

An Easy Question About § 101.

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On May 4, 2021, B. Nese & A. Gelsleichter^[632] told in IP WATCHDOG the patenting community by an article that the “**High Court is Poised to Un-Muddy the Section 101 Waters ...**” – hence this easy question, also provoked by their article. Therein they namely reported that D. Kappos and P. Michel, together with Senator Tillis •filed an amicus brief recently to the Supreme Court, dealing with Section 101, which •stated the novelty that the “‘*disparate and inconsistent application*’ of the current Section 101 jurisprudence has led to ‘an unpredictable and unstable patent system’”. This novelty deserves the following comment.

The underscored statement is a keen embellishment of the inconvenient truth: The ‘*disparate and inconsistent application*’ of § 101 did NOT lead to ‘an unpredictable and unstable patent system’. But, it was the CAFC’s (& USPTO’s) gross & permanent misinterpretation^[622ftn2.b] of the Supreme Court’s SPL framework that has led to ‘an unpredictable and unstable patent system’.^{1.a)}

The Supreme Court by its *Alice*’s PE specification clearly required adjusting the classic SPL to ETCIs’ needs, due to their future socioeconomic highly crucial role for the US^{b)}:

- The exact result of this by the Supreme Court required adjustment, i.e. its SPL framework (obeying its invitation^[480ftn1.b]), takes the classic SPL to a much higher level of development – as it enables, for any ETCl, e.g. to automatically testing it by the FSTP-Test for its PE & PA, then guaranteeing that its patent is absolutely robust, ...^[390_last_sentence].
- It enormously increases ‘ordinary’ innovativity, as it provides complete addressing schemes for systematically/scientifically creating & locating & unfolding immaterial inventions in this ‘8th earthly continent of intellectual mPhys^{a)} natural phenomena and/or abstract ideas’^[573p3_p4].

Thus, ‘**R&D based**’ innovativity will remain the only business area enabling US society’s wealth – due to future vastly fully automated production, agriculture, transport, everyday living, ..., AI.

^{1.a)} as both authorities did not recognize that the Supreme Court had to require for a ‘wild’ ETCl – for acronyms see^[622ftns] – a paradigm expansion for mapping it into SPL. Any such ETCl namely embodies by definition some Metaphysics; i.e., they by Logic inevitably comprise an elementary ‘natural phenomenon’ or ‘abstract idea’, modeled by an ‘**exceptional creative concept, E-xcrC**’^[621]. Its mathematical elementary ‘metamorphosis axiom’ transforms this ETCl’s Metaphysics into its specification’s Rationality, i.e. is •cognition theoretically well founded, •in Kant’s perception of science ‘historically occurred’, •here manifested by the Supreme Court’s PE specification in *Alice*, & •implemented in FSTPtech’s^{2.a)} FSTP-Test.

^{1.b)} The 6 unanimous Supreme Court SPL framework decisions^{2.a)} explain in *Mayo/Myriad/Alice* ex- and/or implicitly, what is required of an ETCl’s specification for its being PE, as stated by this ETCl’s PE-Test.

Metaphorically summarizing, the Supreme Court leads its chosen people Moses-like^[Wikipedia] out of captivity into the Promised Land, and not to a golden calf but to God's 10 commands. ^{2.a)}

By contrast, the CAFC(& USPTO) by its(their) decisions contributed nothing to adjusting the classic SPL to the needs of ETCIs, as the Supreme Court often required. They both held on to the mPhys 'Egypt captivity' alias 'classic SPL', instead of elaborating on the Supreme Court's Rat^[622ftn4.b)] PE. They both thus have blocked out their well-founded cognition that the SPL framework problem is of Kantian^[622ftn1.d)] scientificity alias mathematicity, as the Supreme Court required an ETCI SPL framework's meaning to be of Rat, if concretized by its PE-Test. Mathematically proven in^[622SecII.].

