

MEMO:

Sequenom — An Incomplete Interpretation of §101/Alice by the CAFC

but

Sequenom's PfC also Misses the Point — the USSC Denial hence Consequential

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I. Overview of this MEMO

It is no fun to communicate that the CAFC erred^{1.a)} in its finding that *Sequenom's* "emerging technology claimed invention, ETCI"^{c)} is non-patent-eligible, "nPE". Yet to counter bad rumors about the state of the US NPS — its alleged misery was allegedly shown by the '*Sequenom* guesswork' — the following 3-part clarification is due^{d)}: 1.) This CAFC decision is wrong, 2.) the denial of all §101-PfCs indicates: The Supreme Court will insist in its *MBA*-framework to be used in all SPL precedents about ETCIs as it fills — socio-economically optimal and Solomonian — for ETCIs disastrous SPL gaps, e.g. 3.) unassailably answers their PE/nPE-question, i.e. for any potential kernel of wealth generation in modern societies.^{d)}

As statements 1.) and 2.) are consequences of the PE cognition comprised by statement 3.), the row of their elaborations is reversed, as the titles of Section II-V (the last one being aftermath) indicate.

II. This MEMO Reminds that the §101/Alice- alias PE-problem is Resolved for any ETCI

It has completely been resolved by the FSTP-Test^[390,391] for several years^{e)}, as an ETCI satisfies SPL iff it passes the FSTP-Test. The latter is shown next in English and in mathematical KR^{f)}.

<p><A.c.: IDL-FSTP-Test in: rational KR = refined&post-MBA-KR = rational claiming KR></p> <ol style="list-style-type: none"> 1) if all E-crC0nk and E-ncrC0nk are lawfully disclosed then goto 2); 2) if each A-crC0n, 1≤n≤N, is a conjunction of the corresponding E-crC0nk and/or E-ncrC0nk, 1≤k≤Kn, and is enablingly disclosed then goto 3); 3) if COM(ETCI)^{rat} is E-definite and E-complete and uniquely defined and useful then goto 4); 4) if COM(ETCI)^{rat} comprises an nPE TT0 then goto 7); 7) if COM(ETCI)^{rat} is limited preemptive then goto 8); 8) if COM(ETCI)^{rat} comprises only E-crC0nk independent of each other then goto 9); 9) if COM(ETCI)^{rat} has a definite A/N-Matrix over RS then goto 10); 10) if COM(ETCI)^{rat} is of positive semantic height over RS then goto output; 	<p>input 'COM(ETCI)^{rat} ≡ O-/A-/E-inC0S' ∧ begin FSTP-Test:</p> <p>output 'COM(ETCI)^{rat} satisfies SPL' ∧ stop.</p>
<p><A.d.: IDL-FSTP-Test in: mathematical KR = refined&post-MBA-KR = refined claiming KR = mathematical KR></p> <ol style="list-style-type: none"> 1) if [∀(E-crC0nk ∨ E-ncrC0nk) are lawfully disclosed as???) then go on; 2) If [A-crC0n=∧^{1≤k≤Kn}(E-inC0nk ∨ E-ninC0nk), ∀1≤n≤N] is enablingly disclosed as???) then go on; 3) If [COM(ETCI) is (E-definite ∧ E-complete ∧ uniquely defined ∧ useful) as???) then go on; 4) if [scope(E-crCS^{TT0}) ≠ ∅] then go on; 5) if [∩^{TT0}scope(E-crCS^{ETCI}) ⊆ scope(E-crCS^{TT0}) then go on; 6) if E-crCS^{Alice} ≠ ∅ then go on; 7) if [(∩^{TT0}scope(E-crCS^{ETCI}) ⊆ scope(E-crCS^{TT0})) ∧ (∀x ∈ E-crCS^{ETCI} \ E-crCS^{TT0} : x ⊥ E-crCS^{TT0}) ≠ ∅] then go on; 8) if [∀e(E-crC0nk 1≤n≤N ∧ 1≤k≤Kn) are independent of each other] then go on; 9) if [∃^{1≤n,k}Δ^{in,k} ::= if (E-crCink = E-crC0nk) 'A' else 'N'] then go on; 10) if [∑^{1≤n,k}(min^{∃e[1]}{Δ^{in,1}="N", ..., Δ^{in,k}="N"})] ≥ 2] then go on; 	<p>input 'COM(ETCI)^{mat} ≡ O-/A-/E-inC0S' ∧ begin:</p> <p>output 'COM(ETCI)^{mat} satisfies SPL' ∧ stop.</p>

^{1.a} Who would like to criticize a broadly recognized court, in particular if knowing that its everyday work load doesn't allow it to invest the amount of time indispensably needed for correctly figuring out in detail^{b)} how to master the paradigm refinement of Substantive Patent Law ("SPL"), as manifested by the Supreme Court's *MBA*-framework and socioeconomically necessitated by the advent of ETCIs to it — for excluding SPL is put in jeopardy by them, as the Supreme Court clearly recognized and Solomonically barred by its *MBA*-framework — even if all to this end needed mathematical cognition theoretical knowledge would have been available up front.

