

2014

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### Recommended Citation

Pamela Welch, *Stalemate: Patent Eligibility*, 17 SMU SCI. & TECH. L. REV. 81 (2014)  
<https://scholar.smu.edu/scitech/vol17/iss1/6>

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# Stalemate: Patent Eligibility†

*Pamela Welch\**

American common law has long endeavored to “promote[ ] the even-handed, predictable, and consistent development of legal principles, foster[ ] reliance on judicial decisions, and contribute[ ] to the actual and perceived integrity of the judicial process.”<sup>1</sup> *CLS Bank International v. Alice Corporation*<sup>2</sup> presented the Federal Circuit Court of Appeals, sitting en banc, with a prime opportunity to promote the predictable and consistent application of patent law principles, by delineating a proper test to apply when determining whether an invention is patent eligible under § 101 of the Patent Act.<sup>3</sup> Specifically, the issues on appeal in this case related to computer-implemented inventions. The court was tasked with: (1) identifying which test to adopt when “determin[ing] whether a computer-implemented invention is a patent ineligible ‘abstract idea;’” (2) determining under what circumstances, if any, “the presence of a computer in a claim lend[s] patent eligibility to an otherwise patent-ineligible idea;” and (3) deciding whether classification of a claim as a method, system, or storage medium should affect assessment of patent eligibility under § 101.<sup>4</sup>

This en banc decision resulted in no majority opinion, rather five fractured opinions, along with “additional reflections” filed by Chief Judge Rader. These diverse opinions indicate the Court’s struggle to agree on how to apply the law in determining patent eligibility. As the only appellate court that hears patent eligibility and enforcement cases, the Federal Circuit Court is in the best position to interpret what is and is not patent-eligible subject matter. By failing to establish a clear standard, the Court’s opinions prevent attorneys from confidently advising their clients, and jeopardize the even-handedness, predictability, and consistency of the application of patent law.

## I. PARTIES AND PATENTS IN DISPUTE

The Appellees in this rehearing en banc were CLS Bank International, an Edge Act corporation located in New York, and CLS Services Ltd., a

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† The issue in this case note was preempted on June 19, 2014 when the Supreme Court decided *Alice Corp. Pty. Ltd. v. CLS Bank Int’l et al.* SMU Science and Technology Law Review acknowledges the scholarship of the author through publication.

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1. *Payne v. Tennessee*, 501 U.S. 808, 827 (1991).
2. *CLS Bank Int’l v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269 (Fed. Cir. 2013) (en banc).
3. 35 U.S.C. § 101 (2006).
4. *CLS Bank Int’l*, 717 F.3d at 1293 (Rader, C.J., concurring in part and dissenting in part).

United Kingdom corporation.<sup>5</sup> CLS Bank International is statutorily authorized to engage in international banking activities, as regulated by the U.S. Federal Reserve and “in a cooperative oversight arrangement with the central banks whose currencies are settled by CLS Bank.”<sup>6</sup> CLS Services Ltd. provides technical and operational support to CLS Bank.<sup>7</sup> The purpose of CLS is to mitigate settlement risk for foreign currency exchange transactions by operating a large multicurrency cash settlement system,<sup>8</sup> in which CLS “ensur[es] that both parties have fulfilled their respective obligations before directing the exchange of currencies.”<sup>9</sup>

The Appellant, Alice Corporation Pty. Ltd. (“Alice”), is an Australian company. National Australia Bank Limited is a fifty percent shareholder in Alice,<sup>10</sup> and incidentally a member bank of CLS.<sup>11</sup> Alice is “an innovator in financial markets,” and offers its intellectual property for licensing.<sup>12</sup> Alice owns five patents in dispute, each of which relate to a trading platform that mitigates settlement risk in a financial transaction between two parties by using a trusted third party to settle the transaction.<sup>13</sup> The claims evaluated by the court relate to “methods of exchanging obligations between parties,” data processing systems, and computer-readable storage media containing program code for directing an exchange of obligations.<sup>14</sup>

## II. CLS’S CLAIMS

Shortly after CLS began operations in 2002, Alice advised CLS of its apparent infringement of Alice’s patents and offered a license.<sup>15</sup> Discussions

