

Ann McCrackin
Franklin Pierce Law Center

The War on Patent Eligible Subject Matter in Software/Business Method Innovations

The war on patent eligible subject matter in the area of software and business method innovations has largely been fought in the theater of the Court of Appeals for the Federal Circuit (CAFC). In the early battles of the 80s and 90s, the CAFC was expanding the scope of patent eligible subject matter. However, the 2006 Supreme Court dissent in *Laboratory Corp. v. Metabolite* was a turning point in the war. After *Lab Corp* the recent battles at the CAFC have contracted the scope of patent eligible subject matter. *Bilski v. Kappos* is one of several post-*Lab Corp* decisions involving computer software or “business methods” that narrow what is patent eligible under 35 USC 101. However, the provisions of 35 USC 101 are and should be a course filter leaving to other parts of 35 USC the task of insuring that only worthy software and business method innovations receive patent protection.