Here's Hoping The Supreme Court Does Not Blow Another Opportunity To Fix The Software Patent Problem

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Four years ago, the Supreme Court had a chance to establish once and for all whether or not software was patentable. The Bilski case got all sorts of attention as various parties lined up to explain why software patents were either evil, innovation-killing monsters or the sole cause of innovation since the cotton gin and everything in between (only slight exaggeration). Rather than actually answer the question everyone was asking, the Supreme Court decided to rule especially narrowly, rejecting the specific patents at stake in the case and saying that the current test used to determine patentability (the so-called "machine-or-transformation" test) need not be the only test for patentability. However, it declined to say what tests should be used, leaving it up to the lower courts to start ruling blindly, making up new tests as they went along. And muddle along blindly they did -- right up to the height of pure absurdism in the CAFC (appeals court that handles patents) ruling in the Alice v. CLS Bank case, in which every single judge disagreed with each other. The ruling was 135 pages of confused mess where all justices only agreed on a single paragraph, which (like Bilski) said this particular patent was invalid, but no one could agree why.

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