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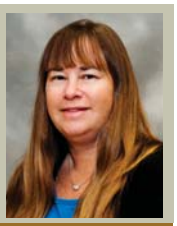

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The Conference of California Bar Associations (CCBA) (formerly known as the State Bar Conference of Delegates) is the organization that proposes, debates and approves resolutions to be presented to the legislature for consideration as new statutes or amendments to current statutes. CCBA has its own lobbyist who takes the approved resolutions to legislators and spearheads the efforts to get them made a part of a legislative bill and approved into law.

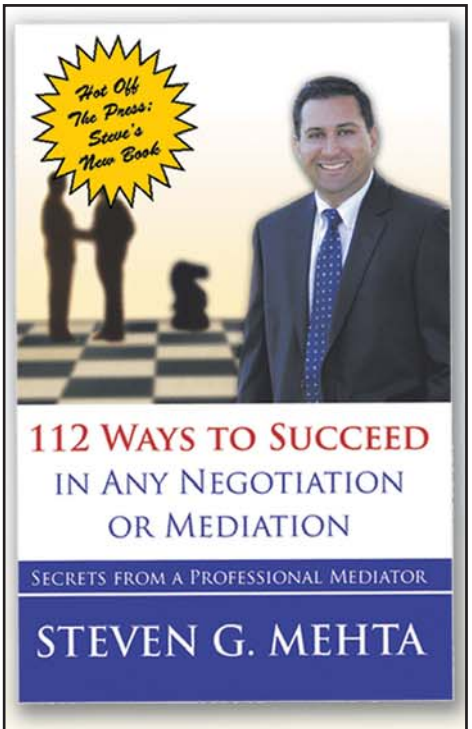
Our bar association is active within the CCBA and annually sends a delegation of members to the CCBA's annual conference where resolutions are debated and voted on. The SFVBA has authored and sponsored resolutions that have been approved at the conference and have gone on to be signed into law.

The work of the CCBA results in improving the laws and the administration of justice in California; advancing the education of California lawyers and fostering their professional excellence; and promoting public understanding of and respect for the law, the justice system, and the roles of the legal profession and an independent judiciary. The CCBA serves justice in California by bringing together attorney volunteers from across the state to seek, debate, and promote creative, non-partisan solutions to law-related issues for the benefit of Californians. These attorneys represent diverse backgrounds, experience, and expertise.

The CCBA organizational values include the promotion and facilitation of volunteerism among California lawyers; the fostering of open and vigorous debate of law-related issues in a courteous, respectful manner that avoids personal and partisan attacks; the encouragement of originality, innovation, and accessibility in seeking solutions to California's law-related issues; and the promotion and facilitation of communication and cooperation within the legal profession and with bar associations, the judiciary, the legislature, and the public.

I have been on the SFVBA delegation to the CCBA for about eight years and find it to be a truly interesting and rewarding experience. In addition to the annual conference, we also meet a few times a year in the summer to debate the proposed resolutions and to vote on the position that the SFVBA will take at the conference. This year I am even going to take a stab at authoring a resolution to be presented at the annual conference.

We are always looking for new members for our delegation. There are no requirements regarding level of professional experience, only a desire to be even a small part of the legislative process. Please consider joining us. For more information, feel free to contact me directly.



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BLACK HISTORY MONTH

SUN	MON	TUE	WED	THU	FRI	SAT
1	2 *Valley Lawyer* Member Bulletin Deadline to submit announcements to editor@sfvba.org for March issue.	3	4	5 Membership & Marketing Committee 6:00 PM SFVBA OFFICE	6	7
8	9 Tarzana Networking Meeting 5:00 PM SFVBA OFFICE	10 Probate & Estate Planning Section Identifying Medi-Cal Issues 12:00 NOON MONTEREY AT ENCINO RESTAURANT Caren R. Nielsen and Terry Magady discuss how to identify Medi-Cal issues at the initial estate planning meeting. (1 MCLE Hour) Board of Trustees 6:00 PM SFVBA OFFICE	11 Business Law & Real Property Section Protecting the Parties in the Sale of Fine Art: Documentation and Due Diligence 12:00 NOON SFVBA OFFICE Garine Babian will discuss due diligence in the sale of fine art and the documentation needed to safeguard the transaction. (1 MCLE Hour)	12 Small Firm & Sole Practitioner Section and Litigation Section Litigation Skills 12:00 NOON SFVBA OFFICE John Marcin provides invaluable tips to improve your litigation skills. (1 MCLE Hour)	13	14 
15	16 	17 Taxation Law Section Partnerships and IRC Section 10 12:00 NOON SFVBA OFFICE Robert Briskin will address the group. (1 MCLE Hour)	18 Workers' Compensation Section UEBTF and SIBTF 12:00 NOON MONTEREY AT ENCINO RESTAURANT Hon. David Pollak addresses the group regarding Uninsured Employers Benefits Trust Fund and Subsequent Injuries Benefits Trust Fund. He will also offer special tips for identifying the correct employer. (1 MCLE Hour)	19 New Lawyers Section Networking Mixer 6:00 PM LOCALE TBD Free to SFVBA new lawyers!	20	21
22	23 Family Law Section Negotiations–Part I 5:30 PM SPORTSMEN'S LODGE Judge Hank Goldberg, Heidi Tuffias and James Eliaser lead an interactive workshop and training to promote effective custody negotiation skills for family law attorneys. (1.5 Hours MCLE)	24 Editorial Committee 12:00 NOON SFVBA OFFICE	25	26 *Annual Judges' Night Dinner* THURSDAY, FEBRUARY 26, 2015 WARNER CENTER MARRIOTT See page 23	27	28

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MARCH 2015

SUN	MON	TUE	WED	THU	FRI	SAT
WOMEN'S HISTORY MONTH						
1	2 *Valley Lawyer* Member Bulletin Deadline to submit announcements to editor@sfvba.org for April issue.	3	4	5 Membership & Marketing Committee 6:00 PM SFVBA OFFICE	6	7
8	9 Tarzana Networking Meeting 5:00 PM SFVBA OFFICE TEN The Esquire Network	10 Probate & Estate Planning Section 12:00 NOON MONTEREY AT ENCINO RESTAURANT Board of Trustees 6:00 PM SFVBA OFFICE	11	12	13 Cyber Fraud 12:00 NOON SFVBA OFFICE Sponsored by CITY NATIONAL BANK The way up. See page 16	14
15	16	17 Taxation Law Section Property Tax Update 12:00 NOON SFVBA OFFICE Wade E. Norwood will discuss the latest regarding property tax laws. (1 MCLE Hour) 	18 Workers' Compensation Section Case Law Update 12:00 NOON MONTEREY AT ENCINO RESTAURANT Hon. Mark Kahn, Ret. will update the group. (1 MCLE Hour)	19	20	21
22	23 Family Law Section Negotiations–Part II 5:30 PM SPORTSMEN'S LODGE Judge Hank Goldberg and Commissioner Keith Clemens, Ret. lead an interactive workshop and training to promote effective financial negotiation skills for family law attorneys. (1.5 Hours MCLE)	24 Editorial Committee 12:00 NOON SFVBA OFFICE	25	26	27	28
29	30	31 				

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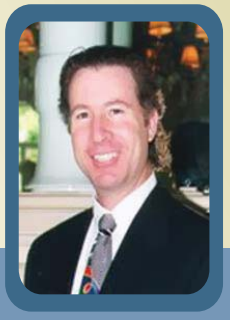

Elliot Matloff

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VALLEY LAWYER STAFF AND VOLUNTEERS TAKE GREAT CARE TO produce an informative and entertaining magazine. On the rare occasions that readers have disagreed about content, you have done so in a peaceful manner that ultimately has helped improve the quality of *Valley Lawyer*. I am truly grateful for being able to enjoy such a healthy dialogue with our member readers. Sadly, last month's terrorist attacks in France remind us that disagreements don't always occur peacefully.

The attacks in France struck a chord with so many because in a way we are all content creators. Whether we publish our work in a magazine, on social media, or express our opinions at the dinner table, we all have independent thoughts which we share on a daily basis. This may be why so many people around the world took to the streets and the internet to display solidarity with the victims. It is certainly why these attacks affected me so much.

In the wake of this horrific violence, we've engaged in healthy debates about freedom of speech and the responsibilities that accompany its use. Some have questioned whether *Charlie Hebdo* and its staff were irresponsible and offensive. But one thing we all agree on is that no one should die for sharing their opinions. Many of those who denounce the content of *Charlie Hebdo* support a person's right to publish what they wish without threat of physical violence.

As we commemorate Black History Month, let us reflect on the work of our nation's civil rights leaders, who in the face of hateful speech and hateful actions, worked peacefully to effect change. And let us follow in their footsteps, working to create a free and peaceful society for all.

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Alice's Wonderland?
Software Patents after the Supreme Court's *Alice Corp.* Decision

By Thomas M. Morrow

It has been a tumultuous six months since the Supreme Court's *Alice Corp*. decision. An increasing number of patents have been found invalid and more Section 101 challenges are being filed. The future of software patents remains unclear. Intellectual property lawyers are wise to keep abreast of every new development.

THE U.S. SUPREME COURT'S JUNE 19, 2014 decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*[1] ushered in a bruising six months for software patents. In *Alice*, a unanimous Court held that four software patents never should have been granted by the U.S. Patent Office because they covered merely an "abstract idea" ineligible for patenting under Section 101 of the Patent Act.[2]

In the six months following *Alice*, the vast majority of courts considering a Section 101 challenge to a software patent held the patent invalid as covering an unpatentable abstract idea. The Patent Office responded to *Alice* by issuing not one, but two sets of guidelines to its examiners following the decision, and took further steps to halt the issuance of some software patents that stood approved by the Office.

Alice, and the eventful six months that ensued, present a number of intriguing considerations and challenges for those who invent, own, and litigate software patents.

The Road by Which Software Patents Rose to Prominence

The first electronic computer was the model 701, introduced by IBM in 1953.[3] At the time, the term "software" was not yet in use—it emerged as a term of art in 1960—and IBM did not seek a patent on the model 701, having earlier decided that computer programs and processes were not eligible for patenting under U.S. patent law.[4]

The categories of inventions that are eligible for patenting are identified in Section 101 of the Patent Act, which states:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.[5]

The foregoing language is drawn nearly word-for-word from the original Patent Act of 1793, authored by Thomas Jefferson,[6] "the first administrator of our patent system."[7] Over the years, courts have identified and enforced three important exceptions to Section 101's broad definition of patentable subject matter, namely, that "laws of nature, natural phenomena, and abstract ideas are not patentable."[8] As the Supreme Court has explained:

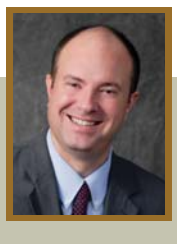
> A new mineral discovered in the earth or a new plant found in the wild is not patentable subject matter. Likewise, Einstein could not have patented his celebrated law that $E=mc^2$; nor could Newton have patented the law of gravity. Such discoveries are manifestations of … nature, free to all men and reserved exclusively to none.[9]

Thus, IBM's decision in 1953 not to patent the first computer was neither illogical nor unusual; indeed, more than a decade later, the efforts of another early software developer, Informatics Corporation, to patent its Mark IV file management system—an early database—were stymied in the United States due to the prevailing view that mathematical laws (and inferentially, computer algorithms used in the Mark IV system) were not patent-eligible under Section 101.[10]

But in the late 1960s, the Patent Office began reconsidering this view, in fits and starts, articulating a position in August 1966 that computer programs could be eligible for patenting so long as they met the requirements of either a "process" or an "apparatus,"[11] then issuing contradictory guidelines in October 1968 that took a more restrictive view,[12] only to rescind those guidelines a year later.[13] Software patents began issuing, an early example being U.S. Patent No. 3,533,086, titled "Automatic System for Constructing and Recording Display Charts," which issued in October 1970 and covered a product that could read a computer program and generate and print a flowchart that accurately depicted the program, thereby relieving the software developer of such "documentation chores."[14] Still, questions continued to exist about the boundaries of patent protection for software.