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5. See *Corporate Governance*, CLS, <http://www.cls-group.com/About/CG/Pages/default.aspx> (last visited Feb. 17, 2014).
  6. *Id.*
  7. See *id.*
  8. See *About Us*, CLS, <http://www.cls-group.com/About/Pages/default.aspx> (last visited Feb. 17, 2014); see also Principal En Banc Brief for CLS Bank Int’l and CLS Servs., Ltd. at 4, *CLS Bank Int’l*, 717 F.3d 1269 (No. 2011-1301) [hereinafter *Principal En Banc Brief*].
  9. Principal En Banc Brief, *supra* note 8, at 4.
  10. En Banc Response Brief of Defendant-Appellant Alice Corporation Pty. Ltd. at 4, *CLS Bank Int’l*, 717 F.3d 1269 (No. 2011-1301).
  11. See *Members*, CLS, <http://www.cls-group.com/Membership/Community/Pages/CLSMembers.aspx?cid=N> (last visited Feb. 17, 2014) (listing National Australia Bank as a settlement member).
  12. See *About Us*, ALICE CORPORATION, [http://www.alicecorp.com/fs\\_about\\_us.html](http://www.alicecorp.com/fs_about_us.html) (last visited Feb. 17, 2014).
  13. See *CLS Bank Int’l*, 717 F.3d at 1274.
  14. *Id.*
  15. Complaint at 13, *CLS Bank, Int’l v. Alice Corp. Pty. Ltd. (CLS I)*, 768 F. Supp. 2d 221 (No. 07-974).

continued for several years, and Alice sent additional letters, eventually stating that it “regards CLS as willfully infringing its intellectual property.”<sup>16</sup> On May 24, 2007, CLS filed an action in the D.C. District Court for a declaratory judgment of non-infringement, patent invalidity, and patent unenforceability.<sup>17</sup> CLS alleged that Alice “does not operate any active exchange services or compete with CLS in any market,” and classified Alice as a “non-practicing entity that seeks to exact licensing revenue from CLS.”<sup>18</sup> CLS claimed that the disputed patents “broadly claim the use of an intermediary or middleman to mitigate settlement risk in financial transactions,” and that these claims “seek to monopolize an abstract idea that has long been understood to be a part of financial intermediation”—the idea of escrow.<sup>19</sup> Relying on the reasoning in *Parker v. Flook*,<sup>20</sup> CLS asserted that Alice’s method claims are not patent-eligible, because they lack an “inventive concept” beyond the abstract idea on which the claim is based, and an abstract idea cannot transform into patentable material by “[a]dding conventional, well-understood elements” to it.<sup>21</sup> Addressing the issue of whether the classification of a claim should affect the assessment of patent eligibility under § 101, CLS argued that all of the statutory invention classes (process, machine, manufacture, and composition of matter)<sup>22</sup> require the same “threshold scrutiny as a method claim, including the inventive concept requirement.”<sup>23</sup> In CLS’s view, evaluating the system and media claims based on their underlying inventions renders them patent-ineligible as abstract ideas in the same manner that the method claims fail.<sup>24</sup>

### III. PROCEDURAL AND SUBSTANTIVE HISTORY

After CLS filed suit in the district court Alice counterclaimed, alleging that CLS infringed Alice’s patents. Both parties “filed cross-motions for summary judgment on whether the asserted claims were eligible subject matter under § 101.”<sup>25</sup> After the Supreme Court issued its opinion in *Bilski v. Kappos*<sup>26</sup> in June 2010, both parties renewed their cross-motions for sum-

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16. *Id.* at 14.

17. *Id.* at 1.

18. Principal En Banc Brief, *supra* note 8, at 5.

19. *Id.* at 6, 8.

20. *Parker v. Flook*, 437 U.S. 584 (1978).

21. Principal En Banc Brief, *supra* note 8, at 9–10.

22. *See* 35 U.S.C. § 101 (2006).

23. Principal En Banc Brief, *supra* note 8, at 10.

24. *Id.* at 10-11.

25. *CLS Bank Int’l*, 717 F.3d at 1293 (Rader, C.J., concurring in part and dissenting in part).

