Sliding Interpretations of AIA-§§ Threaten US Development of Emerging Technologies. Pertinent Supreme Court's Decisions Needed for Stabilizing the US NPS.

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All pertinent experience shows: In Patent Law a vague/metaphysical[e.g. 470ftn4.b)] notion[e.g. 480ftn2.c)] is usually notionally 'refinable'[1.a)d)/2.f)] by the conjunction of its atomic/elementary notions such that the original vague meaning is preserved but clarifiable/-ed[b)] and all these factual and legal atomic/elementary notions are rationalizable.[c)]

Here holds: ●The Supreme Court notionally semiotically refined (by its unanimous 'framework'-decisions[c)]) the vague[b)] 'Substantive Patent Law, SPL', for thus enabling consistently predicting the SPL-satisfaction of any ETCI[d)]. ●The Congress refined (by its AIA's 'IPR'/'CBM'/'PGR') the vague 'Procedural Patent Law, PPL', for thus enabling precisely describing how to deal by the USPTO with potentially erroneously (to be) granted patents.[c)]

Both refinements meanwhile lead ETCI investors to shocking cognitions[e)] that urgently need the Supreme Court's intervention: Currently both refinements namely achieve practically exactly the opposite of what they have been designed for and thus meanwhile start exerting disastrous impacts on 1. the investor community, 2. the pro-patent/-framework share[2.g)] of the patenting community, 3. the USPTO, 4. the PTAB, and 5. the CAFC (this not discussed here) – by depriving the US NPS of its trustworthiness for such investments.

This holds especially for investments into the broad area of life-cycle/molecular-biology/…./nano-tech ETCIs. These are on the one hand of huge socioeconomic impacts but on the other hand of long-term/high-volume/high-risk. Such investments and their ETCIs are evidently of highest sensitivity for the manifold serious threats of trustworthiness of the US NPS that currently emanate from each of the two bullet points – as explained next.

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[1].a The existence of this refinement[b)] is here shown by the *Myriad* patent and abbr. PE-testing of its DNA-based ETCI[d)], again[483].

Each *Myriad*-ETCI deals with testing ●a tissue-probe exposed to a natural phenomenon found on it and thereby using ●a marker capable of .)detecting the modification of this probe at its exposition to this natural phenomenon and of :)indicating to the tester this modification. The first point represents an exceptional and definitively 'elementary creative concept, EcrC', the second point a not necessarily elementary and/or 'creative concept, ncrC' – for crC and ncrC see FSTP-Test[483] – that is **independent** of this EcrC[d)/2.f)]. Not separating these independent concepts from each other – as the USPTO's PE-guideline and the CAFC do, i.e. batching them together into a single exceptional compound concept and thus contradicting its necessarily required separation for their preciseness – disables *Alice's* 'search' from finding the 'inventive concept' required by *Alice's* PE-analysis: By this independent ncrC (in thiisETCI being a crC) this inventive concept exists in the *Myriad*-ETCI.

By contrast: As the IES[352,444], its resp. *Myriad* decision clearly contradicts the Supreme Court's framework.

.b Due to the Supreme Court's framework reinterpretation of 35 USC/SPL[c)], its a priori framework meaning is here denoted as '**vague**' (i.e. metaphysical) and its a posteriori meaning as '**refined**'. Framework-based (i.e. refined) SPL-statements are of a hitherto unknown notional clarity. Yet, using it is not quite trivial. This drawback is over-compensated by getting familiarized (by this clarity's use) with the logical interrelations existing between the then used notions of SPL & ETCIs – namely the refined ones. Today users are totally unaware of these refined notions – in their reasoning about 35 USC – and this awareness's indispensability.

The reason for this indispensability is fundamental. Namely, even if the result of today's vague reasoning about an ETCI – currently practiced in any court dealing with SPL's framework[c)] – coincides with the result in refined reasoning, the former lacks any credibility, while the latter's truth is as unquestionable as is a mathematical theorem proven mathematically (colloquially speaking[9], see this author's C.V.).