The U.S. Supreme Court weighed in on the issue three times between 1972 and 1981. The Court's first two decisions rejected patent applications under Section 101: *Gottschalk v. Benson* (1972) unanimously rejected an application on a method for using a computer to convert binary-coded decimal numbers into pure binary numbers[15] and *Parker v. Flook* (1978) held unpatentable a process for automatically updating an alarm limit within a computer control system in a chemical plant—but by a 6-3 margin this time.[16]

Finally, in *Diamond v. Diehr* (1981), the Court deemed patentable an invention involving the use by a computer of a mathematical formula—namely, a method for controlling the operation of a rubber press, by measuring the temperature within the press, feeding the temperature to a computer and causing it to continually recalculate the optimum cure time via a mathematical equation long-used within the industry to calculate cure time.[17] *Diehr* was a 5-4 decision that turned on the reading given to the patent's claims (the closing portion of a patent that delineates the precise boundaries of the invention for which the patent right is claimed). Viewed one way, the



Thomas M. Morrow is senior counsel with Yetter Coleman, LLP in Thousand Oaks. His practice focuses on intellectual property litigation, primarily patent and trade secrets litigation. Morrow can be reached at tmorrow@yettercoleman.com.

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claims could be seen as covering a patentable method of operating a rubber press. Viewed another way, the claims could be seen as covering a method of updating the cure time, strikingly similar to the unpatentable process for automatically updating an alarm limit rejected three years earlier in *Flook*.[18]

Diehr, decided in 1981, was the Supreme Court's last foray into the patent-eligibility of software patents for 29 years. The next year, 1982, saw the creation of the Court of Appeals for the Federal Circuit (the Washington, D.C.-based appeals court that has nationwide jurisdiction over appeals in all patent cases),[19] and in 1998, that court issued its famous *State Street*[20] decision that caused software patenting to skyrocket. *State Street* upheld the validity under Section 101 of a patent for a computerized accounting system for managing mutual funds, and explicitly clarified that business methods can be patentable subject matter.[21] An explosion of patents on software-embodied business methods ensued.[22]

Alice's Path to the Supreme Court

Within a decade, warning flags began to emerge. The Federal Circuit abrogated *State Street* in 2008 in *In re Bilski*, a case in which it held ineligible, under Section 101, a patent application for a method of teaching buyers and sellers of commodities how to hedge against the risk of price fluctuations in the energy market.[23] The Federal Circuit in *Bilski* articulated a "machine or transformation test" as a new standard for patentability under Section 101, but on appeal, the Supreme Court made clear that the Federal Circuit's new test was not the sole test for patent-eligibility.[24]

The Supreme Court did confirm that business methods were not *per se* unpatentable; however, as to *Bilski*'s particular invention, the Court affirmed the Federal Circuit's decision that it was unpatentable under Section 101, amounting to merely an attempt to patent the abstract idea of risk hedging, as a concept and a mathematical formula.[25]

Post-*Bilski*, amid the uncertainty over the proper framework with which to analyze the patent-eligibility of software patents, the Federal Circuit continued to uphold some software patents under Section 101. For example, it upheld U.S. Patent No. 7,346,545, directed to a method for distributing copyrighted media products over the internet via a facilitator, in *Ultramercial, Inc. v. Hulu*, LLC, reversing a trial court's decision that the '545 patent failed to satisfy Section 101.[26] However, the Supreme Court granted cert, vacated the decision, and remanded for further consideration in view of its decision in a Section 101 case dealing with medical test kits.[27] Yet on remand, the Federal Circuit maintained its position that the software patent in *Ultramercial* remained patent-eligible under Section 101.[28]

And the Federal Circuit upheld the four patents in *Alice Corp*. Those patents dealt with a system and method for reducing settlement risk for parties to commercial transactions, using a computer system as a third-party intermediary:

> The [computer system] intermediary creates "shadow" credit and debit records (*i.e.*, account ledgers) that mirror the balances in the parties' real-world accounts at "exchange institutions" (*e.g.*, banks). The intermediary updates the shadow records in real time as transactions are entered, allowing "only those transactions for which the parties' updated shadow records indicate sufficient resources to satisfy their mutual obligations." At the end of the day, the intermediary instructs the relevant financial institutions to carry out the "permitted" transactions in accordance with the updated shadow records, *ibid.*, thus mitigating the risk that only one party will perform the agreed-upon exchange.[29]

The four patents-in-suit in *Alice* were granted by the Patent Office between 1999 and 2010.[30] In 2007, while some of the patents were still pending in the Patent Office, CLS Bank brought a declaratory judgment suit asserting that the issued patents were invalid, unenforceable or not infringed. Before the trial court, after the Supreme Court's decision in *Bilski*, the parties cross-moved for summary judgment as to the eligibility of the patents under Section 101. The trial court held them unpatentable under Section 101, as covering merely an abstract idea of using a neutral intermediary to facilitate simultaneous exchange of obligations to minimize risk.[31]

The three-judge panel of the Federal Circuit hearing the appeal reversed 2-1, holding that CLS Bank had not made it "manifestly evident" that the patents were directed to an abstract idea.[32] But the full Federal Circuit then took the case *en banc*, granted a rehearing, vacated the panel opinion, and issued a single-paragraph *per curiam* opinion affirming the trial court.[33] The *per curiam* opinion was accompanied by five separate opinions authored by various blocs of the *en banc* court,[34] evidencing the difficulty the judges encountered in grappling with the patent-eligibility of *Alice's* patents.

The Supreme Court's Decision in *Alice*

Against that background of a deeply divided Federal Circuit, the most breathtaking aspect of the Supreme Court's decision in *Alice* was the utter ease with which a unanimous Court held the patents invalid under Section 101. Justice Clarence Thomas's opinion began by emphasizing the basis for the long-held exceptions to patentability:

> [T]he concern that drives this exclusionary principle [is] one of pre-emption. Laws of nature, natural phenomena, and abstract ideas are the basic tools of scientific and technological work. Monopolization of those tools through the grant of a patent might tend to impede innovation more than it would tend to promote it, thereby thwarting the primary object of the patent laws. We have repeatedly emphasized this concern that patent law not inhibit further discovery by improperly tying up the future use of these building blocks of human ingenuity.[35]

Justice Thomas then applied a two-step framework for evaluating patent eligibility. First, a court determines whether or not the patent is directed to one of the patent-ineligible concepts (laws of nature, natural phenomena, and abstract ideas); if it is not, Section 101 is satisfied. If, however, a patent-ineligible concept is involved, then a court will search for "an inventive concept—i.e., an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the ineligible concept itself."[36]

In step one, Justice Thomas readily found the patents to be drawn to the abstract idea of intermediated settlement. Likening it to the risk hedging in *Bilski*, he found intermediated settlement to be a long-standing, fundamental economic practice. Indeed, he found "no meaningful distinction between the concept of risk hedging in *Bilski* and the concept of intermediated settlement at issue here. Both are squarely within the realm of 'abstract ideas' as we have used that term."[37] Proceeding to step two, he found no inventive concept, but merely routine, generic computer implementation of the idea of intermediated settlement.[38]

Reviewing *Benson, Flook* and *Diehr*, Justice Thomas concluded that those cases showed that "the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea while adding the words 'apply it' is not enough for patent eligibility. . . . Thus, if a patent's recitation of a computer amounts to a mere instruction to implement an abstract idea on a computer, that addition cannot impart patent eligibility."[39] Finding *Alice's* four patents to amount to no more than implementation on a generic computer of the abstract idea of intermediated settlement, he deemed them ineligible for patenting under Section 101.[40]

Alice's Aftermath

Eleven days after *Alice*, the Supreme Court took up *Ultramercial* again, and once more granted cert, vacated, and remanded (G-V-R) for further consideration, this time in view of *Alice*.[41] (Indeed that day, the Court considered three petitions for certiorari arising from Federal Circuit decisions on the patent-eligibility of software; the Court denied cert in the two cases in which the Federal Circuit held the software patents to fail Section 101, and granted cert only in *Ultramercial*, where as noted above, the Federal Circuit had upheld the software patent under Section 101.)[42] A few months later, when the Federal Circuit decided *Ultramercial* for the third time, it finally held the patent ineligible under Section 101, deciding that it covered only the abstract idea of using advertisements as currency, e.g., showing an ad before delivering free content.[43]

Indeed, in the roughly six months between *Alice's* issuance on June 19, 2014 and December 15, 2014, courts deciding Section 101 challenges to software patents appeared to be invalidating the patents at nearly an 80% clip. Among the software patents held invalid under Section 101 following *Alice* are those directed to:

- Guaranteeing performance of an online transaction (*buySAFE v. Google, Inc.*)[44]
- Capturing color and spatial properties of an imaging device (*Digitech*)[45]
- Generating a single record of multiple services for accounting (*Amdocs*)[46]
- Facilitating marketing dialogs (*OpenText*)[47]
- Receiving transaction amount data, applying a formula, and making deposits into different accounts per the formula (*Every Penny Counts*)[48]
- Converting loyalty points among vendors (*Loyalty Conv. Sys.*)[49]
- Paying down a mortgage early when funds are available (*CMG Fin. Servs.*)[50]
- Automating lip-synching and facial expressions of 3D characters (*McRo*)[51]

Three district courts upheld software patents under Section 101 during this time period. One case involved a patent on software used to create a tool usable to form sheet metal into different parts, primarily for car parts (*AutoForm Eng'g*).[52] Another involved remotely monitoring data associated with an internet session and controlling network access (*Helios Software*).[53] And a third case upheld four patents covering methods of encoding and decoding data in accordance with a form of error correction code (*CalTech*).[54]

A Ray of Hope for Software Patents? The Federal Circuit's *DDR Holdings* Decision

After a rocky six months, software patent holders took heart from a December 5, 2014 Federal Circuit decision that upheld a software patent over a Section 101 challenge, albeit in a 2-1 decision over a strong dissent. In *DDR Holdings, LLC v. Hotels.com, L.P.*, the Court considered the patentability of U.S. Patent No. 7,818,399, which covered systems and methods for generating composite webpages that combined visual elements of a "host" website with content from a third-party merchant.[55]

The '399 patent aimed to solve problems experienced by host websites that displayed third-party ads. Website visitors, attracted by the ads, would click on them and be transported away from the host website to the website of the third-party advertiser. The patent's solution was to let the website visitor "be in two places at the same time," as the court described it. With the patented system, when a website visitor clicked a third-party ad, the system created a composite website that

displayed product information from the third-party merchant, but kept the "look and feel" of the host website.[56]

The panel majority found this patentable under Section 101. Acknowledging that the patent did address a business challenge (retaining website visitors), the majority emphasized that the challenge was not a "fundamental economic or longstanding commercial practice" but rather a challenge particular to the internet. As the majority saw it, the inventors had not begun with a pre-internet business practice and patented its performance on the internet, but rather, had patented the solution to a problem uniquely existing on the internet.[57]

Yet, that arguably also had been the case in *Ultramercial*, decided a few weeks earlier, wherein the Federal Circuit finally accepted that Ultramercial's patent couldn't satisfy Section 101, post-*Alice*. The *DDR Holdings* majority explained why it found the '399 patent a stronger candidate under Section 101. Whereas Ultramercial's patent covered only the idea of offering media content in exchange for viewing an advertisement—an "abstract business practice" that wasn't patentable merely by being performed on the internet—in contrast, the '399 patent in *DDR Holdings* achieved a "result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink."

