

# TSIRCOU | NEWSLETTER

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## July 2014 Newsletter

In *Alice Corp. v. CLS Bank* the Supreme Court addressed the patent eligibility of computer-related patents under 35 U.S.C. Â§ 101. The Court adopted a two-part test from *Mayo Collaborative Services v. Prometheus Laboratories* to determine whether patent claims fall under the abstract idea exception. This holding will have a significant impact on software patents, particularly on how they are drafted.

We also discuss the recent TTAB ruling to cancel six of the Washington Redskins trademark registrations. This marks the second time the board has ruled that the Redskins trademarks were disparaging to Native Americans at the time they were registered. If the ruling stands, the Redskins would still be able to use their trademarks but will lose the benefits of federal registration. However, the registration will not be canceled until the Redskins exhaust all of their appeals.

Additionally, we discuss Tesla's move to "release" all of its patents. With its announcement on June 12, 2014, Tesla hopes to become the first open source car company. Tesla's patent "release" is an invitation to cross license with car companies and other innovators in the electric vehicle market. This could lead to a more competitive market for electric cars and the expansion of the electric vehicle network and infrastructure. While Tesla gives the impression that it is disclaiming its patent rights, it is really showing ways of using patents effectively.

## ***Alice Corp. v. CLS Bank: Supreme Court Decision***

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On June 19, 2014, the Supreme Court of the United States unanimously affirmed the Federal Circuit holding that Alice Corp.'s patents were ineligible subject matter under 35 U.S.C. Â§101. The Court adopted the two-step analysis from *Mayo Collaborative Services v. Prometheus Laboratories* in determining whether a patent claim falls under the abstract idea exception. First, the Court determined if the claims were directed at an abstract idea, and second, whether they describe "something more" that implements the idea, transforming the claim into a patent-eligible application of the abstract idea.

While many thought this case would define a *per se* rule for software patents, the Court's ruling will instead make determining eligibility of software patents a case-by-case inquiry. It will also have an effect on how software claims are drafted now that generic computer implementation was found to be an inadequate application of an abstract idea.

For more information, please click below:

- [\*Alice Corp. v. CLS Bank\*](#)

## **TTAB Rules to Cancel Washington Redskins Trademark: *Blackhorse v. Pro-Football***

On June 18, 2014, the Trademark Trial and Appeal Board (TTAB) canceled six marks belonging to the Washington Redskins, holding that they were disparaging to Native Americans at the time they were registered. Under federal law, trademarks that disparage groups or bring them into disrepute cannot be registered. This marks the second time the TTAB has ruled to cancel Redskins' trademark, but the previous ruling was overturned in 2003 by a federal district court which found that there was not enough evidence to support a disparagement claim. Additionally, the court held that the plaintiffs were precluded by laches.

If the current ruling stands the Redskins will lose its federal registration. However, the USPTO will not take down the registration until the team exhausts all of its appeals, a process which could take years. Furthermore, the ruling would not cancel the team's rights in the trademarks themselves. The Redskins may still enforce their rights in the trademarks under common law, federal law, or unfair competition laws.

For more information, please click below:

- [\*TTAB Rules to Cancel Washington Redskins Trademark\*](#)

## **Strategy Behind Tesla's Patent Release: The Patent System at Work**

In a blog posting on June 12, 2014, Elon Musk, CEO of Tesla Motors, announced that the company "will not initiate patent lawsuits against anyone who, in good faith, wants to use [its] technology." Though admittedly an unconventional course

of action in the auto industry, Tesla may be able to realize substantial business gains with this strategy.

While giving the impression of abandoning its intellectual property, Tesla is actually opening the door for cross-licensing with other car companies. With competitors using Tesla's technology, competition in the electric vehicle market will increase, along with the network and infrastructure associated with it. In this way, Tesla, a company already at the forefront of electric vehicle market as a result of its patents, will now be in a position to dictate the standard for the whole industry.

For more information, please click below:

- [Tesla's Patent Release](#)

Please feel free to contact us if you would like additional information. We look forward to assisting you with your intellectual-property matters.

**Sincerely,**

A handwritten signature in blue ink that reads "Kyriacos Tsircou". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kyriacos Tsircou  
Tsircou Law, P.C.

*This e-mail and any attachments are not intended to be and should not be relied upon as legal advice.*