26. *Bilski v. Kappos*, 130 S. Ct. 3218 (2010).

mary judgment.<sup>27</sup> On March 9, 2011, the D.C. District Court held that the patent claims were “directed to an abstract idea,” and granted CLS’s motion for summary judgment.<sup>28</sup> Alice appealed to the Federal Circuit Court of Appeals, and on July 9, 2012, a three-judge panel reversed the district court’s holding, classifying the claims as patent-eligible.<sup>29</sup> CLS filed petition for a rehearing en banc, which the Federal Circuit Court granted.<sup>30</sup> The en banc court upheld the district court’s holding.<sup>31</sup> Alice then filed petition for certiorari with the Supreme Court.<sup>32</sup>

#### IV. EN BANC COURT’S HOLDING AND RATIONALE

The en banc court’s holding consisted of a two-sentence per curiam opinion affirming the district court’s grant of summary judgment in favor of CLS.<sup>33</sup> A majority of the court, seven of the ten judges, held that Alice’s method and computer-readable media claims were not directed to patent-eligible subject matter under § 101.<sup>34</sup> The court was equally divided on the issue of whether Alice’s system claims were directed to patent-eligible subject matter,<sup>35</sup> by default upholding the district court’s decision on this issue.

As evidenced by the numerous amicus briefs,<sup>36</sup> attorneys, patent holders, and technology companies across the country had significant interest in the disposition of this case. Most were anticipating that the court would finally clarify the appropriate tests to apply in determining if a claim covers patent eligible material under § 101. Judge Lourie acknowledged the need for “a consistent, cohesive, and accessible approach to the § 101 analysis—a framework that will provide guidance and predictability for patent applicants and examiners, litigants, and the courts.”<sup>37</sup> Despite agreement that a determinative framework is needed, the judges could not agree on what that framework should consist of. Instead, no consensus was achieved and several

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27. *CLS Bank Int’l*, 717 F.3d at 1275.

28. *Id.*

29. *CLS Bank Int’l v. Alice Corp. Pty. Ltd. (CLS II)*, 685 F.3d 1341, 1341–42, 1356, *reh’g en banc granted, opinion vacated*, 484 F. App’x 559 (Fed. Cir. 2012).

30. *CLS Bank Int’l v. Alice Corp. Pty. Ltd.*, 484 F. App’x 559 (Fed. Cir. 2012).

31. *CLS Bank Int’l*, 717 F.3d at 1273.

32. *Petition for Writ of Certiorari, Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 2013 WL 4768483 (No. 13-298).

33. *CLS Bank Int’l*, 717 F.3d at 1273 (per curiam).

34. *Id.*

35. *Id.*

36. *Id.* at 1171–73 (stating that twenty-four amicus briefs were filed with the Federal Circuit Court of Appeals related to this case).

37. *CLS Bank Int’l*, 717 F.3d at 1277 (Lourie, J., concurring).

incompatible standards were put forward, none of which carries precedential authority.<sup>38</sup>

Assessment of recent decisions issued by the Federal Circuit yields two predominate § 101 methods of evaluation—the “coarse filter” (or “manifestly evident”) test and the “inventive concept” approach. The coarse filter approach allows broad latitude to patent claims, and generally finds them as directed to patent-eligible subject matter unless they obviously fall within a statutory or judicial exception, such as a disembodied abstract idea. Chief Judge Rader has described patent eligibility under § 101 as “a ‘coarse’ gauge of the suitability of broad subject matter categories for patent protection” and explained that “subject matter eligibility is merely a threshold check.”<sup>39</sup> He defines abstractness of a claim as a disqualifying characteristic when it “exhibit[s] itself so manifestly as to override the broad statutory categories of eligible subject matter and the statutory context that directs primary attention on the patentability criteria of the rest of the Patent Act.”<sup>40</sup> On the other hand, the “inventive concept” approach calls for something more than “simply appending conventional steps, specified at a high level of generality, to laws of nature, natural phenomena, and abstract ideas.”<sup>41</sup> Judge O’Malley explained that “[t]he key distinction . . . is between claims that recite ineligible subject matter, and no more, and claims to specific inventive *applications* of that subject matter.”<sup>42</sup> The Supreme Court advanced this view in assessing § 101 abstractness claims in *Parker v. Flook*, where it held that the application of a known mathematical formula was not patentable, because that application lacked inventiveness.<sup>43</sup> In *Flook*, the Court rejected the respondent’s argument that inventiveness should be evaluated under §§ 102 and 103, rather than § 101.<sup>44</sup>

## V. ANALYSIS

Unfortunately, the en banc *CLS Bank* opinions did little to clarify how coarse or fine the filter for claims of abstractness under § 101 should be. The judges advanced multiple incompatible theories that expose their disagreement on how the law should be applied.

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38. *See id.* at 1292, n.1 (Rader, C.J., concurring in part and dissenting in part) (noting that “nothing said today beyond our judgment has the weight of precedent”).

