An SPL's ETCI is 'Digitized' iff it is Totally-Robust — Especially PE. An Aftermath: The Semiotics of 'Digitized' and the *Oil States* Case.

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I. This SPL Statement is Reiterated because of its Long Multidirectional Shadows. 1a)-f)/2a)-e)

For Biotech- or ITtech-patents the above statement was proven correct earlier[e.g.423]. But as to their ETCIs' PE-problem there is still so much vain hope that it makes sense to reiterate it, here — to establish clarity.

The socioeconomic background of this reiteration is the indispensability of the Supreme Court's *MBA*-framework for preserving and optimizing SPL's incentivizing high-volume/high-risk/long-term R&D-investments[435]: These vastly depend[430,436] on patents' total-robustness[c], i.e. on consistency[2b] in SPL-precedents about ETCIs[367,424,435]. The *MBA*-framework guarantees this total-robustness of ETCIs and consistency in ETCIs' SPL-precedents, also in Biotech.

To avoid confusion, a remark is needed about the currently nevertheless untenable state of *MBA*-framework-acceptance by such SPL precedents: The [PE]FSTP-Test[d] of an ETCI for its being PE is ignored by the CAFC & USPTO. Instead they both interpret the *Alice* PE-analysis itself to be already its PE-test, thus misinterpreting *Alice* seriously[e] on multiple levels (see[423]). Thus, also their 2-step PE-tests grossly oversimplify the Supreme Court's SPL-precedents about an ETCI's PE.

This implies that these both 2-step PE-tests (of the CAFC & USPTO) are not supported by *Alice* and hence can't guarantee totally-robust patents on ETCIs, thus enforce consistency[2.b] in their SPL precedents about ETCIs. I.e., both SPL-interpretations increase inconsistency and unpredictability of SPL precedents about ETCIs, also Biotech-ETCIs.

I.o.w.: Both highly estimated US institutions still ignore the Supreme Court's SPL-interpretation, its 'framework' — although it enables SPL to draft/recognize totally-robust patents, which protect their investments ideally — and instead cling to the above legal error. This led them to their untenable Biotech-ETCI decisions, qualifying them [n]PE[f]. [423]

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[1] .a The semiotic term/notion "**digitized**" (= "**digitalized**")[2.a] patent is a long-shadow key-/buzzword for a post-*MBA*-framework ETCI[b] patent[c]. The same digitizing was encountered earlier by music, …. Put in O-/A-/E-/M-terminology[415,423]: An ETCI just as a tune is originally presented (i.e. 'internally encoded') in O-KR by analog, by digitizing it in E-KR by digital means. Both KRs encode the same ETCI/tune.

In other words: In view of the confused and complex court discussions about patenting ETCIs (in spite of the clean notional and technical environment in which patenting 'model-based' inventions is located), the cognitional non-inventive development step of digitizing also the knowledge representation (KR[2]) of a patent — just as music was digitized, and before that communications, and before that information, …. — is just consequential. One hence cannot exclude that the Supreme Court by its '*MBA*-framework initiative' was striving right from the outset for similar simplifications in patenting ETCIs as they have before been achieved in the above areas' digitizing. Anyway, the by the Supreme Court's *MBA* framework necessarily implied and hence by it required KR to be used in patenting ETCIs eventually turned out to enable a much simpler and much more powerful patenting technique (for details see[182]).

.b In reasoning often confused, an ETCI determines ●its '**claim interpretation**' (i.e. the meaning of the invention for which a use monopoly is claimed — and is to be protected by "**substantive patent law, SPL**" — by this ETCI's owner) and ●its '**claim construction**' (i.e. a verification that this very meaning satisfies SPL, i.e. 35 USC §§ 101/102/103/112 in post-*Mayo*-interpretation). I.e., an ETCI's claim construction presumes its claim interpretation.

The Supreme Court stated 5 requirements[2.a] to be met by any ETCI's claim construction for being D & PE: It must be **1.)** construed by its incremental inventive element(s) alias '**inventive concept**(s)' (*Mayo*/*Myriad*/*Alice*), **2.)** describable by metarational and rational notions[415ftn3.d)] modelling these inventive concepts' 'E-crCs'[415ftn3.c)], **3.)** of a claim interpretation that screened its whole specification for finding a correct interpretation of this whole wording (*Markman*, *Mayo*, *Biosig, Alice*), **4.)** also of a claim interpretation as required by *Biosig* (i.e.: excluding the BRI), and **5.)** 'limited preemptive and minimally invasive' into 35 USC/SPL (*Bilski, Mayo, Myriad, Alice*).

