Rationality Returns in the US SPL-Drama – it now has a White Knight.

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Three sessions of the IAM/IPBC conference in San Francisco on last Monday dealt with US substantive patent law's ("SPL's") key aspects – as concerning the US society's wealth[1.a)] – especially with SPL's PE-problem:

- Two of them suggested: "*This house believes that despite recent negative developments, the US remains and will continue to be the driving force of the global patent market*" and "*This house believes that patent quality is a distraction – all that really matters is patent eligibility*". Yet, both panels' audiences surprisingly defeated their statements, probably as just echoing the common dissatisfaction with the inconsistency and unpredictability of patent jurisdiction, erroneously assumed to follow from the Supreme Court's SPL-framework[b)].
- These reservations about the current state of the US SPL-framework strangely prevailed in spite of the first session having a truly fascinating view at this SPL debacle, which has been delivered by the therein recently emerged white knight: The new director of the USPTO. He clearly defends the Supreme Court's SPL-framework! This deserves much attention and hence the below explanations – in particular as his view has been accepted almost enthusiastically[480,481] by this audience, which thus explicitly confirmed all his statements.

His opening statements of this conference[478] were not only an amazingly heartwarming appeal to trust in the innovativity of the US society. They also clarify the wise historical and recent patent precedents of the Supreme Court – by outlining the straightforwardness and simplicity of the *Alice* decision's PE analysis.

Applying the Supreme Court's refined SPL-interpretation, he focuses *Alice's* PE analysis on the question of what the Supreme Court requires to be shown for an ETCI for determining its being PE[d)] – not on the question of what the being is of "PE subject matter" resp. of "^{n}PE subject matter"[d)]. In his opening presentation[478] Andrei Iancu indicated the difference between both questions (i.e. both interpretations of *Alice's* PE-analysis), which implies the indication that it is much easier to answer the question asked by *Alice*'s PE analysis[d)] than the question asked by the USPTO (and CAFC), namely for the being of "PE/^{n}PE subject matter[e)].

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[1].a In *Mayo* the Supreme Court justifies by the US Constitution its refining the interpretation of the US/SPL in favor of ETCIs[b)].

.b To this end the Supreme Court requires using its SPL-framework – defined in its *KSR/Bilski/Mayo/Myriad/Biosig/Alice* decisions – for testing "Emerging Technology Claimed Inventions, ETCIs"[c)] whether they satisfy the requirements stated by 35 USC §§ 101/102/103/112. It thus clearly improved ETCIs' patent protection – by enabling drafting them absolutely robust!!! – and excluded their socioeconomic threat to the US NPS by their total preemptivity (by encapsulating them into an application[d)]).

.c An ETCI is potentially ^{n}PE as comprising an abstract idea and/or a natural phenomenon, otherwise it were a "classic technology" CI.

.d While seemingly being the same, these two questions are procedurally quite different from each other. The question for the being of PE subject matter is metaphysical in the highly speculative sense[470/ftn4.b)]. I.e., it has no rational answer whatsoever[e)].

In contrast, the question for the property of a potentially ^{n}PE ETCI that renders it definitively PE[c)] has a very simple and rational answer: All what this property of an ETCI requires – for rendering this ETCI PE – is that ●"it is based on an ^{n}PE invention that is integrated in any application whatsoever" (i.e. that the former is used by the latter), and "this ^{n}PE invention's nature is by this integration transformed into this application" (not corrupting the former), and ●"this application is significantly more than the ^{n}PE invention", i.e. the former comprises a nonexceptional inventive concept that is new to the ^{n}PE invention and independent of it – hence is indeed significantly more.

Here a warning is in place. The meanings of the latter two requirements stated by the *Alice* decision's PE-analysis imply an intricacy: Their intuitive understanding – as practiced by the USPTO (and CAFC) – assumes they are superfluous for the mysterious PE subject matters[e)]. But this assumption is wrong. It potentially causes for any subject matter not meeting these two requirements inconsistency and unpredictability of SPL-precedents about ETCIs, as proven in[e.g.333,354,355,...].

The meanings of all SPL-terms (in the Supreme Court's SPL-framework interpretation) and of "nature transforming" and "significantly more" are namely unquestionably (meta)rationalizable and mathematizable[470/ftn4.b)], as in[470/ANNEX_2)] best recognizable by the FSTP-Test's lines4-9, first in rational (here English) KR and then in mathematical KR.

.e The Supreme Court nowhere asked for the being/meaning of "PE subject matter" but gets along with the lean rational notions "abstract idea" and/or "natural phenomenon", universally modelable/definable[e.g.5,...] by exceptional "creative/inventive concepts".

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This especially indicates: The USPTO's next PE-guideline will be easy to understand, lead to absolutely robust patents, be fully in line with the Supreme Court's SPL-framework – and encounter nobody's criticism.

This author thus dares to predict – having retired from professional life and currently writing a book about the impact of AI on the socioeconomic innovativity potential of the US NPS, as induced by the Supreme Court's SPL-framework[182] – based on his CV (e.g. on www.fstp-expert-system.com):

"This white knight in the current US/SPL misery will render – if he maintains his thinking/talking/acting – the USPTO to the power house of US innovativity for the decades to come, thus enlightening the US youth brighter and inspiring the US researchers, engineers, and inventors more than ever before."

PS: I received only yesterday an email informing me about the USPTO's most recent PE-Memorandum of 07.06.2018[482]. As I touched this very point in my above statement, I immediately read it – and am very puzzled by the discrepancy between it and what I just wrote about the new PE-development at the USPTO. Two items are particularly irritating. Firstly: While Andrei Iancu's approach to the PE-problem tightly follows the clear guidance provided by the Supreme Court's PE-analysis in its *Alice* decision (as explained above), this PE-Memorandum keeps applying a free-style interpretation of this PE-analysis (as explained above and criticized in[470]) that vastly replaces its Solomonic Supreme Court interpretation by poking around in the dark[470] – emphasizing that this free-style interpretation is practiced by the CAFC, too. And secondly: The author of this PE-Memorandum[482] holds in the USPTO a position in which he ought to know that his director has a quite different view at the PE-problem – yet this PE-Memorandum doesn't explain it. I'm looking forward to the above upcoming next PE-Memorandum for the elimination of this discrepancy.

The FSTP-Project's Reference List

FSTP = Facts Screening/Transforming/Presenting (Version of 19.06.2018*)

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