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“He was distinguished for ignorance; for he had only one idea, and that was wrong.”
— Benjamin Disraeli

I’m an activist. That means I’m a person who campaigns to bring about change.

I’m here to change your mind about subject matter eligibility, and to do that, I offer but a single new idea with which to get a handle on this seemingly intractable problem.
That idea? That virtually all of the modern difficulty with subject matter eligibility is due to the fact that the Patent Act does not properly recognize the materiality- or immateriality- of inventions which provide their utility in the form of information, and that once such a recognition is observed, that the key to a coherent eligibility doctrine turns on the character of the entity consuming the information.

The problem of subject matter eligibility is complex, and to arrive in support of this idea, it’s necessary to explore a number of subsidiary ideas around the legislation and jurisprudence relating to inventions patentable. Section 101 if the patent act, headed the same, is where it all starts.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2709289 details these ideas in depth, including scholarly support, sample cases, etc.

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Virtually all of the modern difficulty with subject matter eligibility is due to the fact that the Patent Act does not properly recognize the materiality- or immateriality- of inventions which provide their utility in the form of

information. Examples may be in the form of software, or genetic code, or a diagnostic correlation.
The key to a coherent eligibility doctrine turns on the NATURE OF THE ENTITY CONSUMING THE INFORMATION.
There is little controversy around machines, compositions of matter, or manufactures. The trouble is mainly with inventions claimed as processes, because just about anything people do can be considered a process. Common sense suggests at least one thing that we can rely on regarding processes: every process must have an intended result.

1) A workable solution turns on the meaning of two words: "process" and "abstract".
2) Abstract inventions are not the same as abstract claims, so we have two separate problems.

3) With no human mind, there can be no abstraction.
Every patent claim is an abstraction. Claims that are too abstract will turn on extrinsic factors such as the state of the prior art and the construction of the notional person having ordinary skill in the art.

What makes an invention intrinsically abstract? Mere intangibility does not preclude eligibility according to the Supreme Court in Bilski.

The most basic definition, from its Latin root, is when something is drawn from another. Only a human mind may complete this drawing.

Thus my test: is the invention a process? If yes, is the useful result of performing the process some species of information? If yes, does the utility of the invention arise from human consumption of that information? If yes, the invention is abstract and ineligible.
A human mind consuming information should be beyond the reach of the Constitution.
If the utility of the process arises from non-human use of the information, the invention should be eligible as a process, because without a human mind to host it, there can be no abstraction.
This simple framework handles the patent problems of the information age. It allows for patenting of new, useful, non-obvious algorithms and standards such as MPEG, advances in encryption, robotics, networking, genetic medical devices, etc. while removing all kinds of processes relating to human-created meaning, such as stock trading, online shopping, user-interfaces, games, etc. Improving techniques of handling information unrelated to the human meaning of the information would still be eligible inventions.
A change to Section 100(b) could implement this doctrine.
<i>The term “process” means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material. The term “process” excludes any process whose primary purpose is to produce information intended for consumption by human beings, excepting processes that improve information processing without regard to the particular content or meaning of the processed information. <i/>
We now live in an age- the Information Age- where non-human “ideas” and “results” are facts of everyday life.

Again: no human mind, no abstraction. Conversely, patents that restrict thinking about things, or responding to information, are anathema to free people, and cannot be tolerated.

Please see my attached SSRN paper for support of this proposal.

Attachments 1

Subject Matter Eligibility in the Information Age 12052017

Download (https://downloads.regulations.gov/PTO-P-2021-0032-0079/attachment_1.pdf)

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