I.e.: An ETCI is PE (as interpreted by the 6 Supreme Court's 'framework decisions' *KSR/Bilski/Mayo/Myriad/Biosig/Alice)* if and only if it meets all 5 requirements. Granting a patent on an ETCI not meeting one of these 5 requirements renders the US/NPS inconsistent.[2.a]

.c The notions "**legally** and **totally-robust**" are defined in[354/ftn1.e] as meaning: An ETCI is "**legally robust**" if it is protected by 35 USC/SPL (i.e. rationally passes the FSTP-Test[354,355]) and "**totally-robust**" if its facts are mathematically correctly modeled. The FSTP-Test correctly recognizes for any ETCI its total-robustness. A non-digitized ETCI is in O-KR, i.e. in a prerational/-mathematical KR, and hence is non-robust.

.d Considering the 'D-/PE-/PA-segments' of this FSTP-Test and some COM(ETCI)[2a], its [D/PE/PA]FSTP-Subtest (of evident meaning) decides this COM(ETCI) to be D/PE/PA iff this won't threaten putting the US NPS into jeopardy — enforcing the FSTP-Test's D-/PE-/PA-consistency&robustness.

.e Both institutions and their interpretations of the Supreme Court's framework completely ignore its groundbreaking indication about an ETCI: That it cannot be robustly protected by the pre-*MBA* interpretation of 35 USC §§112/101/102/103 — as this SPL flavor is notionally far too coarse and imprecise for dependably analyzing its indispensably filigree properties, while its post-*MBA* interpretation is sufficiently refined.

Not only any ETCI's but also SPL's O-KR is thus notionally refined into its digitized E-KR, its ETCI-depending resp. ETCI-independent one.

.f For IT experts the *MBA*-framework has much of the System Design[2] principles, thus helping them drafting their ETCIs' specifications. But they also recognize that there is a big gap between their and the CAFC's reasoning in its *Enfish*/*TLI*/… opinions: Their alleged improvements of the technicity of the general purpose computers they use is totally rejected by these experts — there is none. They keep mute for politeness.

But, as initially indicated, an ETCI is mathematically proven (by the structure of 35 USC/SPL[354] and, independent of this SPL-based proof, confirmed linguistically[423] by analyzing the wording of *Alice*'s analysis of the PE-problem) to be D-/PE-/PA-correct[1b)d)] iff it meets the [PE/PA]FSTP-Sub/Test[354,423] — i.e. iff it is 'digitized'[2a)] (using this semiotic term[1a)]). This clearly implies: By not digitizing SPL & ETCIs, both institutions are not 'on the right SPL-track'[c)].

All in all[c)]: There is no other over all ETCIs consistent SPL interpretation than the one underlying the FSTP-Test.

II. An Aftermath: The Semiotics of "Digitized" and the *Oil States* Case.

Digitizing the KR of music was not developed by music-experts but by mathematicians. Digitizing the KR of an SPL-interpretation's PE-consistency[b)] is also not developable by SPL-experts[e)] — though they try[437] (without knowing it).

Putting it more abstractly: This and earlier FSTP-papers outlined why the Supreme Court's (SPL-/ETCI-/*MBA*-) framework ideally meets R&D-investors' needs, also for Biotech-ETCIs. Yet hitherto no compound notions have been available enabling simply and yet clearly presenting potentially complex relations the US SPL and ETCIs are in, e.g. their preceding internal relations elaborated on, or their external relations to non-US SPLs, ETCIs, and patents, or their in- and external relations as in the case at issue, or their fundamental relations to communicating about ETCIs and the refined SPL (discussed below). By contrast, now the adjectives "digitized" of ETCIs and US SPL and "totally-robust" of the US ETCIs communicate a whole series of very substantial national clarifications of SPL-questions and/or international by the US-SPL and the Supreme Court's framework in favor of ETCIs induced IP-advantages. Of these here only the PE-aspect is discussed, i.e. aspects of even much more practical power/importance are left unmentioned. The so emerging "patent technology" will, without question, provide a world-wide boost in innovation economies, first of all in all areas of US Biotech-R&D.

Finally, a very personal word by this author as to ETCIs' and SPL's relation to the currently at the Supreme Court pending "*Oil States* question" may be in place. Its content is perhaps even more important — in the sense of 'more fundamental' — than the preceding clarifications of the usefulness of ●the notion justifying the whole patent system, i.e. of "PE", and of ●the convenience in communicating about this semiotic expansion of the classic SPL[415,423] by these future 'catch-words'.

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[2] .a An ETCI is called "digitized"[1a)] iff it has — in addition to its by its patent (application) always existing O-KR — also an O-/A-/E-KR. As the latter is construed by executing the FSTP-Test on this ETCI, it satisfies requirements 1.)-5.)[1b)].

In the rest of the paper it is assumed that the FSTP-Test is to be executed on 1 COM(ETCI) as the ETCI has only a single one (neglecting a by an FSTP-publication clarified intricacy of SPL about ETCIs, hitherto practically totally ignored in spite of occurring also with CTCIs). Indeed this implies a 6th requirement to be met by an ETCI, in[182] properly integrated on the basis of preceding FSTP pubications.

