BANK SYSTEMS & TECHNOLOGY

Fate of Business Process Patents In Hands of 12 Judges

By Maria Bruno-Britz
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As discussed in my earlier blog on patents, the courts and Patent & Trademark Office have been struggling with how to define whether something that is a business method is patentable material. Some feel that business methods are intangible and should not be eligible for patents, unlike a traditional hardware-based patent. Many of the patent attorneys I've spoke with say that the U.S. patent system wasn't designed to keep up with new technologies, such as software and business processes, and that is why we are seeing so many problems around these kinds of patents.

This note arrived in my email courtesy of Bradley Wright, an attorney with the firm Banner & Witcoff Ltd.:

On May 8, 2008, the U.S. Court of Appeals for the Federal Circuit held a rare hearing before all 12 judges to determine whether process patents should be limited. The appeal was from the U.S. Patent and Trademark Office (PTO), which had rejected a patent application for a method for managing consumption risk on the basis that it did not involve anything tangible. The patent applicant had urged the court to allow patents on processes as long as the process was useful and had a practical application. Although some of the judges appeared concerned about limiting process patents in a way that would eliminate all software patents, others seemed concerned that patents were being granted for intangible things such as methods of arranging financial transactions. The case may have wide-ranging implications for the financial services, software, and consulting industries, which often seek process patents in a non-manufacturing setting. A decision is expected within the next few months.

So things are moving along in the courts. Not only does the financial services industry have a stake in these proceedings, but so too does the high tech industry. If the judges rule that these so-called intangible processes are ineligible for being patented, what will that mean for innovation going forward? Will inventors arbitrarily add on a piece of hardware to their patent applications to skirt the intangibility issue? I am hopeful that a compromise will be reached. It's hard to imagine the implications if it is decided that business processes are absolutely not patentable.