

ANYTHING CAN BE PATENTED IN THE UNITED STATES! PATENTABILITY OF BUSINESS METHODS

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On July 23, 1998, in *State Street Bank & Trust Co. v. Signature Financial Group Inc.*, 47 U.S.P.Q. 2d 1596, 149F.3d 1368, the U.S. Court of Appeals for the Federal Circuit created a precedent, the ramifications of which have an impact not only on the strategies with regard to intellectual property matters in the financial world, but also on the patentability of software in general.

This matter revolves around a patent belonging to Signature Financial Group Inc., concerning software allowing the implementation of an investment structure used in the administration of mutual funds. The validity of the patent was challenged by State Street Bank who alleged that the claimed invention constituted non-patentable matter according to U.S. law, since it concerns an abstract idea which does not produce any concrete or tangible results, or alternatively, concerns a business method which is traditionally considered non-patentable.

First of all, the Court ruled that a mathematical algorithm can be patentable without the invention necessarily having an effect on the physical world. The criterion is that the invention must produce a useful result. This result may simply be expressed in numbers, such as an account of prices, profits, percentages, gains and losses. The usefulness of such a result is the real test of patentability.

The Court also took this opportunity to reject the notion that business methods are non-patentable in the United States. It stated that such an exception is not founded on American law and must be rejected as erroneous and obsolete.

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The impact of this decision is tremendous because it shows that "virtually anything" can be patentable in the United States. It is nevertheless worth mentioning that Canadian courts are far from agreeing with this philosophy: it is still maintained that business methods are not patentable in Canada, and it is generally accepted that a method or a process must act in a concrete way on the physical world in order to be considered patentable subject matter.

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