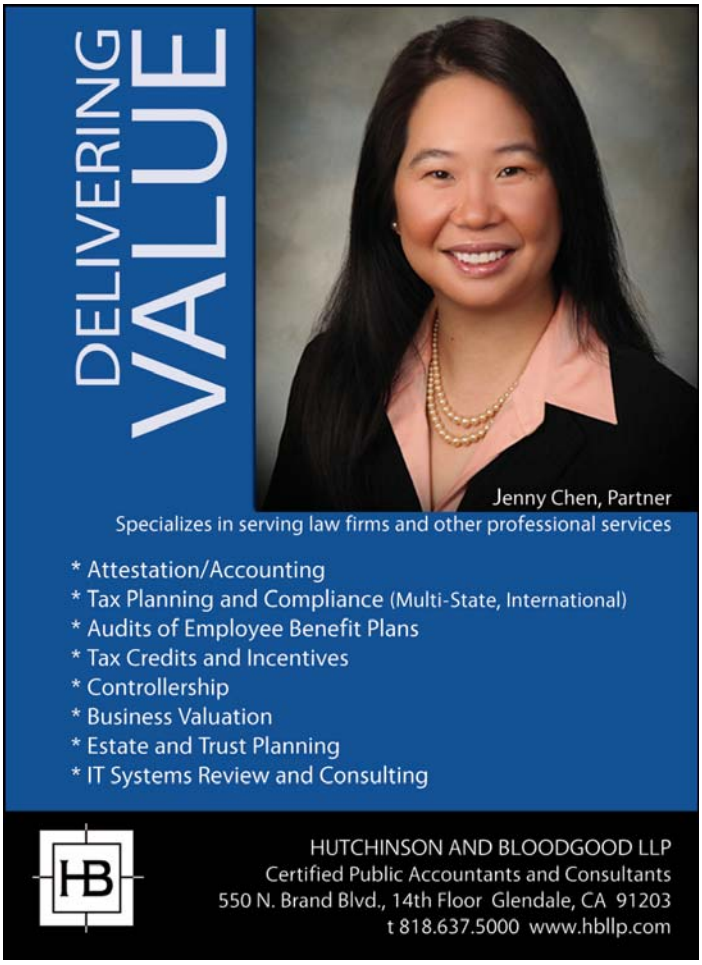
Whereas before the '399 patent, a click on a third-party ad transported the user off the host website, the systems of the '399 patent permitted a different outcome, one in which the user no longer left the host website. To the majority, this was enough to be patent-eligible under Section 101.[58]

Senior Circuit Judge Haldane Mayer, in dissent, bought none of it. He made clear his distaste for the entire premise of the '399 patent, criticizing it as "duping" and "confusing customers," "long on obfuscation but short on substance," and "border[ing] on the comical."[59] More substantively, Judge Mayer primarily disagreed with the majority because he found the '399 patent insufficiently technical.

Premising his dissent on his view that *Alice* introduced a "technical arts" test for patentability,[60] Judge Mayer emphasized that the '399 patent offered no new computer technology, but rather, relied on conventional technology; it offered only an entrepreneurial solution to a problem rather than a technological solution. Believing that "*Alice* made clear that claims untethered to any advance in science or technology do not pass muster under section 101," he found the '399 patent insufficiently technical to be patent eligible.[61]

The Past Six Months in Perspective

The Supreme Court's decision in *Alice* and its decision to G-V-R *Ultramercial* for a second time, while declining to hear contemporaneously pending appeals from cases in which the Federal Circuit struck down software patents under Section 101, are immensely significant.



First, the ease with which the *Alice* Court swept aside the issues that had so troubled the Federal Circuit sounded a wake up call to those who considered it murky or difficult to decide a software patent's eligibility under Section 101. Post-*Alice*, it is now clear that software inventions cannot rest on their computer-implementation alone to be patent-eligible.[62]

Second, *Alice* seems to have served as a tipping point for lower courts. Whereas in the two years before *Alice*, software patents encountered fewer Section 101 challenges in litigation and survived them roughly a third of the time, this rate plummeted to 20% in the six months post-*Alice*, and the frequency of such challenges increased markedly.[63]

Third, *Alice* caused the Patent Office to revamp its procedures for examining software patents. Six days after the decision, the Patent Office issued its examiners "Preliminary Examination Instructions" for inventions involving abstract ideas, particularly those implemented on computers.[64] The Patent Office subsequently supplemented those June 25 Instructions with additional guidance on December 16, 2014, and even this latest guidance is expected to be further revised after public comment closes in mid-March 2015.[65] The Office further took steps to halt the issuance of patents on applications that already had been examined and received Notices of Allowance.[66]

For software developers deciding whether to protect their software invention through patents versus copyright and trade secrets, the events of the past six months may cause them to focus more closely on the latter two forms of intellectual property. Yet, they also should consider whether the software invention relates to a business method or, in contrast, to what may be termed industrial software. Industrial software patents, such as those upheld in *AutoForm Eng'g*[67] and *Diehr* may be better equipped to pass muster under *Bilski* and *Alice*.[68]

Patent litigators on the plaintiff's side likely will re-evaluate their confidence in the validity of software patents issued by the Patent Office pre-*Alice*, as the Office's determination that those patents satisfied Section 101 was made under a far more permissive framework than that now being applied by courts. Litigators deciding whether to take on a contingent fee representation involving assertion of a software patent will scrutinize the patent even more closely than usual. In addition to evaluating the patent under *Alice's* two-step framework, litigators will compare the patent in question to those at issue in *Benson, Flook, Diehr, Bilski* and *Alice.*

Indeed, as one court has observed, "so far, the two-part test for identifying an abstract idea appears to be of limited utility, while comparisons to previously adjudicated patents—or more precisely, to past cases' characterizations of those patents—have done the heavy lifting."[69] Plaintiffs' counsel also may consider the benefits of teeing up the Section 101 issue early, rather than urging the court to wait to decide it until after the patent's claims have been interpreted by the court later in the suit.

Lastly, plaintiffs' counsel should study the numerous decisions invalidating software patents post-*Alice* to identify arguments that are not being found persuasive.

For defendants' counsel, considerations include whether to challenge a software patent under Section 101 in court, or, if defending against certain software patents covering financial products or services, to file a Covered Business Method Review proceeding in the Patent Office,[70] or both (though certain estoppel provisions[71] apply). Timing is a consideration—courts increasingly are demonstrating amenability to such challenges as early as the pleading stage, and a diminishing number appear to be deferring such challenges until after claim interpretation.

Post-*Alice*, software remains patentable as a general principle, but the bar has been raised significantly. Business method patents appear to suffer the most under the new framework, while industrial software patents may be less affected. The next six-to-twelve months may prove just as illuminating as the past six months. The Federal Circuit will begin hearing appeals of the trial court decisions rejecting software patents under Section 101 and may resuscitate some of the patents that currently stand rejected. This area of the law merits close attention going forward.

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[1] 134 S.Ct. 2347.
[2] *Id.* at 2359-60.
[3] Martin Campbell-Kelly, "Not All Bad: An Historical Perspective on Software Patents," 11 *Mich. Telecomm. Tech. L. Rev.* 191, 210 (2005).
[4] *Id.*
[5] 35 U.S.C. §101.
[6] *Diamond v. Chakrabarty*, 447 U.S. 303, 309 (noting that the most recent codification of the patent laws in 1952 left Jefferson's language largely intact, merely using "process" to replace "art" in Jefferson's original version).
[7] *Bilski v. Kappos*, 130 S.Ct. 3218, 3245 (2010) (Stevens, J., dissenting).
[8] *Alice*, 134 S.Ct. at 2354 (noting that the Court has applied this exception to patentable subject matter since its 1853 decision in *LeRoy v. Tatham*, 14 L.Ed. 367).
[9] *Chakrabarty*, 447 U.S. at 309.
[10] Martin Campbell-Kelly, 11 *Mich. Telecomm. Tech. L. Rev*. at 212-13 (recounting Informatics' efforts to patent the Mark IV); *see also id.* at 213 n.113 (noting that Informatics did succeed in patenting the Mark IV in Canada and the United Kingdom).
[11] *Id.* at 214 (describing the Patent Office's August 1966 advisory).
[12] Examination of Patent Applications on Computer Programs, Notice of Issuance of Guidelines, 33 FR 15609-10 (Oct. 22, 1968).
[13] Examination of Patent Applications on Computer Programs, Notice of Rescission of Guidelines, 34 FR 15724 (Oct. 10, 1969) (noting that the rescission was spurred by the decision of the Court of Customs and Patent Appeals in *In re Prater*).
[14] U.S. Patent No. 3,533,086 at Col. 1, line 64 - Col. 2, line 5. *See also* Martin Campbell-Kelly, 11 *Mich. Telecomm. Tech. L. Rev.* at 214 (describing the '086 patent as "one of the earliest software product patents granted" and opining that the invention "was a tour de force of computer programming that even today is an impressive piece of coding").
[15] *Gottschalk v. Benson*, 93 S.Ct. 253, 254, 257 (1972).
[16] *Parker v. Flook*, 98 S.Ct. 2522, 2524, 2529 (1978) (holding unpatentable a process for using a computer to update an alarm limit on a variable measured during chemical processing).
[17] *Diamond v. Diehr*, 101 S.Ct. 1048 (1981).
[18] *Diehr*, 101 S.Ct. at 1067-68 (Stevens, J., dissenting).
[19] The Federal Circuit, as the court is known, was created by merging the U.S. Court of Customs and Patent Appeals with the appellate division of the U.S. Court of Claims.
[20] *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368 (Fed. Cir. 1998).
[21] *Id.* at 1375-77 (upholding the validity of U.S. Patent No. 5,193,056 "Data Processing System for Hub and Spoke Financial Services Configuration").
[22] *See* John R. Allison and Emerson H. Tiller, "The Business Method Patent Myth," 18 *Berkeley Tech. L. J.* 987, 991 (2003) (noting that the number of patents issued by the Patent Office within class 705 "Data processing: financial, business practice, management, or cost/price determination" rose from 469 in 1998 to 1,006 by 2000); *see also* Michael J. Meurer, "Business Method Patents and Patent Floods," 8 *Wash. U. J. L. & Policy* 309, 313 (2002) ("The *State Street* decision set

