Alice Alice …

At the end of its session, the Supreme Court released its opinion about the final patent related case of the session: Alice Corporation Pty. Ltd. v. CLS Bank International et. al.

The facts of the case are fairly straight forward.

CLS Bank facilitates currency exchange transactions. Specifically, CLS Bank acts as an intermediary for currency exchange contracts. The purpose of this intermediation is to protect against settlement risk, or the risk that a party will pay out the currency they sold, but will not receive the currency it bought. In short it is the risk that one of the partners will take the money and run. The idea of the intermediary is that both parties provide their currency to a third party who holds the currency in escrow until the both parties complete their transactions.

This is not a new idea. In fact, the Supreme Court opinion references a text written in 1896 that describes the concept in detail.

Alice Corporation received patent 5970479 that patented the concept of a computer program that automated the job of an intermediary. The patent protected the following algorithm:

1) Receive contract information input from a first party;
2) Receive contract information input from a second party;
3) Link the two inputted contracts together; and then,
4) Close and settle the contracts.

Once Alice Corporation got this patent, they went to town with patents 6912510, 7149720, and 7725375 to bolster this protection from every imaginable angle.

The Supreme Court ruled that the Alice patents were invalid. The court could have taken the simple route and ruled that applying a generic computer algorithm to a well know procedure is too obvious to get a patent. Instead they ruled that Alice was ineligible for a patent because it was an abstract idea.

This ruling goes straight to the heart of what can be patented. For years, the rule has been that to get a patent the invention must be a process, machine, manufacture, or composition of matter. The exceptions to this rule are that laws of nature, natural phenomenon and abstract ideas cannot be patented. While inventions can be based on newly discovered laws of nature, natural phenomenon and abstract ideas, to qualify for a patent they typically have to be applied to or turned into a process, machine, manufacture, or composition of matter.

The grey area here has been business method and software patents. In previous decisions, the Supreme Court has ruled that business method and software could, in the right circumstances, be patentable. With this ruling, the Supreme Court has simply said that in the wrong circumstances business methods and software will not be patentable. Unfortunately, they left it to the lower courts to figure out what the appropriate circumstances will be.

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