

Making the Abstract Clearer after Bilski v. Kappos

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In *Bilski v. Kappos* the Supreme Court rejected the machine-or-transformation test as an exclusive test and directed the Court of Appeals for the Federal Circuit to develop additional criteria for determining what constitutes a patent eligible process. Rather than determining patent eligibility of a process with a multitude of tests each of which are "clues" that a process is not abstract, the Court of Appeals should develop a test to identify when a process is an abstract idea. This paper presents a new test to determine when a process is abstract. This test furthers the purpose of the patent act and is consistent with Supreme Court precedent.

A claim for a process recites only an abstract idea when the claim describes the idea solely in terms of results without specifying how to achieve the results. Even if the claim specifies how to achieve the results, the claim is still abstract if the claim is wholly directed to an algorithm. The result itself may be specified explicitly or implicitly; however, the manner by which the result is achieved must be explicitly recited in one or more steps. Thus, a claim is directed to an abstract idea when the claim is missing details regarding how to achieve a result.