off a flood of e-commerce patents.").
[23] *See In re Bilski*, 545 F.3d 943, 959-60 (Fed. Cir. 2008). *State Street* had held that "the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price" satisfied Section 101 "because it produces a useful, concrete and tangible result." *State Street*, 149 F.3d at 1373. In *Bilski*, the Federal Circuit withdrew the "useful, concrete and tangible result" test in favor of a new "machine or transformation" test. *Bilski*, 545 F.3d at 959-60. The Federal Circuit in *Bilski* did reaffirm that business method patents were not per se unpatentable. *Id.* at 960.
[24] *Bilski v. Kappos*, 130 S.Ct. 3218, 3226-27 (2010) (affirming the Federal Circuit's decision that the patent in suit did not satisfy Section 101, but holding that the Federal Circuit "incorrectly concluded that this Court has endorsed the machine-or-transformation test as the exclusive test").
[25] *Id.* at 3228-29 (business methods not *per se* unpatentable), 3231 (Bilski's application unpatentable as an attempt to patent hedging as a concept and mathematical formula).
[26] *Ultramercial, Inc. v. Hulu, LLC*, 657 F.3d 1323 (Fed. Cir. 2011).
[27] *Wildtangent, Inc. v. Ultramercial, LLC*, 132 S.Ct. 2431 (2012) (remanding for consideration in view of *Mayo Collab. Servs. v. Prometheus Labs., Inc.*, 132 S.Ct. 1289 (2012)).
[28] *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335, 1349-54 (Fed. Cir. 2013) (concluding that "the '545 patent does not claim a mathematical algorithm, a series of purely mental steps, or any similarly abstract concept. It claims a particular method for collecting revenue from the distribution of media products over the Internet . . . . [A]s a practical application of the general concept of advertising as currency and an improvement to prior art technology, the claimed invention is not so manifestly abstract as to override the statutory language of section 101.") (cites and quotes omitted).
[29] *Alice*, 134 S.Ct. 2347, 2352 (June 19, 2014).
[30] U.S. Patent No. 5,970,479 issued on Oct. 19, 1999, and U.S. Patent No. 7,725,375 issued on May 25, 2010.
[31] *Alice*, 134 S.Ct. at 2353 (tracing the procedural history of the case).
[32] *CLS Bank Int'l v. Alice Corp. Pty. Ltd.*, 685 F.3d 1341, 1352, 1356 (Fed. Cir. 2012).
[33] *CLS Bank Int'l v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269 (Fed. Cir. 2013) (*en banc*). Specifically, a majority of the full Federal Circuit held that the claims of the patents that were directed to methods and to computer-readable media failed to satisfy Section 101, while as to the system claims, the full court split evenly and thus affirmed the trial court's holding of invalidity as to those claims as well. *Id.*
[34] *Id.* at 1273 (plurality opinion authored by Judge Lourie and joined by four other judges, deciding all claims of the patents ineligible under Section 101); *id*. at 1292, 1311 (opinion by Chief Judge Rader, concurring in part and dissenting in part, viewing the system claims as satisfying Section 101 because they involved, not a disembodied abstract idea, but an idea "integrated into a system utilizing machines"); *id*. at 1313 (opinion by Judge Moore, dissenting in part, arguing that the system claims satisfied Section 101); *id*. at 1321 (opinion by Judge Newman, concurring in part and dissenting in part, arguing that all claims—system, method, and computer readable media—satisfied Section 101); *id*. at 1327 (dissenting opinion by Judges Linn and O'Malley, arguing that all claims were patent-eligible under Section 101).
[35] *Alice*, 134 S.Ct. at 2354 (citations and quotes omitted).
[36] *Alice*, 134 S.Ct. at 2355 (citations and quotes omitted). The Court previously had introduced this two-step framework in *Mayo Collab. Servs. v. Prometheus Labs., Inc.*, 132 S.Ct. 1289, 1294, 1296-97 (2012), which concerned the eligibility under Section 101 of patents for medical diagnostic tests. Yet even this two-step framework seems structurally less than solid, and it would not be surprising if the Court reworks this formulation in future cases. As one trial court observed, "Describing this as a two-step test may overstate the number of steps involved. If the claim is not 'directed' to a patent-ineligible concept, then the test stops at step one. If the claim is so directed, but we find in step two that the claim contains an 'inventive concept' that 'transforms' the nature of the claim into something patent eligible, then it seems that there was a categorization error in finding the claim . . . 'directed to an abstract idea' in step one." *McRo, Inc. v. Activision Publ'g, Inc.*, 2014 WL 4759953, *4 (C.D. Cal. Sept. 22, 2014).
[37] *Alice*, 134 S.Ct. at 2355-57.
[38] *Id.* at 2357-60.
[39] *Id.* at 2358 (citations and quotations omitted).
[40] *Id.* at 2359.
[41] *Wildtangent, Inc. v. Ultramercial, LLC,* 134 S.Ct. 2870 (June 30, 2014).
[42] *See Bancorp Services, L.L.C. v. Sun Life Assurance Co. of Canada* (U.S.), 134 S.Ct. 2870 (June 30, 2014) (denying cert in a case where the Federal Circuit invalidated under Section 101 a patent for administering and tracking the value of life insurance policies); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 134 S.Ct. 2871 (June 30, 2014) (denying cert in a case where the Federal Circuit invalidated under Section 101 a patent for using a computer system in connection with insurance claim processing). One trial court noted, "Conspicuously, the Supreme Court vacated the only Federal Circuit opinion, *Ultramercial,* upholding a software patent and declined certiorari over the two actions, *Bancorp* and *Accenture*, that invalidate software patents." *See Every Penny Counts, Inc. v. Wells Fargo Bank, N.A.,* 2014 WL 4540319, *4 n.4 (M.D. Fla. Sept. 11, 2014).
[43] *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715-16 (Fed. Cir. Nov. 14, 2014).
[44] *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. Sept. 3, 2014) (deciding that the patent's claims "are squarely about creating a contractual relationship—a 'transaction performance guaranty'—that is beyond question of ancient lineage . . . . [and] thus are directed to an abstract idea," that "the claims' invocation of computers adds no inventive concept," and thus "with the approach to this kind of section 101 issue clarified by *Alice*, it is a straightforward matter to conclude that the claims in this case are invalid").
[45] *Digitech Image Technologies, LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. July 11, 2014).
[46] *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, __ F.Supp.3d__, 2014 WL 5430956, *5-11 (E.D. Va. Oct. 24, 2014) (invalidating the claims of four patents).
[47] *Open Text S.A. v. Alfresco Software Ltd., 2*014 WL 4684429, *5 (N.D. Cal. Sept. 19, 2014) ("The asserted claims in the '372 and '007 patents . . . fail to transform the abstract idea into a patent-eligible invention. The asserted claims in both patents implement the basic marketing scheme on a generic computer system without any meaningful limitations.").
[48] *Every Penny Counts,* 2014 WL 4540319 at *5 (invalidating a method patent because it claims "an abstract idea that is implemented by well-understood, routine, conventional activities previously known to the industry" and invalidating a system patent because it "merely implements—on a generic, unspecified computer—the [method patent's] unpatentable method").
[49] *Loyalty Conv. Sys. Corp. v. Am. Airlines, Inc.*, __ F.Supp.2d __, 2014 WL 4364848, *6-14 (E.D. Tex. Sept. 3, 2014).
[50] *CMG Fin. Servs., Inc. v. Pacific Trust Bank*, F.S.B., __ F.Supp.2d __, 2014 WL 4922349, *17-19 (C.D. Cal. Aug. 29, 2014).
[51] *McRo, Inc. v. Activision Publ'g, Inc.*, 2014 WL 4759953, *4 (C.D. Cal. Sept. 22, 2014).
[52] *AutoForm Eng'g GmbH v. Eng'g Tech. Assocs., Inc.*, 2014 WL 4385855, *3-4 (E.D. Mich. Sept. 5. 2014).
[53] *Helios Software, LLC v. SpectorSoft Corp.*, 2014 WL 4796111, *15-17 (D. Del. Sept. 18, 2014) ("Although 'remotely monitoring data associated with an Internet session' or 'controlling network access' may be principles fundamental to the ubiquitous use of the Internet or computers generally, [defendant] has provided no support for that position. As such, the Court cannot agree with [defendant] that the patents-in-suit are drawn to an abstract idea.").
[54] *California Institute of Technology v. Hughes Communications Inc.*, __ F.Supp.3d __, 2014 WL 5661290, *14-20 (C.D. Cal. Nov. 3, 2014). The Court stated: "Caltech's patents recite methods of encoding and decoding data in accordance with an IRA [irregular repeat and accumulate] code. At step one, this Court determines that all asserted claims are directed to the abstract idea of encoding and decoding data for the purpose of achieving error correction. Nonetheless, at step two, this Court finds that the claims contain elements that provide an inventive concept. When claims provide a specific computing solution for a computing problem, these claims should generally be patentable, even if their novel elements are mathematical algorithms. That is the case with all of Caltech's asserted claims, which the Court has concluded are patentable." *Id.* at *14.
[55] *DDR Holdings, LLC v. Hotels.com, L.P.*, __ F.3d __, 2014 WL 6845152, *1 (Fed. Cir. Dec. 5, 2014). Two patents had been asserted successfully at trial, and were taken up on appeal by the Federal Circuit. Of the two patents, one (the "'572 patent") was held invalid over prior art by the panel, which thus did not reach the Section 101 issue as to that patent, but considered Section 101 only as to the '399 patent.
[56] *Id.*
[57] *Id.* at *10.
[58] *Id.* at *12.
[59] *Id.* at *17 (Mayer, J., dissenting).
[60] Judge Mayer has articulated this view multiple times post-*Alice. See, e.g., Ultramercial,* 772 F.3d at 717 (Mayer, J., concurring); *I/P Engine, Inc. v. AOL Inc.*, 576 Fed. Appx. 982, 992 (Fed. Cir. Aug. 15, 2014) (Mayer, J., concurring).
[61] *DDR Holdings*, 2014 WL 6845152 at *18-19 (Mayer, J., dissenting).
[62] "*Alice* did categorically establish a clear rule that had previously been subject to debate: mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention." *McRo*, 2014 WL 4759953 at *4.
[63] My colleague Chris R. Johnson and I searched for Section 101 cases involving software patents decided after the Supreme Court's March 20, 2012 decision in *Mayo Collab. Servs. v. Prometheus Labs., Inc.*, 132 S.Ct. 1289 but before the Court's *Alice* decision. Of 30 decisions, we found nine upholding the patents, 19 deeming them invalid under Section 101, and two decisions upholding some claims of the patents but invalidating others. For the six months post-*Alice*, we reviewed 20 decisions, 4 of which upheld the patents under Section 101, the remainder of which invalidated them.
[64] U.S. Patent and Trademark Office, "Preliminary Examination Instructions in view of the Supreme Court Decision in *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.", available at* www.uspto.gov/patents/announce/alice_pec_25jun2014.pdf (last visited Jan. 5, 2015).
[65] 2014 Interim Guidance on Patent Subject Matter Eligibility, 79 FR 74618-33 (Dec. 16, 2014).
[66] See Update on USPTO's Implementation of *Alice v. CLS Bank* (Aug. 4, 2014), available at http://www.uspto.gov/blog/director/entry/update_on_uspto_s_implementation (last visited Jan. 7, 2015).
[67] *AutoForm Eng'g GmbH*, 2014 WL 4385855 (E.D. Mich. Sept. 5. 2014).
[68] *Cf.* Bernard Chao, "Finding the Point of Novelty in Software Patents," 28 *Berkeley Tech. L.J.* 1217, 1222-23, 1226-28 (2013) (distinguishing business method patents from industrial software patents, noting the "intense criticism" often given to business method patents, and opining that "from a policy perspective [industrial software patents] are indistinguishable from other industrial patents that are not implemented through software and . . . have not been subject to the same criticism as their business method cousins").
[69] *McRo*, 2014 WL 4759953 at *5.
[70] The CBM Review process is available for patents having claims directed to "financial products or services" that are not directed to "technological inventions." *See* for example the Patent Office's discussion of its CBM Review program at http://www.uspto.gov/aia_implementation/faqs_covered_business_method.jsp (last visited Jan. 7, 2015).
[71] A defendant in a lawsuit who also petitions the Patent Office for CBM Review is estopped from raising in the patent suit any grounds for invalidity that are (i) actually raised and (ii) subject to a final decision in the CBM Review proceeding. *See id.*

Test No. 76

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. Appeals from patent cases tried in California federal courts are heard by the Court of Appeals for the Federal Circuit in Washington, D.C.
❑ True ❑ False

