoning is skipped, for brevity. Except its fundamental error in interpreting the Supreme Court's *Alice* decision/analysis. This interpretation assumes that applying to ETCIs the *Alice* analysis – for thus avoiding "patenting ETCIs of unlimited preemptivity at lowest possible impact[u)] on creating PE ETCIs" – would presuppose a clear understanding of the notions "abstract idea" and/or "natural phenomenon" comprised by any ETCI (otherwise it were a CTCI).

THE CONTRARY IS TRUE: The Supreme Court provided by its *Alice* analysis the clear "separation line"[v)] between PE and nonPE ETCIs, independently of what abstract ideas and/or natural phenomena they embody, hence independently of what the meaning is of these two notions. Thereby a careful look at the *Alice* analysis is needed for recognizing that it is capable of defining this separation line – and this is proven mathematically[e.g. 300,301] – i.e. that it indeed provides the necessary and sufficient conditions any ETCI must meet for not threatening the US NPS this way[u)] and yet exert only the minimal impact to this end on creating PE ETCIs[w)].

.c These are the CAFC's decisions in *DDR*, *Enfish*, *TLI*, *BASCOM*, …, and now in *AMDOCS* (by M). It is fair to assume: These 5+ LACs exhaustively represent all the requirements stated by the Supreme Court's *Alice* decision to be met by an ETCI for being PE. Then, these LACs would enable any court and the USPTO to issue robust PE decisions about ETCIs.

But how should this be possible, if all these hitherto LACs in total don't require exactly the same impact and grant exactly the same warranting on creating PE ETCIs that the Supreme Court correctly found necessary and sufficient to this end[b)] – as clearly indicated by the absence of two key words in the hitherto pro-PE LACs. Their missing evidently indeed implies for many ETCIs a semantically substantial difference between these LAC's and the *Alice* analysis's requirements – which rightly causes the above D concern.

.d Once more: *Alice's* analysis clearly requires that, for becoming a PE ETCI, its originally nPE invention must undergo this transformation into to an inventive application characterized by these two key words – but none of the 5+ LACs (except that of *DDR*) shows that its ETCI is indeed made up this way, what requires both: to identifying its nPE invention and the latter's appropriate/independent[300,301] transformation, yet not to be found in these LACs. The only similarity quoted by them is an application (not at all independent).

.e As long as the CAFC PE decisions do not completely meet **ALL** requirements of the *Alice* analysis they are legally vulnerable, especially the erroneous ones (such as *Myriad* and many more). It then can neither avoid own wrong decisions frustrating the investors community (see in *Myriad*[159,160]) nor unfold the creativity of the US inventors community – in short: foster the US society's innovativity.

.u This implies: Excluding from patenting only unlimited preemptive ETCIs[300], i.e. only ETCIs subject to creating logically unavoidable inconsistencies in their SPL precedents, thus socioeconomically threatening the whole US NPS, as explained in the Supreme Court's *Mayo&Alice* decisions. As an undeniable consequence this implies: PE is to be unconditionally granted to all other ETCIs – which in turn inevitably must meet the requirements stated by this PE analysis of the Supreme Court's *Alice* decision.

.v For the (philosophical) ontology alias (geometrical) space of all ETCIs – whereby this notion of space may easily be defined over the base set of all human creations and a "sufficiently powerful" paradigm[316] – evidently the notion of "separation line" is not defined, but it is a (philosophical) metaphor for the (geometrical) subspace of this just quoted space that separates its set of PE ETCIs from its disjoint set of nonPE ETCIs, the union of both sets being the complete set of this space.

.w Finally, the term "abstract idea" represents a notion of highly speculative Metaphysics and hence its meaning is rationally indefinable, as everybody familiar with Analytic Philosophy knows (and repeatedly emphasized by this author) – just as the notion represented by the term "true love". These flowery notions are very helpful metaphors in human communications about issues of highly speculative Metaphysics we all know to be often helpful in our daily life. Other metaphors' possible use is irrelevant, here.

The FSTP-Project's Reference List

FSTP = Facts Screening/Transforming/Presenting (Version of 10.11.2016[7])

Most of the FSTP-Project papers below are written in preparation of the textbook [182] – i.e. are not intended to be fully self-explanatory independent of their predecessors. Many of the MEMOs quoted below will be elaborated on only for this textbook.

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

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***) available at www.fstp-expert-system.com**