Patenting the payments system--New developments in patent law may have dramatic impact on payments players

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A seemingly obscure point of interpretation of U.S. patent law could have meaningful impact on innovation in the payments market. This interpretation could affect new players and existing players alike and deserves attention. Investments in innovative new payments technologies always carry risks. Investments can fail if the business model does not come to fruition. Poor understanding of vulnerabilities in new technology could open up new opportunities to fraudsters or simply could alter risks for parties to the transaction or providers of the transaction service itself. However, those same investments in payments innovation could also serve to strengthen the defenses to various risks, thereby improving the overall picture for all.

On November 9, 2009, the Supreme Court will hear the *Bilski* case, which draws into question the viability of business method patents. This is a subcategory of the range of patents that have been issued in recent years for payments-related innovations described in a previous Portals and Rails post. In particular, *Bilski* will address the issue of whether U.S. patent law requires that the subject matter of patents be reflective of machines or some physical transformation of matter. Included in this issue is a question of whether abstract ideas that mention computers as a means to reduce the idea to practice are patentable as well. This case could affect the calculus for making new payments technology investments overall.

Some feel that a ruling by the Supreme Court that limits patentable subject matter to exclude business methods will negatively affect a wide array of innovations, including those for the manipulation of information, whether or not implemented by computer. Others, including some from the financial services industry, feel that business method patents should be limited or eliminated and that progress and innovation will in fact be strengthened as there will be less threat of suit by those who obtain monopoly patent rights on "abstract ideas."

Payments innovations are firmly ensconced as part of the "knowledge economy." In the payments context, as reported in this blog and elsewhere, there are a dynamic array of technology and business model developments and an ongoing stream of new patents and patent applications. Just think of the array of new ways that payments can be accomplished using the Internet in the past 10 years or so. Many of these existing and future innovations may be affected by the *Bilski* decision one way or the other.

Patents have been seen as a key tool to reward financial services innovations and as a means for new entry into various market segments. Patents also serve to disclose publicly the nature of the invention, which helps to drive other, follow-on innovations. Over the long term, limiting patent protection for business methods could alter the reward incentive structure for payment innovations. Or it could

remove an impediment to product investments in payments as there is less threat of suit, which may allow for more rapid deployment of innovative new products and services.

The Supreme Court's decision in *Bilski* could have a dramatic impact on the payments marketplace as competitors may have to adjust their sights in terms of how they protect and deploy their innovations. New players in the marketplace may find it more difficult to enter the payments markets while existing players may or may not have their market positions strengthened.

For now, the jury is out, so to speak. To get a deeper sense of the issues being considered, see the related briefs filed with the Supreme Court.

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