2. Section 101 of the Patent Act defines the categories of inventions for which a patent may be granted.
❑ True ❑ False

3. A defendant sued for patent infringement must wait until the summary judgment stage of the case before challenging the patentability of the patent-in-suit under 35 U.S.C. 101.
❑ True ❑ False

4. Covered Business Method (CBM) Review refers to the process used in federal courts to challenge the patentability of a software patent.
❑ True ❑ False

5. In *Alice Corp. v. CLS Bank*, the U.S. Supreme Court held that all software patents are *per se* unpatentable.
❑ True ❑ False

6. In the six months following the U.S. Supreme Court's decision in *Alice Corp*., about half the software patents challenged under 35 U.S.C. 101 were held invalid by courts.
❑ True ❑ False

7. The three exceptions to patent-eligibility—laws of nature, natural phenomena, and abstract ideas—were judicially created.
❑ True ❑ False

8. Copyright law and trade secret law also may afford protection to a software invention.
❑ True ❑ False

9. The six months following the Supreme Court's decision in *Alice* saw an increase in the frequency with which Section 101 challenges were asserted against software patents in litigation.
❑ True ❑ False

10. *State Street Bank* is a decision by the Court of Appeals for the Federal Circuit that held that business method patents were not *per se* unpatentable.
❑ True ❑ False

11. One result of the Federal Circuit's abrogation of the holding of *State Street Bank* is that business method patents are per se unpatentable.
❑ True ❑ False

12. The machine or transformation test has been confirmed by the Supreme Court as the sole test for patent-eligibility under Section 101.
❑ True ❑ False

13. The Supreme Court in *Alice* applied a two-step framework for evaluating patent-eligibility under Section 101 of the Patent Act.
❑ True ❑ False

14. Under *Alice*, a patent application that takes a long-standing business practice and implements it on a computer is unlikely to satisfy Section 101 of the Patent Act.
❑ True ❑ False

15. Since the Supreme Court decided *Alice*, the only decisions that have upheld software patents over Section 101 challenges have been decided by district courts, not the Court of Appeals for the Federal Circuit.
❑ True ❑ False

16. The Supreme Court's decision in *Alice* has not affected the Patent Office's processes for examining software patents.
❑ True ❑ False

17. The Supreme Court's decisions in *Benson, Flook* and *Diehr* are no longer good law after *Alice*.
❑ True ❑ False

18. Before *Alice*, the Supreme Court had never before held a software patent ineligible for patenting under Section 101.
❑ True ❑ False

19. Software patents were granted by the Patent Office before the Federal Circuit's 1998 decision in *State Street Bank*.
❑ True ❑ False

20. At least one Federal Circuit judge believes that the Supreme Court's *Alice* decision created a technical arts test for patentability.
❑ True ❑ False

MCLE Answer Sheet No. 76

INSTRUCTIONS:
1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the $20 testing fee for SFVBA members (or $30 for non-SFVBA members) to:

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ANSWERS:
Mark your answers by checking the appropriate box. Each question only has one answer.

1.	❑ True	❑ False
2.	❑ True	❑ False
3.	❑ True	❑ False
4.	❑ True	❑ False
5.	❑ True	❑ False
6.	❑ True	❑ False
7.	❑ True	❑ False
8.	❑ True	❑ False
9.	❑ True	❑ False
10.	❑ True	❑ False
11.	❑ True	❑ False
12.	❑ True	❑ False
13.	❑ True	❑ False
14.	❑ True	❑ False
15.	❑ True	❑ False
16.	❑ True	❑ False
17.	❑ True	❑ False
18.	❑ True	❑ False
19.	❑ True	❑ False
20.	❑ True	❑ False

SAN FERNANDO VALLEY BAR ASSOCIATION

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THURSDAY, FEBRUARY 26, 2015

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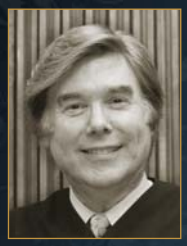

Judge Harvey A. Silberman
Los Angeles Superior Court
SFVBA Judge of the Year

Judge Randy Rhodes
Los Angeles Superior Court
Administration of Justice Award

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Hon. Harvey Silberman Named Judge of the Year

By Irma Mejia

On February 26, the SFVBA will honor Judge Harvey Silberman at its annual Judges' Night ceremony in Woodland Hills. All members and their firms are invited to join the Bar in recognizing Judge Silberman for his accomplishments and ongoing service to the community.

Photos by Paul Joyner

THE SAN FERNANDO VALLEY BAR ASSOCIATION will honor Los Angeles Superior Court Judge Harvey Silberman as Judge of the Year at our annual Judges' Night on February 26 at the Warner Center Marriott in Woodland Hills. Each year, the SFVBA honors an exemplary jurist for his or her demonstrated commitment to justice.

Judge Silberman's career is marked by a strong devotion to public service. Originally from New York City and a graduate of Wesleyan University, he came to Los Angeles to work as a television writer, working for several popular shows, including *Charles in Charge*. However, the growing AIDS epidemic of the 1980s compelled him to make a career change. The son of a corporate lawyer, Judge Silberman found law to be the most fitting and natural way for him to help with the massive health crisis.

After earning his law degree from USC in 1992, Judge Silberman became the first staff attorney hired by AIDS Project Los Angeles (APLA). Having volunteered for APLA in law school, he witnessed firsthand the need for legal services among many AIDS patients. As a lawyer, he served on the frontlines of the devastating illness, representing dying patients in all sorts of end-of-life matters, including drafting deathbed wills. Silberman became an early advocate for compassionate and dedicated representation of AIDS patients at a time when the illness was widely misunderstood.

After years of service to APLA and seeking a less stressful practice, Judge Silberman joined a family law firm, where he honed his litigation skills. But the call for public service was too strong to ignore and in 1998 he joined Neighborhood Legal Services of Los Angeles County as director of its Family Law/Domestic Violence Program. He also served as a Professor of Law at USC. In 2004, he was elected Commissioner of the Los Angeles Superior Court, a position he held until his election to the bench in 2008. He was reelected in 2014 for a term lasting until January 2021. He hears family law cases in the Northeast District.

When not on the bench, Judge Silberman devotes his time to his family, playing the piano, and writing and directing short films. He also continues to serve the community as a board member of the Valley Community Legal Foundation of the SFVBA and the Association of Family and Conciliation Courts.

Judge Silberman is popular and respected among attorneys and colleagues on the bench. "I've had the pleasure of appearing before Judge Silberman early in his career when he was just appointed a commissioner. And thereafter, when I joined the family law bench for the Los Angeles Superior Court, I recognized that Harvey was a person of impeccable dedication to the issues of family and children," says Los Angeles Superior Court Judge Thomas Trent Lewis. "Harvey is a credit to the bench and I'm sure his dedication to the families of Los Angeles County will continue."

"He is held in high esteem by the attorneys who appear before him and he is an outstanding member of the community," says Linda Temkin, SFVBA Director of Education and Events. "Our Board of Trustees views Judge Silberman as a great and deserving recipient of this year's award."

Judge Lewis also adds, "As a past president of the San Fernando Valley Bar Association, I extend my heartfelt congratulations to the Bar for making such a wonderful selection for the prestige and honor that comes with this award. Well done."

Q- How do you feel about being named Judge of the Year by the San Fernando Valley Bar Association?

A- I am incredibly honored to be recognized as Judge of the Year. The fact that the honor comes from the San Fernando Valley Bar Association is especially touching because I was a member of the SFVBA and spent a good deal of my career as an attorney working in the San Fernando Valley.

Judge Silberman and court staff

Q: What motivated you to go into law?

A: In the years after I left college, I was a television comedy writer and wrote television shows for Bea Arthur, Ellen Burstyn and Elaine Stritch. I also wrote for a show that many people seem to remember, *Charles in Charge*. Sadly, in the early 1980s, the AIDS crisis struck and many people I knew became very sick or died. In 1987, I went to 62 funerals. Most of those who died were under 40. I began to find it difficult to be funny all day long when all of these terrible things were happening. I felt I needed to get involved helping all of these sick people. So, I gave up my television career and I went to law school at USC.

After law school I became the first staff attorney hired by AIDS Project Los Angeles and my public interest legal career began. I continued working in public interest law in the San Fernando Valley for many years through Neighborhood Legal Services of Los Angeles County, where I supervised a number of courthouse based domestic violence clinics and served clients who were sheltered at Haven Hills.

Q: Working in the public interest can be difficult because of lower salaries and heavier workloads. Do you think it is still worthwhile?

A: I can only speak for myself. I came of age during a terrible time, in the midst of a terrible epidemic. So many people I knew were dying. I felt the need to do something in a hands-on way. My dad, as a lawyer, volunteered and I always had a sense that I could help people through the law.

Q: Did you always want to be a judge?

A: I never aspired to be on the bench. After my first dozen years as a lawyer, I had a somewhat unusual resume in that I had worked for a firm, worked as a public interest lawyer, and taught at a major law school. Lots of people have one or two of those things on their resume, but I had all three. A colleague urged me to apply to be a court commissioner and, lo and behold, I was chosen.

Q: What was it like working for APLA so early in its history? What kind of challenges did you encounter?

A: It was very difficult work. Two or three nights a week, after leaving the office, I would go to work in the hospital wards where I helped patients with various legal issues. It was enormously difficult to work with such young people who were dying. It was very impactful work but also dangerous. A number of times I was dressed in a hazmat suit because patients had virulent tuberculosis or other contagious diseases. I would go into isolation chambers with the patients to do the work.

At the time, there was a lot of backlash in the community. People were afraid to go near people with AIDS. It was scary, especially in the early days without much knowledge of the illness. It was scary for me, going into an isolation chamber, even in a hazmat suit. And in the early days, there was so much stigma about the disease. It was challenging work but I didn't feel it was work I could shrink from. There were so few people willing to pitch in and help. The government was not really helping in any way. It was the community that rallied on its own to help and I just really needed to be a part of it.

Q: Why did you focus the rest of your career on family law?

A: After a number of years working for people with AIDS, I decided I needed a break from the stress and strain of that kind of work. I knew I wanted to stay in an area of the law that dealt with the human condition so when an opportunity arose to work at a friend's family law firm, I took it. From the first day, I knew I had found an area of the law for which I had a passion.

I eventually left the firm to go back into public interest work, becoming a certified domestic violence counselor to provide legal services in shelters. It was illuminating in so many ways. At the time, in the mid- to late 1990s, I was one of only a few men involved in direct services.

Q: Were domestic violence survivors more or less comfortable because you were a man?

A: Hopefully they felt at ease that I had taken the time to become a certified counselor. Another thing that helped was language. I learned from my legal secretary how to say in Spanish, "Excuse me. I'm sorry I don't speak Spanish but my assistant will help translate." With just that one sentence, I could see a total transformation in the litigant. She was suddenly relaxed because I took time to apologize and explain the next step.

I thought, "If I could learn one sentence, then I could learn two, and I could learn three." I got Spanish lessons on CD for my car and spoke only Spanish with my staff on Fridays. If I didn't understand something, I'd look it up in the dictionary. We expanded this to two days, then three. After about two years of this type of language study, I became proficient enough to take the test to be certified to perform legal services in a foreign language.

Q: It seems like a great skill to have.

A: Yes and it really helps a lot in the courtroom now. Though the interpreters are wonderful, there's a flavor of the situation I sometimes get when Spanish-speaking litigants are here. I don't have to listen to the interpreter too much. I pick up a lot of nuances of what's happening in the family because I speak the language.

Q: As a judge, have you always heard family law cases?

A: My first court assignment was in a separate court dealing only with domestic violence and civil harassment. Then I was switched to a trial court.

