

From: Nancy J. Linck [mailto:nlinck@rothwellfigg.com]
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To: AB98 Comments
Subject: Interim Guidelines

It is quite likely the Supreme Court will set aside the *Bilski* test. Otherwise, they would not have granted cert. Thus, as a backup position, I recommend the examiners be instructed in the Interim Guidelines to include an alternative ground for concluding a process claim is to nonstatutory subject matter. For example:

"The claim is to a nonstatutory process because it is not tied to a machine and does not transform any subject matter. Alternatively, the process claim is to an abstract idea" (or a natural phenomenon or law of nature). See Judge Rader's dissent in *Bilski*, finding the claim was to an abstract idea.

I believe you've already laid the groundwork for such a modification in your background discussion re abstract ideas, etc.

By doing so, if the Supreme Court sets aside the *Bilski* test, the Board of Appeals will still have a basis to affirm.

If you would like to discuss, please call me at 202-772-5694,

Best,
Nancy Linck
(former Solicitor and APJ)