Andrei Iancu's Serious § 101 Challenge — Becoming his § 101 Success Story?
The USPTO's Recent Claim Interpretation May Render *Alice's* § 101 Test as Patent Champion.

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The USPTO's 'old' claim interpretation, the "Broadest Reasonable Interpretation, BRI" [1.a)], insinuated for an ETCI's patent(-application) a for inventors and investors disastrous PE-deficiency, fortunately untrue[e)f)]: That an ETCI can only be determined PE if it is BRI interpreted — solely by the USPTO's will[479,480]. By its pertinacious repeating this untruth, it practically barred the established SPL-experts from finding the PE-solution, as the BRI totally ignored the key feature(s) A (and B) of PE[c)] — as the Supreme Court asked for it[d)] and it by the PE-analysis in *Alice* explicitly outlined (as explained below).

The USPTO has recently induced — after all the permanent public complaints about BRI's many misleadings in claim interpretations[e)f)], by its eventually having changed over to the "*Phillips*" claim interpretation[482], and as of[c)] — the key cognition: That clarifying A (and B) is crucial for consensually ending the PE-dilemma. This clear 'de novo' interpretation of the terms '*application*' and 'inventive ^{Alice}concept" on page 7 in *Alice's* PE-analysis (after having announced both by[d)]) mandatorily leads to these terms' meanings consistent to the Supreme Court's pertinent elaborations in ●*Mayo* and ●*Myriad*'s final pages: This very wide interpretation of the framework's key term '*application*'[g)], as refined by the Supreme Court in its *Alice* decision, namely ideally complements the notion of '*inventive concept*'[495ftn3.c)] — for clarity called "inventive ^{Alice}*concept*"[g)]. It indeed eliminates the by the Supreme Court in *Bilski/Mayo/Myriad* clearly identified big problem of patenting ETCIs that they may threaten by total preemptivity the entire US patent system (and amazingly achieve this by minimal invasivity into it[480]).

In total[b)]: For an ETCI its embedded ^{n}PE '*Alice*-invention' and any "*application*" of the latter (as just defined, potential or actual), each to it belonging inventive ^{Alice}*concept* can easily be determined — if there is one, *Alice* requires only one such pair — as each of them must by *Alice's* definition occur in the ETCI and be basically independent[488ftn1.b)] of the set of concepts of this ^{n}PE invention[488ftn2.b)]. It is crucial to note that any such inventive ^{Alice}concept identifies not only a single "primary" application — by *Alice*'s PE-analysis of an ETCI and its thereby first and/or incidentally encountered primary application (of the ETCI's embedded ^{n}PE invention meeting the additional requirements ex- and/or implicitly stated by this ETCI's PE-analysis[483]) — but a usually much larger set of "secondary" applications for these inventive ^{Alice}concepts[h)].

I.e.: Andrei Iancu's new claim interpretation launched the consensual termination process of the § 101 dilemma.

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[1].a By the definition of an element of a claim's BRI[483] this element is an interpretation of this claim iff it is an interpretation of this claim in its light — whereby this 'claim's light' is an indefinite as transcendental term[489ftn2)]. Alone this property of the meaning of the term BRI must exclude its use in patenting business. By contrast, this claim's *Phillips* interpretation is defined metarationally, as this interpretation's definition comprises only metarational terms[489ftn2)].

.b W.l.o.g. and solely for brevity, this mail assumes that there are no ETCIs with identical or synonymous COM(ETCI)s[489FFigs.a) and b)].

.c In hindsight and by the *Phillips* claim interpretation[488] of an ETCI, the wording of the paragraph[d)] — referring to the PE-problem — shows that the Supreme Court had recognized already at its *Alice* hearing that A) the application(s) of the ^{n}PE invention embedded in the ETCI at issue would play the key role in solving the PE-problem, as B) in *Bilski/Mayo/Myriad/Biosig* required, based on the ETCI's 'inventive ^{Alice}concepts', and here is elucidated. The Supreme Court thereby nowhere required that an ETCI has only a single pair <application, inventive ^{Alice}concept> — which is the message of this mail, is of decisive importance for inventors and investors, and implied by the Supreme Court's framework.

An example: Let the patent(-application) at issue deal with an ETCI being a 'pharmaceutical application, A' of an ^{n}PE invention, as *Alice's* PE-analysis assumes (see above). The BRI — since decades used by the entire patent community solely for finding a single obvious interpretation put together by prior art disclosures rendering this ETCI anticipated — would analogously search for one pair <application, inventive ^{Alice}concept> only, which now would render this ETCI PE. And: The USPTO just as the CAFC nowhere mentioned that having several such pairs may be very advantageous as of so increased economic potential. Thus, the BRI is for inventors & investors very disincentivizing'. I.e., it contradicts the Supreme Court's requirement to foster 'innovative activities of inventors and investors (see its *Mayo* decision).

By contrast to the BRI, the *Phillips* claim interpretation is in line with the *Alice*'s PE-analysis: The interpretation's of its wording has a meaning."*… that is sufficient to ensure that the patent in practice* [i.e. the ETCI] *amounts to significantly more than a patent upon the [ineligible concept] itself.* "). And it enables by *Alice's* PE-analysis to distinguish, for an ETCI, between its 'primary & secondary application(s)' — as explained in the main text.

.d Justice Breyer[69]: "*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 boats' 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] 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…*" [highlights added]

.e Justice Ginsberg[81,127] (as to the BRI's untenability): "*It cannot be sufficient that a court can* [always] *ascribe some meaning to a patent's claims … post hoc*", as the Constitution authorized "*…to inventors the exclusive right to their discoveries, ..*" [highlights added]

.f Chief Justice Roberts[279] (as to the coexistence of the BRI^{USPTO} and the BRI^{CAFC}[56]): "*…it's a very extraordinary animal in legal culture to have two different proceedings addressing the same question that lead to different results. …. I'm sorry. It just seems to me that's a bizarre way to decide a legal question …*" [highlights added]

.g This entire set of inventive ^{Alice}*concepts* just as any subset of it is also called this ETCI's inventive concept.

.h The width of this '*application*' understanding in *Alice's* PE-Test would — with all likelihood — render it totally consensual in the patent community, especially for patent(-application)s in the CRISPR and alike R&D and investment areas, because of their numerous applications (provided their ETCIs specify them).

The FSTP-Project's Reference List (Version of 14.11.2018)

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[2] AIT: "Advanced Information Sciences & Technologies" 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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