

Patents back in business, at least in the US

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The US Supreme Court has issued its long awaited decision on the patentability of business methods. The Supreme Court decided that while the particular invention in question was not eligible for patent protection (it covered an abstract idea or scheme), business methods in general were not excluded from patentability. Further, business method inventions were distinguished from computer-implemented or software inventions. The Supreme Court considered computer-implemented inventions were more eligible for patent protection since they inherently include or relate to a computer and are therefore likely to at least have some technical considerations.

There were concerns that this decision would close the door on business method patents in the US, and to a lesser extent, software patents. However, these have been put to rest by the Supreme Court. The Supreme Court indicated that it will not impose limits on what types of invention are eligible for patent protection, other than those set out in the US Patent Act.

This follows a recent decision of the highest decision-making body of the European Patent Office not to change its practice in dealing with computer-related inventions. So, such inventions are eligible for patent protection in Europe as long as they provide a technical solution to a technical problem, rather than providing an advance in an abstract, non-technical field.

These two decisions, with the wide eligibility of patent protection for computer-related and business method inventions in Australia, will put added pressure on the legislators in New Zealand not to impose a blanket exclusion on the patentability of software. Such an exclusion was recently proposed for the draft Patents Bill. This is despite this being inconsistent with the apparent intentions of the Select Committee reviewing the Bill to allow patents for some software inventions ("embedded software"). However, the Government has noticed this inconsistency and the latest indications are that New Zealand will adopt an approach similar to that in Europe.