

## SUPREME COURT RULES SOFTWARE AND BUSINESS METHODS CAN STILL BE PATENTED

By Geoffrey K. White

On June 28, the last day of its current term, the United States Supreme Court ruled, in the much-anticipated *Bilski* patent case, that software and business methods may still be patented. The Court approved the use of the so-called “machine-or-transformation” test, i.e., whether the claimed invention is tied to a particular machine or apparatus or whether it transforms a particular article into a different state or thing, in evaluating the viability of software and business method patent applications, but refused to recognize that test as the sole one for patentability.

Consistent with other recent patent-related cases, the Court indicated its preference for flexible, rather than rigid, tests for determining patentability. It maintained a long-standing tenet of patent law that determinations of whether an invention includes patent-eligible subject matter should focus on whether the claimed invention is a process, machine, manufacture, or composition of matter, with three specific exceptions: laws of nature, physical phenomena, and abstract ideas.

The Court explained that the term “process” does not exclude business methods. It ruled, however, that the claimed invention in *Bilski*

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## ICANN RELEASES NEW TOP-LEVEL DOMAINS FOR THE UNITED ARAB EMIRATES, SAUDI ARABIA, EGYPT AND RUSSIAN FEDERATION

By Brian P. Gregg

In May 2010 the first four non-Latin script top-level country code domains (IDN ccTLD) went live in the United Arab Emirates, Saudi Arabia, Egypt, and Russian Federation. This means instead of converting those country names to Latin characters, as in .ru for the Russian Federation, companies and individuals can register domains in native language characters including the top level domain such as .рф in the case of the Russian Federation. The other ccTLDs include United Arab Emirates .تارام; (Emarat), Egypt .رص. (Misr) and Saudi Arabia .ةيدوعسلا. (Al-Saudiah).

Trademark owners should consider the implications of owning, or someone else owning, a domain that contains their trademark in these scripts. It is likely that as script-specific domains become more ubiquitous, individuals who prefer their native language are more likely to visit sites they can type in that language. Brand owners who wait could end up losing internet traffic to competitors who are early adopters of the new domains, or could end up in complicated and costly fights to obtain their brand domains if another has grabbed it first.

Countries typically offer an initial period during which only registered trademark owners can apply for domains. Trademark owners should act quickly during this period to secure their domains while access to the domain registry is limited. Trademark owners who do not hold registrations in key markets may also consider filing for trademark protection as a means to obtaining a key domain. Other languages including Chinese are likely to be released soon by the Internet Corporation for Assigned Names and Numbers (ICANN) so trademark owners should develop a strategy now for where and when they want to register domains that include important trademarks.

### Key dates include:

**Russian Federation** – On July 15, 2010, registration will open for those who own trade names, owners of geographical indications of goods

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(a concept of hedging risk in energy markets) was not patentable since it could most appropriately be categorized merely as a mathematical formula or abstract idea.

Observers hoping for certainty in the Court's decision are bound to be disappointed, while those pursuing business methods patents may be encouraged in their efforts. For now, the complex battles surrounding these patents will continue to be waged case-by-case. ■



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origin, mass media and non-profit organizations. Public registration of domains is scheduled for October 1, 2010.

**Saudi Arabia** – From May 31, 2010 – July 12, 2010 the Saudi Arabian registry will accept applications for domains from entities or individuals that own corresponding registered trademarks or trade names. The registry will open to the general public on September 27, 2010.

**United Arab Emirates** – From September 27, 2010 – October 22, 2010 owners of trademarks registered in the UAE and other Arab countries may register (with priority for UAE registrations). From November 15th – 19th commonly used names such as cars.emarat will be open to registration by corporations. Companies may apply but must show a connection with the applied for domain. Where more than one company applies there will be an auction. Starting on December 11, 2010, UAE domain registration is open to anyone.

Egypt has yet to release details on its registration procedure. ■



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