^b Justice Breyer^[69] (as to the pre-Alice state of the *Mayo/Bilski/Myriad*-framework): "Different judges can have different interpretations. All you're getting is mine, ok? I think it's easy to say that Archimedes can't just go to a boat builder and say, apply my idea [i.e. the natural phenomenon of a boat's water displacement] 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 to sketch an outer shell [i.e. framework]^[314] of the content, hoping that the experts, you and the other lawyers and the CAFC, could fill in a little better than we had done the content of that shell..." [emphasis added]. Thereafter, the Supreme Court's *Alice* decision briefly sketched what this content is, i.e. this from externally required framework refinement.

^c '*Sequenom's* ETCI' abbreviates "*Sequenom's* emerging technology claimed invention, ETCI, of US Pat. Nr. 6,258,540 — by the CAFC decided to be nPE on 12.06.2015", rehearing en banc denied on 02.12.2015, PfC filed on 21.03.2016, PfC denied on 27.06.2016.

^d None of its 3 parts is self-contained but assumes the reader's familiarity with all pertinent *Sequenom*, CAFC, and FSTP documents. This holds also for the meaning of an ETCI being "limited preemptive"^[390] and the latter's redundancy to "(∩^{TT0}scope(E-crCS^{ETCI}) ⊆ scope(E-crCS^{TT0})) ∧ (E-crCS^{Alice} ≠ ∅)", with an "*Alice*-concept" E-crC^{Alice} is ∈ {∀x ∈ E-crCS^{ETCI} \ E-crCS^{TT0} : x ⊥ E-crCS^{TT0}}, and "⊥" stands for "independent of".

^e In the patent community initially nobody understood the FSTP-Test, as it was presented only in precise mathematical terms¬ions^{d)}. It meanwhile is repeatedly iterated increasingly concrete and even in a simple but equally precise subset of English^[390,391], IDL. This "**Invention Description Language, IDL**" is a trivial subset of English (and of mathematical precision, also as to its SPL notions) and thus instantly understandable not only by patent experts but by virtually everybody familiar with this natural language, with some very elementary Mathematics, and with the post-*MBA* SPL notions. As a consequence, IDL sentences are automatically translatable into mathematical expression, which eventually enables executing the FSTP-Test on an ETCI vastly automatically — tremendously helpful in iteratively drafting/testing an ETCI.

^f **NOTE:** Both KR^{s[2]} visualize what CAFC/USPTO/AIPLA/IPO, ...^[390] didn't recognize — as not grasping the *MBA*-framework's scientific wordings — thus failing to exclude unlimited preemptive ETCIs from PE, in the FSTP-Test achieved by its test₀, 5≤o≤7 (with test₅∧test₆ = test₇).

In^[391] is shown in detail that any of these two KR of the FSTP-Test^{2.a)} ● is the correct and complete refinement (alias interpretation alias implementation) of the PE analysis (= PE test-specification) provided by the Supreme Court's *Alice* opinion^{b)}, whereby ● for the patent community the FSTP-Test's English KR is easy to apply correctly — **AND NOTE** — without a need to grasp *Alice*'s analysis in detail. Each of the statements 2.) and 1.) now follows in only a few lines, due to the FSTP-Test.

III. *Sequenom*'s Implied PE-test is Not Solving the §101/*Alice*-Problem and is Not Solomonic
Sequenom's PfC^[398] is of great depth, yet its PE-test — implicitly defined by its PfC's question^{c)} and dealing with an ETCl having 3 E-crCs at least, 1 being exceptional (= as natural phenomenon) — also commits the error^{2.b)}, as it does not check an ETCl for being limited preemptive only, thus missing the point^{d)}. But even if its 'PfC-PE-test' were to exclude unlimited preemptive ETCl's from PE, it would be far too restrictive for broad acceptability — for *Sequenom* too — as it finds an ETCl already nPE if its application per se is not inventive. But this is an alleged requirement, "F"^{e)}, neither necessary nor sufficient for excluding ETCl's unlimited PE. F is hence neither stated nor implied by the *MBA*-framework (see Sections II, IV, and V). Hence, the Supreme Court's denial of granting the PfC was consequential, for both reasons.