Family law is not a very popular assignment. It requires very long hours and it's a hard job dealing with people and their imperfections. There are a lot of emotions and a certain amount of danger. I think most family law judges deal with threats. I have had at least one death threat. The long hours, danger and volatility of the subject matter make it a less popular assignment for judges. I've always felt that, since my work here is a continuation of my public service, if this is where the court needs me, then I'll stay.

Q: Can you describe your first appearance in a courtroom as a new attorney?

A: All I remember about my first courtroom experience is that I was terrified. Luckily, the judge was very kind to me and I try my best to return that favor to new attorneys appearing in my courtroom.

Q: Do you have a favorite jurist that you look up to?

A: I worked with Judge William MacLaughlin (former Presiding Judge for Los Angeles County) when he was the supervising judge at the San Fernando courthouse. In coordination with my employer, Neighborhood Legal Services, we opened a domestic violence clinic at the courthouse. After the clinic opened, Judge MacLaughlin took me aside and urged me to apply for a position on the bench. I am forever grateful for his encouragement.

Q: What do you enjoy most about serving on the bench? What do you dislike about it?

A: The thing I enjoy most about my work is the ability to help families through conflict. The thing I dislike

most is having so little time to spend on the plight of so many children. It is often very daunting to realize you only have 15 minutes to get to the bottom of a matter and decide the fate of a child.

Q: What is the most difficult aspect of your work?

A: The most difficult aspect of my work is to have to watch the terrible things done to children. Parental conflict destroys children and parents often have little or no sense how destructive their conflict can be on their own children.

Q: Are you any different now than when you first presided over a courtroom?

A: What hasn't changed in my years on the bench is my commitment to children and their families. I hope that I have become more educated about the human condition so as to make myself a more effective bench officer.

Q: How do you feel about diversity in the legal profession and on the bench? Are there certain steps or programs we can support to continue to improve in this area?

A: Diversity on the bench is very important. People trust the system of justice when they see that people from all walks of life administer that system. All of us need to encourage people of all genders, race, religions, and sexual orientations to consider serving as a bench officer.

Q: How do you view the current Bench-Bar relationship?

A: I have always been lucky to have a great working relationship with the family law Bar. I take an enormous amount of time to attend Family Law Executive Committee meetings, speak at Bar events, and attend special functions of the Bar. In turn, the Bar is enormously generous in its support for programs such Pro Per Judgment Day and serving as daily settlement officers.

Q: What advice would you give to current law students?

A: Since I don't teach at the university anymore, I have anywhere from three to six judicial externs every year so I can continue passing on knowledge. I tell them all to find an area of law they are passionate about because that is the only thing that will bring them professional fulfillment.

SFVBA TO PRESENT **Judge Randy Rhodes** WITH ADMINISTRATION OF JUSTICE AWARD

THE SAN FERNANDO VALLEY BAR Association honors local judges for their commitment to justice and judicial excellence. At this month's Judges' Night award ceremony, the SFVBA will honor Los Angeles Superior Court Judge Randy Rhodes with the Administration of Justice Award.

Judge Rhodes has diligently served in Los Angeles County courts since 1997. Over the years, he has heard cases in various areas of law, including felony and misdemeanor criminal matters, probate, and civil and family law. He was reelected to the bench in 2012 and currently hears cases at the Chatsworth courthouse.

He is a graduate of California State University Northridge and received his law degree from the University of West Los Angeles. He devotes a lot of his time to engaging with students who are interested in pursuing careers in law-related fields. He is a dedicated volunteer in CSUN's Judicial Internship Program and offers his time to mentor students and provide lectures in local schools.

Judge Rhodes currently spearheads the Meet the Judges Program, the long running public forum designed to answer questions about the courts and the role of judges. The program, a collaboration between CSUN's Political Science Department, the SFVBA and the court, is held each spring on the university's campus.

Judge Rhodes is known for his unfailing politeness and is credited with bringing civility and respect back into the courtroom. His appreciation for attorneys and jurors alike has long been established and the San Fernando Valley Bar is proud to honor his service.

Irma Mejia is Editor of *Valley Lawyer* and serves as Publications and Social Media Manager at the San Fernando Valley Bar Association. She also administers the Bar's Mandatory Fee Arbitration Program. She can be reached at editor@sfvba.org.

By Patricia A. Yevics

"There are only two kinds of speakers: those that are nervous and those that are liars."—Mark Twain

FEAR OF PUBLIC SPEAKING, ALSO KNOWN AS glossophobia, is one of the most commonly reported social fears, even greater than fear of death. However, it is important for professionals to be able to have some comfort level with speaking in front of other people. Whether speaking before a small group in a familiar setting or a large group of strangers, being able to give a presentation is a skill that can be learned regardless of your personality.

I have been collecting tips and suggestions about how to improve my skills and techniques and I thought I would share some of them with you. According to Ralph Waldo Emerson, "All great speakers were bad speakers at first." Everyone can and should learn how to speak in front of a group.

"There are always three speeches, for every one you actually gave. The one you practiced, the one you gave, and the one you wish you gave."—Dale Carnegie

Many years ago I had the good fortune to take a two-day Dale Carnegie public speaking class and, while I am certainly not an expert speaker, I did learn some really good tips that I have never forgotten.

- Never say "that is a great question" or "thanks for asking that question." If you do not say it for all questions, then it is assumed that the others are not great or you are not happy to get a question.
- When asked a negative question, do not give away your feelings with facial expressions.
- When asked a negative question, try to turn it to a positive.
- When you are finished with your presentation and want questions, say "Who has the first question?" To end questioning, say "Who has the final question?" Do not say "Does anyone have any questions?" This will give the audience the opportunity to say "no" and that is not what you want.
- If you do not get any questions, have a question ready and say "I am often asked this question."
- Always repeat the question for the audience, even negative questions.
- For all presentations, make a list of what you want to remember to do such as "Smile, start with a good opening, do not say um, etc." and keep it with you as a reminder.
- Most people spend most of their time on the body of the presentation and forget about a great opening and closing. (More on this later in the article.)
- When preparing and delivering a presentation where you are giving information and want people to take some action, you have to show a benefit as to why they should take that action. You will also need to provide evidence that taking the action will result in the benefit.

"90% of how well the talk will go is determined before the speaker steps on the platform."—Somers White

Fortunately most lawyers know and understand the critical importance of preparation for their work. This is also true for presentations. In addition to knowing the facts of your topic, you need to learn as much about your audience as possible. Find out who will be there, why they will be there, and what they hope to take away from your speech or presentation. Whenever I ask someone to speak at a conference, I make it very clear who the audience is. The presentation should be tailored to the audience. Even if you reuse a presentation, you need to update it to fit the situation.

It is also important to know how much time you will have for a presentation. While it is always good to have more information than less, you do not want to have so much that you are rushing at the end or have to apologize for not being able to finish the presentation. It actually requires more planning to deliver a short speech than a long speech.

Ready, Set, Go!

You get 30-60 seconds to engage the audience. Your opening sets the tone but most people waste the opportunity to make a great impression when they begin a presentation. We are all guilty of it but we can improve.

First, here's how to not start a presentation:

- Never open with "Today I would like to talk about..." The audience knows what you are supposed to talk about or at least they should have some idea.
- Avoid clichés such as "It gives me great pleasure" or "I would like to thank..."
- Never start with a negative such as, "I am not really that knowledgeable about this" or "I am not very comfortable speaking to large groups." (I have actually heard speakers start with these statements.)

How to start a presentation:

- Start with a startling statistic or statistic that relates to your topic. If you are using a PowerPoint presentation, this is a good beginning.
- Use an anecdote or experience. A story, case study, or personal anecdote is perhaps the single most effective tool for transferring information from speaker to audience. In fact, Harvard Professor Howard Gardner once said, "stories are the single most powerful weapon in a leader's arsenal." It must be well told, relevant and short.
- Ask a rhetorical question

There are many additional resources providing excellent tips. Below are a few of the best:

- "10 Rules of Public Speaking," *Dale Carnegie Blog*, April 19, 2010 http://blog.dalecarnegie.com/leadership/10-rules-of-public-speaking
- Dale Carnegie, *The Art of Public Speaking*, 1915 http://manybooks.net/titles/carnegieda16311631716317-8.html (free e-book download)
- Gary Genard, "25 Words or Phrases to Avoid in Speeches and Presentations," *Speak for Success!,* March 2, 2014 http://www.genardmethod.com/blog-detail/view/215/25-words-or-phrases-to-avoid-in-speeches-and-presentations#.VK8s0HtCV6V
- Peter Jeff, "Grand Finale: 12 Ways to End Your Speech" http://westsidetoastmasters.com/article_reference/12_ways_to_end_your_speech.html
- Matt Eventoff, "Five Great Ways to End A Speech," *Quick and Dirty Tips*, January 2, 2014 http://www.quickanddirtytips.com/business-career/public-speaking/5-great-ways-to-end-a-speech
- Brad Phillips, "How to Deliver a Powerful Closing to a Speech on Any Topic," *PR Daily*, September 17, 2012 http://www.prdaily.com/Main/Articles/How_to_deliver_a_powerful_closing_to_a_speech_on_a_12670.aspx

- Ask for a show of hands
- Use an expert opinion
- Use a current headline
- Use a client testimonial or success story[1]

> *"They may forget what you said but they will never forget how you made them feel."*—Carl W. Buechner

Too often speakers, myself included, spend so much time preparing our presentation and then working on a dynamic start, we forget to end effectively. In reality, the end of the speech is just as important as the beginning and middle. Depending upon the presentation, how you end will help them remember what you presented. Some ways to consider are:

- A call to action if you want the audience to use some of the information to make a change
- A pointed story or anecdote that relates to your presentation
- A strong quote
- A summary of what you just told them

Do not be afraid to try to give a presentation. If you are really afraid, you can start by being on a panel. The worst that will happen is that you will not do very well. But you can learn from your mistakes. You will get better.

[1] Brad Phillips, "5 Inviting Ways to Start a Speech," PR Daily, May 1, 2012, http://www.prdaily.com/Main/Articles/5_inviting_ways_to_start_a_speech__11507.aspx; Gary Genard, "How to Start a Speech — 12 Foolproof Ways to Grab Your Audience!" *Speak for Success*, June 3, 2012, http://www.genardmethod.com/blog-detail/view/137/grab-your-audience-12-foolproof-ways-to-open-a-speech#.VK8qaHtCV6V.

Patricia A. Yevics has been Director of Law Office Management at the Maryland State Bar Association since 1993. This article first appeared in the May 2014 issue of *Bar Bulletin* by the Maryland State Bar Association. It is published here with permission.

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METADATA IN DIGITAL PHOTOS

SHOULD YOU CARE?

By Sharon D. Nelson and John W. Simek

HOPEFULLY READERS ARE already familiar with metadata, especially as it exists in email messages and word processing files. If not, then a brief refresher is in order. There are a couple of different types of metadata, but most regard the common definition to be data that is stored internal to the file (you can't see it without knowing how to look at it) and is not explicitly defined by the user. The application (e.g., word processor) inserts data within the file such as the author, last time printed, fonts used or creation date. But what about image files such as those taken with digital cameras? What metadata do those files contain?

Digital photos can be an electronic evidence heaven. Digital image files typically contain information about the date and time the photo was taken, camera settings such as aperture and shutter speed, manufacturer make and model (and often the serial number), and, in the case of smartphones, the GPS coordinates of where the photo was taken (pure evidentiary gold in many cases). This metadata is called Exif (Exchangeable image file format) and is a standard that specifies formats for files recorded by digital cameras. None of this information is added by the user at the time of file creation. Clearly, the information could be extremely valuable, especially in litigation.

