

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2007-1130  
(Serial No. 08/833,892)

IN RE BERNARD L. BILSKI  
and RAND A. WARSAW

Appeal from the United States Patent and Trademark Office, Board of Patent Appeals and Interferences.

Before MICHEL, Chief Judge, NEWMAN, MAYER, LOURIE, RADER, SCHALL, BRYSON, GAJARSA, LINN, DYK, PROST, and MOORE, Circuit Judges.

PER CURIAM.

### ORDER

This case was argued before a panel of this court on October 1, 2007. Thereafter, a poll of the judges in regular active service was conducted to determine whether the appeal should be heard en banc.

Upon consideration thereof, IT IS ORDERED THAT:

The court by its own action grants a hearing en banc. The parties are requested to file supplemental briefs that should address the following questions:

- (1) Whether claim 1 of the 08/833,892 patent application claims patent-eligible subject matter under 35 U.S.C. § 101?
- (2) What standard should govern in determining whether a process is patent-eligible subject matter under section 101?
- (3) Whether the claimed subject matter is not patent-eligible because it constitutes an abstract idea or mental process; when does a claim that

contains both mental and physical steps create patent-eligible subject matter?

- (4) Whether a method or process must result in a physical transformation of an article or be tied to a machine to be patent-eligible subject matter under section 101?
- (5) Whether it is appropriate to reconsider State Street Bank & Trust Co. v. Signature Financial Group, Inc., 149 F.3d 1368 (Fed. Cir. 1998), and AT&T Corp. v. Excel Communications, Inc., 172 F.3d 1352 (Fed. Cir. 1999), in this case and, if so, whether those cases should be overruled in any respect?

This appeal will be heard en banc on the basis of the original briefs and supplemental briefs addressing, inter alia, the issues set forth above. An original and thirty copies of all briefs shall be filed, and two copies served on opposing counsel. The parties shall file simultaneous supplemental briefs which are due in the court within 20 days from the date of filing of this order, i.e., on March 6, 2008. No further briefing will be entertained. Supplemental briefs shall adhere to the type-volume limitations for principal briefs set forth in Federal Rule of Appellate Procedure 32 and Federal Circuit Rule 32.

Any amicus briefs will be due 30 days thereafter. Any such briefs may be filed without leave of court but otherwise must comply with Federal Rule of Appellate Procedure 29 and Federal Circuit Rule 29. Oral argument will be held on Thursday, May 8 at 2:00 p.m. in Courtroom 201.

FOR THE COURT

February 15, 2008  
Date

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

cc: David C. Hanson, Esq.  
Stephen Walsh, Esq.