

Bilski v. Kappos: U.S. Supreme Court Declines Categorical Rejection of Business Method Patents

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In a much-anticipated decision handed down yesterday, the United States Supreme Court unanimously upheld the Federal Circuit's en banc ruling affirming the U.S. Patent & Trademark Office's rejection of patent claims for a method of hedging commodities risks as ineligible for patent protection under 35 U.S.C. § 101. See *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008), *aff'd* *Bilski v. Kappos*, 561 U.S. ___, slip op. No. 08-964 (June 28, 2010). The Court divided sharply, however, regarding the analysis underlying that conclusion and left many important questions for lower courts and the PTO to resolve concerning the tests to be used to determine the patentability of business methods and other "processes" under Section 101.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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