



June 4, 2012

**Supreme Court Orders Review of Patentability for Software Patents****Intellectual Property Client Alert**

*This Alert provides only general information and should not be relied upon as legal advice. This Alert may be considered attorney advertising under court and bar rules in certain jurisdictions.*

*For more information, contact your Patton Boggs LLP attorney or the authors listed below.*

**Richard J. Oparil**  
[roparil@pattonboggs.com](mailto:roparil@pattonboggs.com)

**Matthew J. Laskoski**  
[mlaskoski@pattonboggs.com](mailto:mlaskoski@pattonboggs.com)

**Kevin M. Bell**  
[kbell@pattonboggs.com](mailto:kbell@pattonboggs.com)

WWW.PATTONBOGGS.COM

On May 21, the Supreme Court in *WildTangent Inc. v. Ultramercial LLC*, No. 11-962, issued a brief order remanding the case to the Federal Circuit to reconsider the validity of a software patent in light of the Supreme Court's recent decision in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.* ([here](#)).

The *Prometheus* decision held that certain medical diagnostic testing was not eligible for patent protection as claiming a law of nature. The patent at issue in *WildTangent* deals with methods of having a user view advertisements before accessing copyrighted materials online.

The Supreme Court's remand of this case raises questions of whether software and business methods, even if they involve complex programming and the Internet, will be considered patent eligible by the Supreme Court. On one hand, the claims in the *WildTangent* case are very different than the claims in *Prometheus* in that they deal with clearly different technologies, *i.e.*, online software versus biological systems, which would lead to a conclusion that the *Prometheus* analysis should not apply. On the other hand, however, the Supreme Court may be looking to narrow the scope of patent eligible subject matter for software and business methods.

The Federal Circuit's reconsideration of this case, as well as any further review of this case by the Supreme Court, should be carefully considered by any companies involved in the software and business method fields.

*This Alert provides only general information and should not be relied upon as legal advice. This Alert may also be considered attorney advertising under court and bar rules in certain jurisdictions.*

WASHINGTON DC | NORTHERN VIRGINIA | NEW JERSEY | NEW YORK | DALLAS | DENVER | ANCHORAGE | DOHA, QATAR | ABU DHABI, UAE