

The Patentability of Financial Methods: The Market Participants' Perspective

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In the last few years a renewed interest in the validity of patenting business methods has emerged. The issue appeared to have been settled in 1998 with the *State Street* decision. In 2008, however, the Federal Circuit responded to a more restrictive approach to the patent system adopted by the Supreme Court, and began questioning the soundness of the policy of extending patent protection to business methods.

This development occurred explicitly in *In re Bilski* when the Federal Circuit decided to rehear the case en banc and reconsider the conclusions previously reached in *State Street*. Subsequent to this, the Supreme Court granted *certiorari* on the case and its decision, issued in June 2010, exacerbated an already heated debate on the patentability of certain subject matters.

Ultimately, the issues under consideration revolve around the empirical question of whether the patent system in a specific sector is “doing its job” or, in other words, whether that patent system is fostering the creation of additional business methods. To answer this question, I conducted an empirical investigation that involved structured interviews with market participants about the production and consumption of financial methods as a subset of business methods.

The collected data reveal that market participants are ambivalent about the benefits that both the financial market and their companies can derive from having exclusive rights on financial inventions. The data also provide a description of the financial market and its dynamics that is difficult to reconcile with the patents system’s mechanisms. Thus, it raises serious doubts whether patent protection in the ten years between *State Street* and *In re Bilski* had any impact on innovation in the financial industry.

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