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To: Bilski_Guidance
Subject: Comments on Interim Guidance

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From: Ted Masters, Patent Agent Reg. Number 36,209
Subject: "Interim Guidance for Determining Subject Matter Eligibility for Process Claims in View of Bilski v. Kappos

1. The subject guidance document does not give proper emphasis to the "apparatus" prong when it refers to the "machine or transformation" test. In Bilski it is clear that an eligible process is not limited to one performed using a "machine", but rather that an "apparatus" other than a machine could also be utilized. "Machine/apparatus or transformation" would be a much better describer.

2. Perhaps because of the machine emphasis in the guidance documents, eligible process claims which are performed using apparatus are being rejected. For example GAU 3711 is utilizing Bilski to reject card games, which were heretofore considered eligible subject matter. Card game claims clearly qualify as eligible subject matter in that they (1) incorporate an apparatus (cards) into the method steps, and (2) cards are an integral element in the performance of the method, as are required by A. (1) and (2) of "Factors To Be Considered in an Abstract Idea Determination of a Method Claim" in the subject document.