.b The meaning of the — for the SPL-precedents over ETCIs practically very important (and hence also 'long-shadow') — notion of an over all ETCIs "consistent" SPL-interpretation — also: set of SPL-precedents — is that this interpretation's all criteria applied/used in it comprise only this SPL-interpretation's meanings and these are always the same. Thereby this 'same' means that any ETCI is evaluated to PE or nPE, independent of the legal argument chain ('LAC') that is construed on these criteria, provided this LAC also satisfies 35 USC/SPL of *MBA*-framework flavor. I.e.: it is legally enforceable.

.c Many believers in the current CAFC & USPTO PE-decision policy, based on the latter's almost identical but erroneous (almost except *DDR*) 2-step PE-tests, would probably hope that — even if conceding, consistency is enforceable by the Supreme Court *MBA*-framework's SPL-interpretation — this is possible also for the allegedly only slightly different CAFC & USPTO SPL-interpretations and hence allegedly slightly different 2-step PE-tests. But this hope is wrong.

This is easily proven by ●assuming this conviction were true and ●showing its contradiction in itself. (This below contradiction-proof is independent of the precondition of the just referred to proof in[415], being the ETCI's claim interpretation[1b)]. I.e. it holds even if the ETCI's there claim construction were flawed).

Based on this precondition & contradiction-assumption, a second&different *MBA*-framework-satisfying SPL-interpretation is assumed, and the ETCI is satisfying SPL then on this SPL-interpretations, too.

The said contradiction within the assumption itself of the existence of the second such SPL-interpretation is shown by a (nested) complete induction [over the number m=1,2,3,... of dimensions of the ETCI (over the number n=1,2,3,... of E-crCs per ETCI of dimension m)] as follows: For m=1 ∧ n=1 a second such SPL-interpretation trivially cannot exist. Assuming this is true also for an arbitrary m°>1 ∧ n°>1, it holds for m = m°+1 and n = n°+1, too — by the same reasons (here skipped for brevity). q.e.d.

.d As the consistency-problem[b)] is a mathematical problem (implied by the Supreme Court's *MBA*-framework) its KR is definable only by an isomorphic KR-transformation of an ETCI's Supreme Court's *MBA* framework-O-KR into its refined and here used O-/A-/E-/M-KR — by mathematicians.

I.e.: This and the preceding elaborations proved that and why solely judicial considerations can't directly solve the SPL's PE-problem identified by the Supreme Court's ETCI-framework: This solution namely requires to refine, up-front, the notional raster of the classical SPLparadigm — suitable for dealing with CTCIs — such as to enable it to deal also with ETCIs, requiring this just outlined mathematical KR-transformation.

.e Note a subtlety of SPL by clarifying in what kinds of uses of the FSTP-Test it remains an nPE abstract idea, and how it must be used (and is so used in all below FSTP patent applications) for becoming a part — i.e. the TT0 — of one of its PE applications. The mathematical formula in *Parker's* ETCI[248] is a special case PE decision by the FSTP-test4-7 per se of an ETCI (not comprising an independent inventive concept, i.e. not passing the FSTP-Test), while *Diehr*[307] corresponds to these FSTP patent applications, as any one of them comprises more than 1 independent inventive concepts.

Up-front: The author can't comment, due to his lack of know-how, on the narrowly interpreted and then purely US constitutional question of the *Oil States* case as accepted by the Supreme Court. Yet, he may sketch the inevitable didactical and socioeconomic key implication of solving this narrow *Oil States* question as understood by amicus briefs: To be unrelated to the lesson to be learned from the collective disorientation resulting from trying to cope with the rapid and fast accelerating progress in knowledge creation without performing the corresponding SPL-paradigm adjustment — there in classical SPL, in *Oil States* the classical institutional support of the CAFC and USPTO for fostering US society's all innovative potentials.

This lesson showed both: The driving force of the Supreme Court by intervening into the stand-still in SPL-precedents about ETCIs by its SPL-framework-initiative in favor of ETCIs, just as the reluctance of the classical pacemakers to acknowledge the increasing filigree/fictionality/sophistication of SPL precedents about ETCIs and the need of respective adjustments of the SPL-paradigm. The US Constitution's way out from this malaise seems evident. Congress has, by its temporal and in particular its politically necessarily fragmented profile, no chance to achieve this synchronization to ETCIs' needs. Thus the only sound alternative is to equip the Supreme Court for permanently monitoring/reflecting this for the wealth of the US society crucial process of keeping the interpretation of SPL in sync to ETCIs' needs — as it recently did.

The FSTP-Project's Reference List

FSTP = Facts Screening/Transforming/Presenting (Version of 15.10.2017*)

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