39. *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335, 1339, 1341 (Fed. Cir. 2013).

40. *Research Corp. Techs., Inc. v. Microsoft Corp.*, 627 F.3d 859, 868 (Fed. Cir. 2010).

41. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1300 (2012).

42. *PerkinElmer, Inc. v. Intema Ltd.*, 496 F. App’x 65, 68 (Fed. Cir. 2012).

43. *See Parker v. Flook*, 437 U.S. 584, 594 1978.

44. *See id.* at 592–93.

### A. Inventive Concept Test

Judge Lourie, joined by four other judges, advocates for the “inventive concept” test in evaluating patent eligibility claims. Although the categories of patent-eligible subject matter are broad, they are limited by three judicially created exceptions: laws of nature, natural phenomenon, and abstract ideas.<sup>45</sup> In reviewing common themes in Supreme Court precedent, Lourie identifies “guideposts” to an approach that will provide predictability in the law—one which “turns primarily on the practical likelihood of a claim preempting a fundamental concept.”<sup>46</sup> He explains that the foremost objective in applying the common law exceptions should be to “[g]uard[ ] against the wholesale preemption of fundamental principles.”<sup>47</sup> Claims that are patent-eligible “should not be coextensive with a natural law, natural phenomenon, or abstract idea,” but rather “must include . . . substantive limitations that . . . add ‘significantly more’ to the basic principle, with the result that the claim covers significantly *less*.”<sup>48</sup> The Supreme Court foundational guideposts that Lourie identifies are to: (1) avoid “overly formalistic approaches to subject-matter eligibility that invite manipulation by patent applicants,”<sup>49</sup> (2) use a “flexible, claim-by-claim approach to subject-matter eligibility that avoids rigid line drawing,” such as the “machine-or-transformation” test,<sup>50</sup> (3) give issued patent claims a presumption of validity,<sup>51</sup> and (4) recognize that an abstract idea is not transformed into a machine by “merely adding existing computer technology.”<sup>52</sup>

Within this framework, if a claimed invention is a process, machine, manufacture, or composition of matter per the requirements of the statute, Lourie determines if a judicially created exception (law of nature, natural phenomena, or abstract idea) applies.<sup>53</sup> If an exception applies, then the claim is ineligible under § 101.<sup>54</sup> This determination is difficult to apply, particularly with respect to abstract ideas, because there is a lack of consensus on what an abstract idea actually is. Lourie suggests a process to help determine if a claim poses any risk of preempting an abstract idea by first identifying and defining the fundamental concept in the claim.<sup>55</sup> Next, evaluate the bal-

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45. *CLS Bank Int'l*, 717 F.3d at 1276–77 (Lourie, J., concurring).

46. *Id.* at 1277.

47. *Id.* at 1281.

48. *Id.*

49. *Id.*

50. *Id.*

51. *CLS Bank Int'l*, 717 F.3d at 1284 (Lourie, J., concurring).

52. *Id.* at 1291–92.

53. *Id.* at 1277.

54. *Id.*

55. *Id.* at 1282.

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ance of the claim to determine if it contains “additional substantive limitations that narrow, confine, or otherwise tie down the claim so that, in practical terms, it does not cover the full abstract idea itself.”<sup>56</sup> This step is looking for something “beyond the mere recitation of a disembodied fundamental concept” and is referred to as an “inventive concept.”<sup>57</sup> Lourie explains that an inventive concept “must be ‘a product of human ingenuity’” and “a genuine human contribution to the claimed subject matter.”<sup>58</sup> The “human contribution must represent more than a trivial appendix to the underlying abstract idea” and is not “merely tangential, routine, well-understood, or conventional.”<sup>59</sup> The human contribution cannot be a token or trivial limitation, a “vague limitation[ ] cast in ‘highly general language,’” or be a “bare field-of-use limitation.”<sup>60</sup> Performing these steps of evaluation to Alice’s claims in dispute, Lourie concludes that all of the claims are patent-ineligible abstract ideas.<sup>61</sup>

## B. Meaningful Limitations

Chief Judge Rader wrote a separate opinion, concurring in part and dissenting in part, agreeing with Judge Lourie that the judicially-created exceptions for claims drawn to laws of nature, natural phenomena, or abstract ideas are not patent eligible.<sup>62</sup> However, Rader suggests that a close inspection of the text of the statute, as well as the legislative history, yields a conclusion that these exceptions should be narrowly construed,<sup>63</sup> and a “challenge to the eligibility of the subject matter must be proven by clear and convincing evidence.”<sup>64</sup> He argues that Congress intended § 101 to cast a wide net, noting that the language, “uses expansive categories and modifies them with the word ‘any,’” indicating that “Congress plainly contemplated that the patent laws would be given wide scope.”<sup>65</sup> Rader interprets the Supreme Court’s opinion in *Diamond v. Diehr* to clarify that the evaluation of a claim for

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56. *Id.*

57. *CLS Bank Int’l*, 717 F.3d at 1282 (Lourie, J., concurring).

