
How will KSR affect business method patents?

Rob Glance
Associate General Counsel, Fannie Mae

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General Observations

- Tightening (arguably) of patentability standard will not end business method patents
- Likely little change in allowance rates at the Patent Office for Class 705
- KSR will therefore have little impact on the patent portfolios of companies late to business methods
 - Larger potential impact on those companies that received business method patents early

General Observations continued...

- KSR is Supreme Court's attempt to address patent quality
 - Supports Patent Office efforts
 - May weaken impetus behind legislative reform in the area of software patents
- KSR does not address subject matter patentability
 - No concurrence by Justice Kennedy denigrating business method patents!

General Observations continued...

- Future of “pure” business method patents less certain in view of eBay, Metabolite, but-
 - Software patents more certain than “pure” business method patents (i.e., patents that do not recite a computer implementation)
 - Financial services industry is heavily dependent on computers/information technology
 - Software patents on financial innovations create as much risk as pure business method patents

Impact on Risks

- Low quality patents issued pre-KSR will be easier to defend against, possibly lowering risk
 - But risk won't be eliminated altogether
 - Not all pre-KSR patents are low quality patents
- New (arguably stronger) patents continue to issue

Impact on Operations

- IP risk needs to be managed (e.g., performing freedom to operate searches, etc.)
- Patents are just one form of intellectual property, but procedures regarding protection of assets are typically generic to all forms of intellectual property (they are not patent specific).
- Take a wait and see approach on patenting efforts

Impact on Perception of Patents

- Short term: for financial services companies that have avoided dealing with patents in the past, getting employees engaged is a challenge
 - For some of them, KSR (as described by the headlines that accompanied it – e.g. “Rulings Weaken Patents’ Power”) provides one more reason why they don’t need to worry about patents
- Long term: reducing low quality patents will have a long term positive impact on perception of patents