

The Continuing Controversy Over Business Methods Patents

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Introduction

In 1998, the Court of Appeals for the Federal Circuit ("CAFC") clarified in its *State Street Bank* decision that methods of doing business could be patentable subject matter, and the Supreme Court denied certiorari.¹ Despite the Court's ruling, the controversy over patentability of methods

of doing business did not die.² Since 1998, although there has been a significant increase in the number of business methods patent applications filed, there has been continuing comment regarding their patentability.³ This Note examines the attributes of business methods patents relevant to infringement litigation, and

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1 See *State St. Bank & Trust Co. v. Signature Fin. Group, Inc.*, 149 F.3d 1368, 1373 (Fed. Cir. 1998), cert. denied, 525 U.S. 1093 (1999) (holding that business methods should be subjected to the same patentability tests as other process claims, rejecting attribution of unpatentability to any claims other than those for laws of nature, natural phenomena, or abstract ideas). For further discussion of this case, see *infra* notes 35-46 and accompanying text.

2 See, e.g., Martin J. Adelman, *Patentable Subject Matter: The Road Ahead for Software and Business Methods Patents*, in INT'L INTELL. PROP. L. AND POL'Y - VOLUME 15 (forthcoming 2007).

3 See James S. Sfekas, *Controlling Business Method Patents: How the Japanese Standard for Patenting Software Could Bring Reasonable Limitations to Business Method Patents in the United States*, 16 PAC. RIM L. & POL'Y J. 197, 203 (2007) (noting that business methods patent applications had increased to 2,821 in 1999, to 7,800 in 2000, and continued to increase); see also Bronwyn H. Hall, *Business Method Patents, Innovation, and Policy* (UC Berkeley Dep't of Econ., Working Paper No. E03-331, 2003), available at <http://repositories.cdlib.org/iber/econ/E03-331> (using broad definition of business methods patents to assert that the United States Patent and Trademark Office ("USPTO") granted more than 10,000 of them in 2002). But see USPTO, *Patent Counts by Class by Year: CY 1977-2005*, <http://www.uspto.gov/web/offices/ac/ido/oeip/taf/cbcbby.htm#PartA1> (last visited Sept. 7, 2007) (statistics showing only 786 business methods patents (Category 705) granted in 2005, up from 313 business methods patents granted in 2004, using narrow classification of business methods patents). Part II of this Note will address this apparent discrepancy.