58. *Id.* at 1283.

59. *Id.*

60. *Id.*

61. *Id.* at 1284.

62. *Id.* at 1297 (Rader, C.J., concurring in part and dissenting in part) (quoting *Mayo*, 132 S. Ct. at 1293).

63. *CLS Bank Int’l*, 717 F.3d at 1303 (Rader, C.J., concurring in part and dissenting in part).

64. *Id.* at 1304–05.

65. *Id.* at 1294.



novelty is governed by § 102 rather than § 101,<sup>66</sup> refuting Judge Lourie's premise that inventiveness or "more than novelty" is to be evaluated under § 101.<sup>67</sup> While the Supreme Court has recognized that "the § 101 patent-eligibility inquiry and, say, the § 102 novelty inquiry might sometimes overlap,"<sup>68</sup> it has also given support to Rader's assessment by "declin[ing] the [ ] invitation to substitute §§ 102, 103, and 112 inquiries for the better established inquiry under § 101."<sup>69</sup>

In agreement with Lourie, Rader holds that a "court must consider the asserted claim as a whole when assessing [patent] eligibility" and "consider the *actual* language of each claim," rather than "go hunting for abstractions."<sup>70</sup> The danger in breaking down the claims rather than evaluating them as a whole is that "[a]ny claim can be stripped down, simplified, generalized, or paraphrased to remove all of its concrete limitations, until at its core, something that could be characterized as an abstract idea is revealed."<sup>71</sup> Taken to the extreme, the decomposition of claims would "make all inventions unpatentable because all inventions can be reduced to underlying principles of nature which, once known, make their implementation obvious."<sup>72</sup> To avoid this untenable result the evaluation of the claim should be based on "whether [it] seeks to patent an idea itself, rather than an application of that idea"<sup>73</sup> and whether the claim "includes *meaningful* limitations restricting it to an application, rather than merely an abstract idea."<sup>74</sup>

Applying Rader's interpretation, because the system claims are integrated using machines and include other steps to enable transactions, they cannot be disembodied abstract ideas.<sup>75</sup> In evaluating the method claims, he inquires "whether the recited steps are inherent in an escrow and claimed at a high level of generality, such that in fact the claim is not to a practical appli-

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66. See *Diamond v. Diehr*, 450 U.S. 175, 190-191 (1981); *CLS Bank Int'l*, 717 F.3d at 1294 (Rader, C.J., concurring in part and dissenting in part).

67. See *CLS Bank Int'l*, 717 F.3d at 1294 (Rader, C.J., concurring in part and dissenting in part) (stating "whether a new process, machine, and so on is 'inventive' is not an issue under Section 101; the condition for 'more' than novelty is contained only in Section 103").

68. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1304 (2012).

69. *Id.*

70. *CLS Bank Int'l*, 717 F.3d at 1298 (Rader, C.J., concurring in part and dissenting in part).

71. *Id.*

72. *Id.* (quoting *Diamond*, 450 U.S. at 189 n.12).

73. *CLS Bank Int'l*, 717 F.3d at 1299 (Rader, C.J., concurring in part and dissenting in part).

74. *Id.* at 1299-1300.

75. *Id.* at 1309-10.

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cation of the concept of an escrow, but in effect claims the abstract concept of an escrow.”<sup>76</sup> Concluding that “each step [of the method claims] individually recites merely a general step inherent within the concept of an escrow” and describes “the general and theoretical concept of using a neutral intermediary in exchange transactions to reduce risk that one party will not honor the deal,”<sup>77</sup> Rader found that these method claims do embrace an abstract concept.

