Re: Amicus Brief Requesting Cert in Alice v. CLS

To Whom it may concern,

There is currently confusion with respect to the patent eligibility of computer-implemented inventions. In a recent *en banc* Federal Circuit case, *Alice v. CLS*, the Federal Circuit caused even more confusion. The *en banc* hearing and opinion were meant to address whether a computer-implemented claim is patent eligible under § 101. While the Federal Circuit handed down a 135-page decision in an effort to set the record straight on what can and cannot be patented under § 101 of the Patent Act, the ten judges could only agree on 55 words. The one-paragraph *per curiam* opinion, including the concurrences and dissents, is attached.

The decision in *Alice* is currently being appealed to the Supreme Court. The question presented by the petitioner is: "Whether claims to computer-implemented inventions including claims to systems and machines, processes, and items of manufacture are directed to patent-eligible subject matter within the meaning of 35 U.S.C. § 101 as interpreted by this Court?" If answered by the Supreme Court, this case has the potential to clarify and eliminate much of the confusion plaguing the lower courts.

In an effort to encourage the Supreme Court to grant *certiorari*, the attached amicus brief was drafted to encourage the Supreme Court to take this case and explaining the confusion. The amicus brief was drafted neutral on the merits such that any company or organization – regardless of their views on § 101 – can sign onto the brief.

We invite your company or organization to sign onto the brief.

There is no cost to signing onto the brief.

The deadline for filing is Monday, October 7th. Therefore, please contact Jay Knobloch or Steve Borsand (contact information below) on or before Thursday, October 3rd if you are interested in signing onto the brief.

Below are some of the frequently asked questions related to the amicus brief and the case.

Question 1: Are there other companies signing onto the brief?

Answer 1: Yes, there are other companies and the list is growing daily.

Question 2: The claims in *Alice* pertain to financial services (e.g., shadow accounts). My company's patent portfolio does not relate to financial services. Why should I care about *Alice*?

Answer 2: The question presented (see above) by the petitioner, relates to computer implemented inventions – across all industries. As such, the *Alice* case relates more generally to claims directed to computer implemented inventions; not just claims related to financial services. The Supreme Court's decision in this case will likely impact all industries that use computer implemented claims. Furthermore, the case will also likely impact even patents that do not recite

computer elements because the rationale for determining what is "abstract" can impact any patent, and especially any method claim, regardless of whether it is software related. Finally, it is entirely possible that the Supreme Court also takes *Ultramercial*, which is also on appeal at the Supreme Court. The claims in *Ultramercial* do not relate to financial services. Instead, they relate to distributing copyrighted material (e.g., songs or movies) across the Internet.

Question 3: *Ultramercial* and *Bancorp* are being appealed (or will likely be appealed) to the Supreme Court as well. Is this the proper § 101 case for the SCOTUS to review?

Answer 3: Yes, for several reasons. First, the Federal Circuit was unable to agree on the proper analysis for § 101 pertaining to computer implemented inventions. Second, the other § 101 cases on appeal, *Banc Corp* and *Ultramercial*, only include processes claims. Alice includes both system and process claims. Third, all the claims are computer implemented. There was stipulation – by both parties – at the District Court level that all of the claims at issue are computer implemented.

Question 4: What if I don't agree with the other companies on the merits regarding § 101?

Answer 4: Perfectly fine. This brief is meant to be neutral with respect to the merits. The goal was merely to point out the confusion with respect to analysis of "abstract ideas" under § 101. Every company or organization is free to argue whatever position in the event that the Supreme Court takes this case.

Question 5: Is Alice a patent troll?

Answer 5: Not that it matters because this case will likely set precedent for all computer implemented claims (regardless of the assignee) but, no, Alice is not a patent troll. Ian Shepherd is the named inventor on the patent and is still a major shareholder.

Please feel free to contact Jay Knobloch or Steve Borsand with any further questions.

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