Should you care about the metadata in digital image files? It depends on whether you are the originator or the recipient of the information. The metadata could be extremely dangerous if revealed through social media channels, especially if the user is unaware of the consequences.

Here's a real world example. Adam Savage is one of the hosts of the popular science television program "Mythbusters" on the Discovery Channel. He posted a picture of his automobile parked in front of his house on Twitter. Even though Adam is a science guy, he apparently didn't know or simply forgot that his photo revealed more information than the fact that he drives a Toyota Land Cruiser.

Embedded in the picture was a geotag, which provided the latitude and longitude of where the photo was taken. Since he announced that "Now it's off to work," a burglar would know that he was not at home and the geotag would also pinpoint where he lived. Adam certainly dodged a bullet.

Sharon D. Nelson, Esq. and **John W. Simek** are the President and Vice President, respectively, of Sensei Enterprises, Inc., a legal technology, information security and digital forensics firm. They can be reached at snelson@senseient.com and jsimek@senseient.com.

Then there's the famous story of the leaked *Harry Potter and The Deathly Hallows* book. Someone took a digital photo of each and every page and posted the entire book on BitTorrent networks such as Pirate Bay. Lucky for the photographer that they haven't been caught, but they sure left behind a lot of electronic breadcrumbs. The metadata tells us that the camera he (we suspect the photographer was male since part of his hand and fingers are in many of the photos) used a Canon EOS Digital Rebel 300D camera running firmware version 1.0.2. The camera serial number is 0560151117. Canon identified the camera as being three years old and it had never been serviced. We're sure that the camera is at the bottom of some river by now since it could lead the authorities to the owner.

Probably the most famous Exif story is that of John McAfee. While on the run from authorities in Belize in connection with a murder investigation, he allowed a journalist from a news and lifestyle website to take a photo of him, which was then posted on the website, complete with its Exif data. It turned out he was in Guatemala, where he was promptly detained and later deported to the United States.

For those who care to know (and it seems everyone does), photos that are posted to Facebook or Twitter currently are stripped of their Exif metadata. On the other hand, Google+ preserves it.

We have many more metadata stories, but you get the picture (bad pun). Digital image metadata is not readily viewable by the casual viewer. Perhaps that is the reason why we still find a plethora of metadata in the electronic evidence that we analyze for our cases. So how do you identify what metadata exists in the electronic file and is there a way to clear it out?

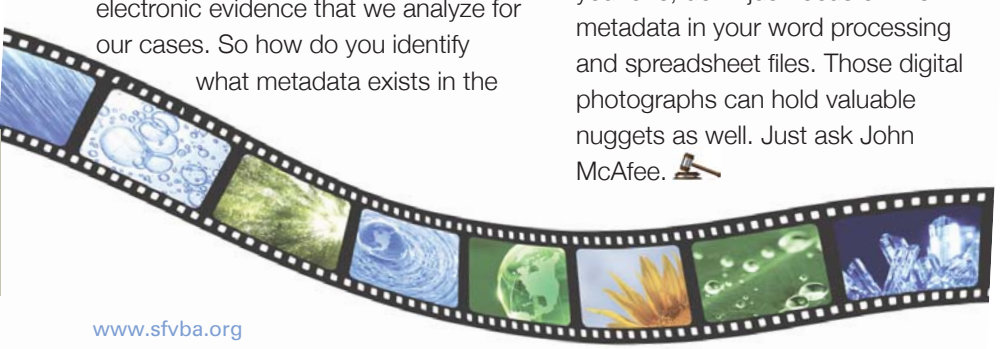
Viewing the metadata requires that you open the digital image in a piece of software that can readily show you the metadata values. You probably don't even need to spend any money to do so. You can use the included Windows Live Photo Gallery or Windows Photo Viewer if you are running Windows 7. Once the file is open, just go to File, Properties to see a lot of the metadata values, including GPS location information if it exists.

But what if you don't want to distribute the Exif data with the file? How do you get rid of it, or at least change it? The function to modify the data, as well as remove it, is included in your Windows environment.

If you right-click on a file and select Properties, then click on the Details tab, you have the opportunity to change or delete much of the embedded metadata. There is even a link at the bottom of the panel that will "Remove Properties and Personal Information." You can use this hyperlink for an individual file or for all files in a folder. Once you click on the hyperlink, you can create a copy with all possible properties removed or selectively remove specific properties.

There are also free Windows utilities like QuickFix (available at download.cnet.com) that will strip GPS and other metadata from the image file. Give it a try, especially since it's free and supports drag and drop. Finally, you can install a product like Litera's Metadact-e, which will clean metadata from document files as well as image files.

No matter what approach you take, don't just focus on the metadata in your word processing and spreadsheet files. Those digital photographs can hold valuable nuggets as well. Just ask John McAfee.



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- Domestic Violence - Not Guilty, Jury Finding of Factual Innocence (San Fernando)
- $50 Million Mortgage Fraud - Dismissed, Trial Court (Downtown, LA)
- DUI Case, Client Probation - Dismissed Search and Seizure (Long Beach)
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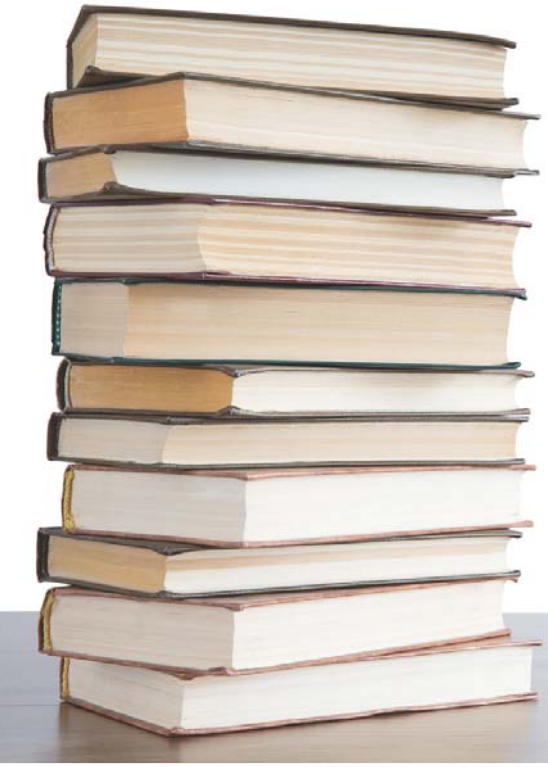
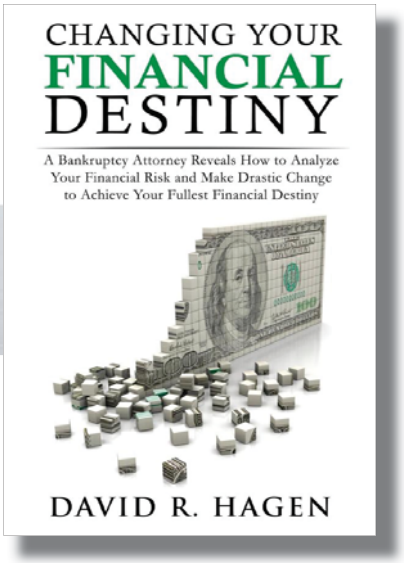


A Path over Financial Fear:

Review of Changing Your Financial Destiny



By David Gurnick

BANKRUPTCY. THE WORD is scary. The thought is scary. To the public it means financial ruin. To clients it means failure of their own finances, loss of money due from a customer, or destruction of a business relationship. Its rules seem complex and out-of-reach. People in financial trouble fear bankruptcy lawyers too. They are afraid of the process and fearful that bankruptcy is all the lawyer will suggest.

In *Changing Your Financial Destiny* (2014, available at Amazon.com), SFVBA member David R. Hagen shows us that all we have to fear, is fear itself. In calming, plain English, David tells those having, or on the verge of, money troubles easy-to-follow steps to straighten out their finances. He shows readers that turning one's financial situation around can place them on track to achieve their full financial potential.

The book is an easy read at just 78 pages. In it, Hagen explains in a no-nonsense tone why people get into debt. He provides an easy-to-apply methodology for looking at one's cash flow and other circumstances, to help anyone recognize if they are in or close to being in financial trouble. With examples from his practice, and occasional wry good humor, Hagen debunks the enticement of easy credit with its very high cost. This includes credit cards charging as much as 21% interest and car title loans with interest as high as 84%. The book explains, also in an easy-to-understand way, the basics and differences between Chapter 7, 11 and 13 bankruptcies.

Most important, *Changing Your Financial Destiny* presents ways to avoid bankruptcy. Hagen shares his wisdom, gained through more than 30 years of practice in all aspects of bankruptcy law. He represents debtors and creditors and served for ten years as a panel bankruptcy trustee for the U.S. Trustee's Office in the Central District of California.

In the book's fourth chapter, Hagen tells us that over his career, he developed several common solutions to serious financial problems. Most of the options presented are not bankruptcy. He states that "bankruptcy, while a powerful and effective solution, should always be among the last choices."

The book implores readers to follow its wise guidance. The fifth chapter

David Gurnick is an attorney with the Lewitt Hackman firm in Encino. David represents franchisors, franchisees and other businesses in litigation, dispute resolution and transactions. David is a Past President of the SFVBA and can be reached at dgurnick@lewitthackman.com.

urges choosing a path and following it. Don't wait, the author says, in a fatherly way, adding: "Do it now."

The book also explains exemptions and debts that may be nondischargeable. An appendix discusses exemptions available to California residents. These are categories of property that someone can elect to keep, even if they file for bankruptcy.

The author is well known among members of the San Fernando Valley Bar Association, of which he is a Past President. In *Changing Your Financial Destiny*, Hagen gives the public, and lawyers, a thoughtful, useful discussion on how to achieve one's financial potential and how bankruptcy works. It is a good read for anyone, especially lawyers, as it will help in understanding the law and advising clients. *Changing Your Financial Destiny* makes a fearful aspect of the law more understandable, more accessible, and perhaps even a bit more routine.

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QUICK CASELAW SEARCH:

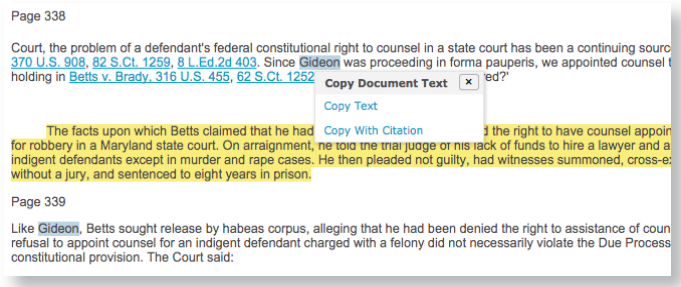
Finding, Saving, Printing, Sending a Case

IN LAST DECEMBER'S ISSUE, THIS COLUMN reviewed the basics of Fastcase, including member access from the SFVBA's website. Future columns will look at how to find cases, run searches, and sort results, using the tools that make Fastcase unique. This month's column will focus on the basic search.

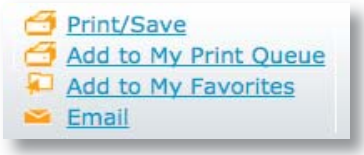
Once logged into Fastcase, the first screen the user will see contains a box with the title "Quick Caselaw Search." This screen is not the best place to run a full Boolean search, but this is a great screen to find a case. Simply type the case name into the Quick Caselaw Search box (e.g., *Gideon v. Wainwright, Miranda v. Arizona, Younger v. Harris*).