### C. Evaluate the Claim as a Whole and a Call for Congressional Action

Attuned to the concerns of several of the amici curiae,<sup>78</sup> Judge Moore asserts that “[h]olding that all these claims are directed at no more than an abstract idea gives staggering breadth to what is meant to be a narrow judicial exception” and would be “the death of hundreds of thousands of patents, including all business method, financial system, and software patents as well as many computer implemented and telecommunications patents.”<sup>79</sup> She believes the “inventive concept” approach advanced by Judge Lourie is erroneous, because it fails to evaluate the claim as a whole, and echoing Chief Judge Rader’s concern, recognizes that any claim can be effectively stripped down to an underlying abstract idea.<sup>80</sup> Judge Linn calls for Congress to address the judicial divide in evaluating the unique challenges software patents present. Congress could “limit their life by limiting the term of such patents,” or it could “limit the scope of software patents by requiring functional claiming.”<sup>81</sup>

### D. Plain Language of the Statute

Judge Newman’s opinion concurs in part and dissents in part. She proposes that the court reaffirm three basic principles relating to § 101 in order to stabilize its application and continue to apply it in accordance with statute and precedent. First, “the court should hold that § 101 is an inclusive statement of patent-eligible subject matter” and reaffirm that an evaluation of abstract preemption is more appropriately handled when applying “the laws of novelty, utility, prior art, obviousness, description, enablement, and specificity.”<sup>82</sup> Second, “the court should hold that the form of the claim does not

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76. *Id.* at 1311–12.

77. *Id.* at 1312.

78. *See, e.g.*, Brief of Amicus Curiae Int’l Bus. Machines Corp. on Rehearing en banc in Support of Neither Party, *CLS Bank Int’l v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269 (Fed. Cir. 2013) (No. 2011-1301), 2012 WL 6799778, at \*18–19.

79. *CLS Bank Int’l*, 717 F.3d at 1313 (Moore, J., dissenting in part).

80. *Id.* at 1315.

81. *Id.* at 1333 (Linn, J., dissenting).

82. *Id.* at 1322 (Newman, J., concurring in part and dissenting in part).

determine § 101 eligibility,” eliminating the opportunity for clever draftsmanship to redeem an otherwise ineligible claim.<sup>83</sup> Finally, “[t]he court should confirm that experimental use of patented information is not barred.”<sup>84</sup> In summary, Newman proposes that to conform with legislative intent “the court [should] return to the statute, and hold that when the subject matter is within the statutory classes in § 101, eligibility is established.”<sup>85</sup>

### E. Additional Reflections of Chief Judge Rader

In an unanticipated move, Chief Judge Rader published “additional reflections” to voice his concern and surprise with the way his colleagues have struggled with the disposition of this case.<sup>86</sup> He advocates for consulting the statute, and reiterates his belief that inventions should be evaluated on their merits, “not on the basis of undefined and unproven judicial abstractions like ‘abstractness’ or ‘preemption.’”<sup>87</sup>

## VI. CONCLUSION

As explained by Judge Newman, the court, rather than providing clear guidance, has “propounded at least three incompatible standards, devoid of consensus, serving simply to add to the unreliability and cost of the system of patents as an incentive for innovation.”<sup>88</sup> With the diversity of opinions about how the courts should evaluate claims under § 101, the disposition of any patent case heard by the Federal Circuit will likely “depend on the random selection of the panel.”<sup>89</sup> Lower courts and litigants have opportunities to choose from whichever line of cases best supports their argument; with the current state of the law, both sides of any § 101 dispute have plausible arguments. Indeed, although none of the opinions in *CLS Bank* carry any precedential value, other courts have already chosen from the various tests described in this opinion and applied them to cases they are hearing, proliferating inconsistent application of the law and a lack of predictability. While each of the opinions in this case brings in Supreme Court precedent to support its position, the variance in application of this precedence is a good indicator that the rules the Supreme Court has established are not clear. Recognizing the need for clarification, the Supreme Court has granted certiorari

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83. *Id.*

84. *Id.*

85. *CLS Bank Int'l*, 717 F.3d at 1326 (Newman, J., concurring in part and dissenting in part).

86. *See id.* at 1334 (additional reflections of Rader, C.J.).

87. *Id.*

88. *Id.* at 1321 (Newman, J., concurring in part and dissenting in part).

89. *Id.*

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for this case.<sup>90</sup> Inventors, patent agents, and attorneys anxiously await the Court's ruling, expecting that it will define the appropriate method of patent eligibility evaluation and restore the consistency and integrity of the judicial process.

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90. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 734 (2013).