IV. CAFC's Decision^{1.c)} about *Sequenom*'s ETCl is Clearly Contradicting the *MBA*-Framework
 After the elaborations on statements 3.) and 2.) in Sections II and III, this title may be verified in 1 sentence^{f)}: The CAFC erred by F, and its reasoning shows that otherwise it would have erred by^{b).g)}

V. Some Aftermath about an ETCl's Enablement/DE/PE/PA — and its Primary Supporters
 ● Generally: Virtually all CAFC and USPTO PE-rejections of ETCl's patent applications are legally erroneous, as both institutions' such decisions were subject to F and/or^{b)}. Due to my background I'm going to send an email to some of their inventors, i.e. primary supporters, telling them their second chance and that they should, in a second try, reconsider also their depending claims for applications needed.
 ● Practically: John Duffy's recently raised the question^[404] about the increasing complexity of ETCl's — first of all in Microbiology — and deciding on their enabling specification, DE, PE, and PA^[391]. This problem is indeed by classical plainly human activities in the future uncontrollable. Yet by FSTP-Technology and the IES^[350-352] this problem is easily and unassailably overcome, stereotypically & semi-automatically.
 ● Principally: It seems evident that the Supreme Court's conceptually inspired *MBA*-framework thinking and its unfolding as operational FSTP-Technology will be the only intellectual instrument enabling identifying ETCl's and determining their properties for their being enablingly specifiable, DE, PE, and PA — Microbiology-/Nanotech-/Finance-/AI-/IT-developers^[402,403,405] have not even recognized this problem.

^{2. a} Both KR's are SPL-notionally absolutely equivalent, as mathematically proven^[354,355,390,391]. The modifications of the here natural language KR of the FSTP-Test, as compared to^[391], are fully in line with IDL's syntactical power^[401]. Lines 5 and 6 skipped/reduced in both KR's, as compared to^[391], are redundant to line 7 (as visualized in the mathematical KR), in natural IDL-language being the only reasonable alternative.

NOTE: The indeed filigree of the notional dichotomy between 'limited preemptivity' (potentially enabling an ETCl's PE) and 'unlimited preemptivity' (unconditionally rendering an ETCl nPE) evidently is the reason all institutions quoted by the above **NOTE**^{1.h)} failed to define the notion of 'unlimited preemptivity' such that an ETCl is absolutely dependably and easily testable for its absence from it — in spite of the Supreme Court's repeated hints in its *MBA*-framework that this dichotomy is crucial for assessing that ETCl's would not put the US NPS into jeopardy. Here this dichotomy is visualized mathematically in the FSTP-Test by its test7 (in natural English) corresponding to test5^test6, thus also specifying this dichotomy's meaning exactly, which is commonly known to be hard to assure in natural language without scientific and deterministic interpretability, yet the latter being provided by IDL^[372,390,391,401].

^b The CAFC and the USPTO erroneously take — instead of this FSTP-Test in any one of its 'IDL-KR's' — already the SPL-test-specification of *Alice*'s PE analysis as their "2-step PE test" and thereby lose the capability to refine this analysis as required by the *MBA*-framework. This loss first of all means that they cannot recognize that their 2-step test is unable to check of the ETCl at issue whether it is limited preemptive. This in turn means that this 2-step test cannot distinguish between PE and nPE ETCl's.

I.o.w.: The CAFC and the USPTO fail to recognize decisive subtleties of the FSTP-Test — which are necessary for completely implementing the *Alice*-test-specification. E.g., they both ignore that this specification of *Alice* clearly excludes the PE of an unlimited preemptive invention. Hence their "2-step test" does not bar patenting unlimited preemptive ETCl's. Indeed, a careful reconsideration of several ETCl's that the CAFC found to be PE are by the true *Alice*-test nPE, as it did not notice that their specifications define unlimited preemptive scopes — as one easily verifies by deriving from these unlimited preemptive ETCl's by them preempted ETCl's.

^c *Sequenom*'s PfC question is indefinite because of its final clause — this indefiniteness is left aside here.

^d That *Sequenom*'s PfC question misses the point means that it — skipping other details — fails to include for the ETCl the only-limited-preemptive requirement. This additionally basically warrants that this ETCl is not (at all or unexpectedly) preempted by an ETCl* with the former's TTO.

^e criticized to be untenable in^[160,163], without mentioning that the CAFC committed the same legal error on multiple occasions.

^f thus showing the triviality of testing an ETCl for SPL-satisfaction, postulated in^[390,391]

^g Fairness requires to emphasize that the dissenting opinion of Circuit Judge P. Newman^[398] is just excellent: It saves here criticizing in detail the CAFC^{1.a)} — this is done by her opinion, just as what otherwise this MEMO would have told.

The FSTP-Project's Reference List

FSTP = Facts Screening/Transforming/Presenting (Version of 17.07.2017)
Most of the FSTP-Project papers below are written in preparation of the textbook[142] - i.e. are not fully self-explanatory independent of their predecessors.

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[2] AIT: 'Advanced Information Technology' alias 'Artificial Intelligence Technology' denotes cutting edge IT areas, e.g. Knowledge Representation(KR)/Description Logic (DL)/Natural Language (NL)/Semantics/Semiotics/System Design, just as MAI: 'Mathematical Artificial Intelligence', the resilient fundament of AIT and 'Facts Screening/Transforming/Presenting, FSTP'-Technology, developed in this FSTP-Project.
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