Thus, this mail's statements inevitably raise the above easy question: Will the CAFC really maintain its interpretation of the Supreme Court's PE specification in *Alice*, i.e. its meaning of an ETCI's PE? And the USPTO, too? Both authorities are highly estimated and just got a new 'chief federal judge' resp. 'director'. Now, after a (pretty) detailed mathematical proof^(b) of both authorities' gross failures^[622ftn2.b)] this might be an elegant way for both of them to change over to the Supreme Court's requirements of ETCIs' needs – for no longer hampering enabling US society's wealth.

Partial Reference-List of FSTP-Emails

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|------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| [495] S. Schindler, B. Wittig: "UC's vs. Broad's CRISPR Patents ...", Part III, publ. 30.01.2019") | [626] S. Schindler: "FSTPtech Basics in COVID-19ETCIs", to be publ. in Q3/2021 |
| [573] S. Schindler: "A Hitherto Unnoticed AI Requ. Met by the USSC's PE Philosophy ...", publ. 10.12.2019") | [627] S. Schindler: "Sequ. Patent Examination' can't Fix USPTO's(&CAFC's)§101Errors.", publ. 19.04.2021") |
| [586] S. Schindler: "AI-Hesing an ETCI Warrants Much Better Information than its PE-Test...", publ. 09.01.2020") | [629] D. Shores: "The mRNA IP and Competitive Landscape ...", IP-WATCHDOG, 11.04.2021") |
| [596] S. Schindler: "AI Facilitates Testing v ETCI for PE & PA — Aut. or AI-Theorem", publ. 10.03.2020") | [630] S. Schindler: "Patenting an Only Sequenced ETCI", in prep. |
| [619] S. Schindler: "The Meaning of Any ETCIs' Appl., 'Inventive Con.', & their Scientif.", publ. 12.05.2020. | [631] S. Schindler: "An Easy Question About § 101", this mail, publ. 30.05. 2021") |
| [621] S. Schindler: "Patent Business – Before Shake-up", publ. 14.04. 2021") | [632] B. Nese et al: "High Court is Poised to Un-Muddy the Sec. 101 Waters", IP-WATCHDOG, 04.05.2021") |
| [622] S. Schindler: "The CAFC's ETCI Precedents is of MetaPhysical SPL ...", publ. 02.03.2021") | [633] S. Schindler: "An Urgent Note about the Dram. Notional Gaps in Patent. COVID-19 ETCIs", in prep. |

^{*)} The complete Ref List on www.FSTP-expert-system.com.

^{2.a} For facilitating understanding this mail's reasoning, this footnote explains some more ETCI context.

As explained in^[495,....,622 et al.], 'FSTPtech' is a scientific implementation of the US Supreme Court's 'SPL framework' specification in terms of IT's very popular 'system specification & structuring' technique. This technique has been created in the 70s/80s for the technically very intriguing area of 'Operating Systems' design, has terminated the then broadly raging 'software disaster', thereafter became underlying each & any practiced modern design technique, and since the 90s is worldwide unique.

By the turn of the millennium, the US Supreme Court recognized – as the first highest court, worldwide – that the advent of ETs rendered the classic SPL interpretation untenable, due to ETCIs' new properties, e.g. a crC's 'exceptionality', i.e. its being partially unknown^[621SecII.]. After rejecting several of its decisions by the CAFC (as it did not refine the classic SPL interpretation), the Supreme Court reinterpreted on its own by its famous foresighted line of 6 unanimous decisions, a notional refined SPL framework – in *KSR/Bilski/Mayo/Myriad/Biosig/Alice* – as a notional (then sufficient^{[622,627])} refinement of classic SPL interpretation.

The Supreme Court thus provided, by its inducing the ●FSTP-Project, the fundament for meeting ETCIs' patent protection needs and therein creating the ●FSTPtech. By means of the latter, complete ETCI specifications are principally legally & factually totally robust – by the coarser classic SPL impossible – due to the notional new subtlety of this PE ETCI area^[495,622 et al.]. All being enabled by FSTPtech's amazing semantics.

^{1.b} While this mathematical proof is next to trivial (and hence kept briefly), it yet requires familiarity with the foundation of Basics of Mathematics^[182] that indispensably is based on Mathematic Philosophy, i.e. Mathematic Cognition Theory – as any mathematical science, e.g. Mathematical Physics^[182].