Click SEARCH and the result list will provide the case you need along with all the cases that cite to it, though the case itself will always come up first. They are live links, so simply click on the case name to open the case. Once opened, you will find the standard presentation: citation, parties, attorneys, judges, text, and footnotes.

If you need to incorporate a sentence or paragraph into a brief or letter, simply highlight and copy the desired text and tell the dialogue box if you want to copy the text with or without the Bluebook citation. (We love to make your lives easier!)



Now that you have found your case, what can you do with it? There are four choices: email the case, add it to your library, add it to your print queue, or deal with it (i.e. print or save) right away. The links for these four tasks will be on your screen, above the case.



Email

Click the link to email the case to other Fastcase subscribers, starting with yourself. Use commas to separate email addresses, if you need to send it to more than one colleague.

Add To My Favorites

This will put a case into your personal document library. Once you get it there, you can leave it in the general document cache, add it to an existing folder or put it into a folder you can create and name on the spot.

Add To My Print Queue

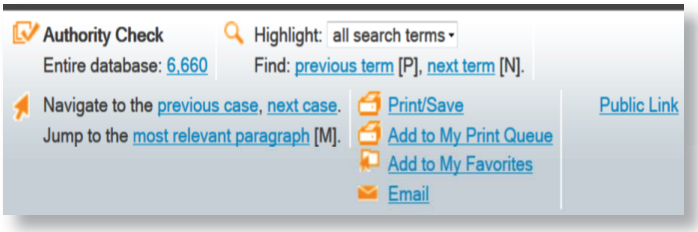
The print queue is a batch printing facility under the PRINT button on your command bar. The print queue gives users the ability to print or save as a grouping several cases or statute sections. You will be able to print or save them as individual documents in a zip file or as a single continuous document, with each new case or statute section beginning on a new page.

Print/Save

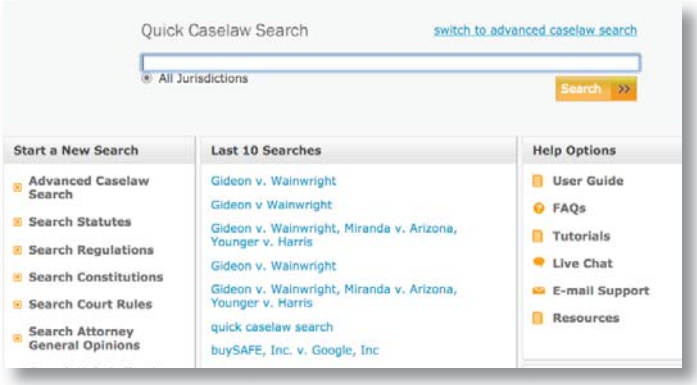
You also have the ability to deal with a case at once by printing or saving it immediately as either a Microsoft Word document or a PDF document. Here you will have a chance to make choices, e.g., to highlight or not highlight search terms or to present the case in a single-column format or a double-column format.

When Fastcase was created in 1999, the founders thought that access to the law was both a practical and a philosophical question: should not attorneys, and indeed the general public, have effective and affordable access to the laws under which we live? Fastcase has made every effort over the years not only to digitize the law, but to democratize it as well. You will see above the case text an important step in that process, the PUBLIC LINK.

Most commercial databases have an email function, though it is somewhat problematic whether the case will open properly or not if the recipient does not have a subscription to that particular database—and therefore a recognized email address. There is no such difficulty with the Fastcase Public Link. Click on the Public Link to open a full text version of the decision with no copyrighted or proprietary matter. Copy the new URL in your browser bar and email it to colleagues or clients. That URL will open up anywhere there is internet access, whether the recipient has a database subscription or not.



The other feature of this opening page that may be of interest to users is the list, down the left side of the page, of searchable resources. These are broad categories. Please note that the last three categories (Search Newspapers, Search Federal Filings, Search Legal Forms) are present at the request of several of our bar association partners. They are not part of the Fastcase database and link to outside services. All the other categories which you are able to search are part of the Fastcase database and you will not incur any usage charges for any of those materials.



So that is the story of the opening page, the Quick Caselaw Search. Stay tuned for the nuts and bolts of searching!

SFVBA members can access Fastcase through www.sfvba.org. Just sign in with your SFVBA username and password. If you need assistance to log in, please contact SFVBA Member Services Coordinator Martha Benitez at martha@sfvba.org.

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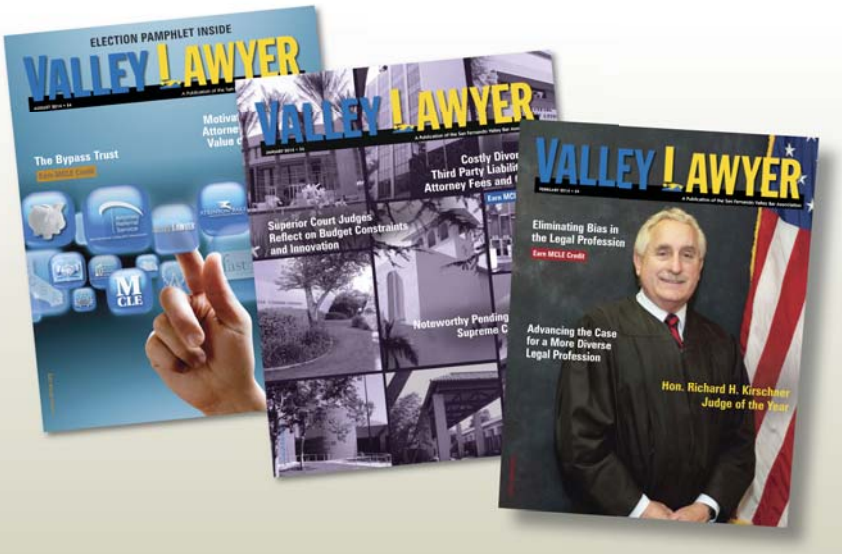

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February is Black History Month so *Valley Lawyer* created a quiz to test readers' knowledge of achievements made by African Americans in the legal profession. Answer the questions below for a chance to win dinner and movie!* Check your email for a link to the quiz. Not on our email list? Submit your answers to editor@sfvba.org.

*Only current SFVBA members are eligible to win.

1. In 1981, who became the first African American to serve as the president of the State Bar of California?
a. Samuel Williams
b. Johnnie Cochran
c. Craig Holden

2. Who was the first African American Supreme Court Justice?
a. Clarence Thomas
b. Thurgood Marshall
c. Edwin Archer Randolph

3. Who holds the distinction of being our nation's first African American licensed to practice law and the first African American to hold a judicial position?
a. Diane Watson
b. Frederick Douglas
c. Macon Bolling Allen

4. In 1977, who was the first African American appointed to the California Supreme Court?
a. Leondra Kruger
b. Janice Rogers Brown
c. Wiley W. Manuel

5. In 1941, who became California's first African American trial judge and the first African American trial judge west of the Mississippi River?
a. Edwin Jefferson
b. Clarence Thomas
c. Thurgood Marshall

6. In 1887, who became the first African American lawyer admitted to the State Bar of California?
a. Thomas Bradley
b. Frederick Douglas
c. Robert Charles O'Hara Benjamin

7. In 1929, who became the first African American woman admitted to the State Bar of California?
a. Annie Virginia Stephens Coker
b. Kamala D. Harris
c. Jackie Lacey

8. In 1980, who became California's first African American Speaker of the Assembly?
a. Willie Brown Jr.
b. Johnnie Cochran
c. Julian C. Dixon

9. In 1973, which lawyer became the first African American mayor of Los Angeles?
a. Frederick Madison Roberts
b. Thomas Bradley
c. Macon Bolling Allen

10. In 1872, who became the first female African American lawyer in the United States?
a. Charlotte E. Ray
b. Kamala D. Harris
c. Leondra Kruger

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Small Firms, Big Ideas

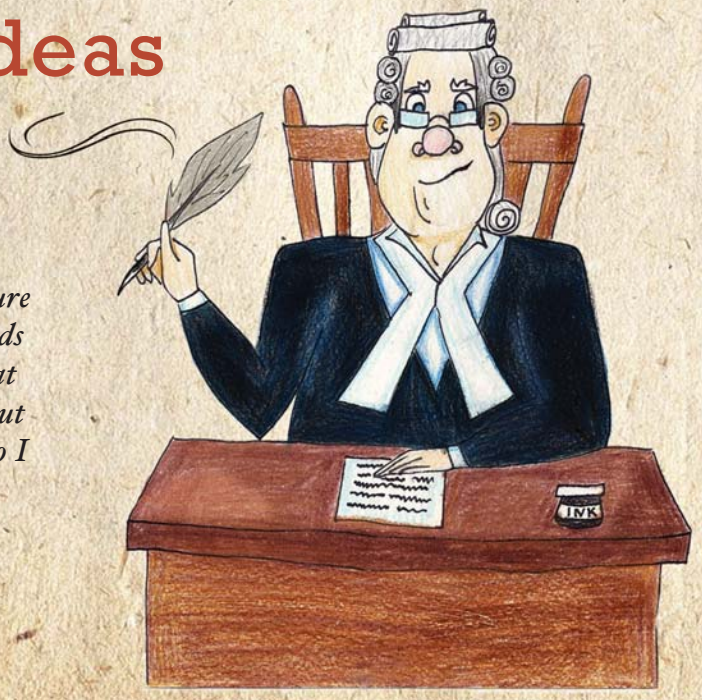

Illustration by Gabriella Senderov

Dear Phil,

With the start of a new year, I am thinking about the future of my small law firm. I read up on legal and business trends but it seems that almost all of the publications are aimed at big law, and not relevant to my future. How do I figure out what global trends apply to my small practice, and how do I interpret them on a micro scale?

Sincerely,

Small-Firm Lawyer in a Big-Firm World

BROAD-BASED TRENDS APPLY AS MUCH TO smaller firms as to larger ones. The difference is that smaller firms are more agile and responsive. They can be the earliest of adopters and, therefore, take the greatest advantage of trends and developments, well ahead of lumbering, large firms. So celebrate your small size!

Check out the small business trends for 2015 and check off the ones you think might work for your small law firm. For example, if you believe that a technology solution might enhance your practice, you can implement it in a unit of one or two, without much financial risk. And this analysis can apply across the board for any trend you find relevant or appealing.

Here are some big trends that can be adapted to your small firm:

- *Outsourcing.* Some lawyers prefer an on-premises assistant but a regular employee must be paid regularly. As an alternative, small firm counsel can use virtual assistant services more frequently during "fat" times and less often during lean times, to adjust payroll obligations.
- *Cloud Computing.* Firms that use the cloud store their software on the internet, not on a device. Small firms have cut down on server use and are more likely to go to the cloud. Solo and small firms lead a dramatic increase in the use of cloud computing (document storage and sharing via Dropbox went from 4 percent usage in 2012 to 58 percent in 2013, as one example).
- *Client Conferencing.* When it comes to using video conferencing with clients, solo and small firms lag behind large firms. But technological advances now make teleconference options affordable for singletons.

Look backward and consider what can be delegated or automated going forward. How does this affect your client billing? Regarding all of the important issues of interest to you, your clients, and your practice, you must think, act, and be a forward-looking small business entrepreneur. Don't worry about competing with big law. Your small firm has, and always will have, an ongoing competitive advantage over its slower-moving competition.

Good luck!

Phil

Dear Phil is an advice column appearing regularly in *Valley Lawyer* Magazine. Members are invited to submit questions seeking advice on ethics, career advancement, workplace relations, law firm management and more. Answers are drafted by *Valley Lawyer*'s Editorial Committee. Submit questions to editor@sfvba.org.

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