.c The Supreme Court's line of unanimous framework decisions, *KSR/Bilski/Mayo/Myriad/Biosig/Alice*, adjusted the interpretation of Substantive Patent Law ('SPL') – of 35 USC §§ 101/102/103/112 – to the notional preciseness needs of ETCIs[d)] and thus increased their patents' legal robustness, i.e. established their being totally '**robust**'[e.g. 354,433]. By its framework decisions, the Supreme Court induced founding the *TELES PRI* GmbH for the 20+ M US$ FSTP-R&D-project in Berlin in immediately after the *KSR* & *Bilski* decisions – privately funded by this author and his R&D-foundation. The reason being that by the time of launching it there was no other mathematician yet sufficiently familiar with the foundation of Mathematics/Physics, with[2] and the resp. parts of philosophy, and with US/SPL/framework for evaluating this project's objectives scientifically – which meanwhile showed that the refined SPL and its ETCIs notionally represent a rational/mathematical science[182] (as envisioned by Kant).

By contrast, the pre-framework SPL and its ETCIs are unconditionally metaphysical/vague. Hence, the framework by its notional refinement changes nothing of both of them, but solely enables their rational/complete KR[2]. I.o.w.: It changes nothing in patent law – but just clarifies SPL's hitherto vague notions, i.e. those of ETCIs[485]).

.d 'Emerging Technology Claimed Inventions, ETCIs' always ●are of 'model-based', i.e. vastly fictional, subject matter, hence ●embody an abstract idea and/or a natural phenomenon as by the framework[c)] defined, and therefore ●based on notionally appropriately refined SPL as otherwise key framework-notions, e.g. **independence of crCs**[a)/2.f)], cannot be determined for many ETCIs. These will soon by far outperform 'Classic Technology CIs, CTCIs', economically and by volume, as expanding over many more and much larger areas of life than CTCIs.

.e – discussed at the IP-WATCHDOG's small but excellent insider meeting in DC by the end of July –

This disastrous impact on the trustworthiness of the US NPS to protect such investments is not caused by start-up difficulties[2.a)] – even if lasting a few years – i.e. by initially interpreting by only vague notions of

- cognitive kind the by the Supreme Court's framework §§ semiotically[e.g. 480ftn2.c)] refined original SPL-notions[b)], and
- organizational & cognitive kind the by Congress in its AIA's IPR/CBM/PGR §§ refined original PPL & semiotic SPL[c)],

i.e. both unavoidably to be reiterated repeatedly, due to their worldwide unique and far reaching novelty[d)].

It is caused, as broadly felt at the IP-WATCHDOG meeting[1.e)], by both issues' message. They tell: The preceding page's parties 2.-5. vastly ignore, as regards content, what the US Constitutional authorities have decided[e.g. 483, 480]. While 2.-5. practice lip services assessing that their actual efforts are in line with Congress and the Supreme Court, they substantially deviate from these decisions[e.g. 483, 480]. This excludes that investors' trust in the US NPS would re-establish itself – based on agreement within the parties 2.-5. – in spite of Andrei Iancu's excellent gift to make this wish come true.

Footnote[e)] outlines for each of both kinds of such SPL-/PPL-refinement embarrassments only the for investors most frustrating message, i.e. the PE- and the IPR-problem disaster. They suffice for showing that increasing patent protection of investments in ETCIs and accelerating granting ETCI patents (and improving their quality and also that of the USPTO) indispensably requires both issues' rationalizations (in the general case necessarily based on refinement)! Otherwise, the currently catastrophic human reiterations of both kinds of refinements must logically remain disoriented as they actually are, since years – as nonrefined SPL is with many ETCIs[1.a)] unable to meet the Supreme Court's requirements[f)]. Thus, the meanwhile clear questioning of the trust in the US NPS by the investor community – as to protecting investments into developing ETCIs – remains fatally self-enhancing.

In total: ●This mail's upper headline briefly indicates the current disaster with the US NPS as such. The broad ETCI-anti-patent fraction[g)] within the US patent community successfully alienates potential fresh investors as to the robustness of patent protection by the US NPS for their investments into emerging technologies – thus monopolizing them for their incumbents. This threatens in the US further competitive development of ETCIs. ●Its second line states a for the US fundamental requirement: That, for prevailing over this evidently powerful fraction,

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[2] .a inherent to introducing such non-trivial notional refinements in large organizations running anyway complex processes, such as the USPTO.

