

Patenting of Business Systems

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Broadly, the objective of patent law is to encourage innovation by providing limited monopoly over some particular technology. The reward of a patent (the limited monopoly) is identical no matter what the degree of innovation. If the patent is both obvious (i.e. having very little innovation) and excessively broad than there is a real possibility of limiting competition and thus harming consumers. Business systems patents by their nature are broad, and thus the test for obviousness should be raised higher for this class of patents.

I observe that the degree of originality and innovation in the patents presented in the discussion paper seems low, if it is existent at all. For instance, the patent in the discussion paper **US5897620** appears to have uncanny similarity to a conventional tender process (albeit with the tenderer paying for the product with a credit card), and I would guess that **US5948061** is violated by the vast majority of companies using some form of direct mail with a feedback coupon.

Consider the following hypothetical example. Suppose I am building a business process for conducting auctions. There will be in the order of 30 different auction processes that one could propose, with variation according to whether the reserve is announced, whether the auction is standard (with increasing bids) or Dutch (with a lowering price announced by the auctioneer and single bid securing the goods) whether collections or single goods are permitted to be sold, whether bids and/or bidding participants are announced to all participants in the auction immediately, after several minutes, or are never revealed. Combine that with ten different varieties of payment and we have instantly created 300 odd different business processes, all of them obvious.

A demonstration of implementation does not necessarily serve any useful purpose. As an exercise in the last 3 hours I have written a simple piece of software implementing the above auction ideas, (available on request) and I imagine that ten payment options could be accomplished within a day. I don't see that implementation makes for much additional difficulty in the construction of an application.

In order for there to be a real business innovation, there must be some characteristic which goes beyond iterating over the current known parameters for doing business; iterating over variations in current practices does not constitute innovation, and more importantly cannot justify the grant of exclusive rights to such a system.

As a final (personal) note, I don't see that the case for the existence of business systems patents have been made. It appears that they are permitted simply due to the reluctance of the courts to define **mechanism** or **innovation**, or perhaps the realization that such a definition can never be adequate. As a logician I find it extraordinary that any invention or discovery of mine (which by nature will be a mathematical formula of some kind) cannot be patented, but the nonsense presented in the above patents can.

Recommendations:

- The criteria of innovation for business systems patents be made much higher.
- Implementation should not be added as a criteria as it serves no purpose; for business systems patents implementation will often be trivial.
- The case *for* granting business systems patents has not really been made; as such their granting should be as limited as possible.