.b whereby the Supreme Court quite openly invited anybody to reiterate its framework refinement in the latter's light[e.g. 480ftn1.b)]. What the FSTP-Project did[1.c)].

.c – whereby the crucial point is that by logical reasons the definition of whatsoever 35 USC/PPL semantics reconsidering the lawfulness of a (to be) granted US patent necessarily rests on 35 USC/SPL and the latter's just discussed refinement, i.e. excluding settling the former prior to the latter.

.d Unlike the US Supreme Court, hitherto worldwide no NPS has noticed that there is a framework for ETCIs that enables the scientification of its SPL – and thus enables absolutely robust patents and by AI (semi-)automatic testing patent(application)s[e.g. 433].

.e While subsequently only 1 disaster is outlined for each of both kinds of problems, there are several more potential disasters for each kind – e.g. the SPL- & PPL-problems of pathology or enabling-disclosure resp. of *Teva*-analogy or institution-details – omitted here[182].

1.): The PE problem. By various versions of its 'PE-Guideline', the USPTO (supported by the CAFC) dragged all the US patent community, as to determining an ETCI's PE/^{n}PE, onto a wrong track[470]: It misunderstood the PE-analysis provided by the *Alice* decision – ignoring crucial parts of its specification[480] – to be the PE-test required by the Supreme Court (in truth contradicting it).

On the other hand, the USPTO (and CAFC) refuse since [160,296] to notice that the Supreme Court by its framework implies the scientification of the (refined) US SPL, which in turn implies the FSTP-Test[e.g. 300,301,...,483] as the necessary&sufficient rational/mathematical PE-test of any ETCI – which trivially has scientifically for ever terminated[182] this incredible PE-battle[486] about the Supreme Court's Solomonian PE-analysis in *Alice*.

What here is remarkable about the meeting[1.e)]: Someone repeated the well-known Supreme Court bashing for its *Alice* decision as it allegedly is 'anti-patenting' of inventions[g)]. This author countered by clarifying the just said: That this criticism of the Supreme Court's *Alice* decision is wrong as based on the latter's as grossly as evidently under-interpretation by the USPTO's (and CAFC's) "2-stepPE-test" (see above), hence being untenably legally erroneous. The participants' opinions were split[g)] – i.e. some were clearly approval.

2.): The IPR problem. No consistency-enforcing mechanism in place for the potentially several hundred PTAB boards.

.f – e.g. to determine whether an ^{n}PE invention's/TT0's application is by its independence of the TT0 significantly more than TT0[1.a)d)].
This determination is rationally/mathematically and hence automatically derivable from any ETCI's specification COM(ETCI)[483]!!!

.g The anti-patenting fraction is indeed much larger and much more powerful than recognizable at first glance. There namely are the since ever existing and today phony fractions of ideological opponents, many IT-start-up enterprises by practical reasons, and muddy water preferring and silent law firms, just as opponents to expanding SPL from CTCIs to ETCIs as worrying about moral and/or legalistic reasons.

Though, virtually all large pharma enterprises – and allegedly also Microsoft and Oracle, and who else from the IT-area? – are against limiting the scope of ETCI-patents, as the Supreme Court indeed requires, only to the applications known and enablingly disclosed therein. Yet, relaxing this limitation would not only disable the advantages of the actual framework, but also spoil the predictability/consistency of SPL decisions.

Andrei Iancu – having already clearly targeted these PE-/IPR-(and implicitly CBM-/PGR)-problems – will need legislative support by the Supreme Court, as Congress can't provide it in due time. Leaving him alone in fighting this battle, by not granting him legislative unmistakable support, might turn out as risky for the Supreme Court's framework effort to adjust the US NPS to what is needed for securing the US society's wealth.

The FSTP-Project's Reference List (Version of 18.08.2018)

Most of the FSTP-Project papers below are written in preparation of the textbook[182] – i.e. not fully self-explanatory independent of their predecessors.

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[2] AIT: "Advanced Information Sciences & Tecnologies" or "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 & MKR: "Mathematical Artificial Intelligence & Mathematical Knowledge Representation", i.e. the resilient fundament of AI, AIT, and "Facts Screening/Transforming/Presenting, FSTP"-Technology, both developed here.— currently much of the latter still in a 'status nascendi'[182]

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*) ***documents and full list available at*** www.fstp-expert-system.com