Congress (in-)Action

Resolving a Court Created Gordian Knot on Software Patents

Solutions to the Software Patent Problem
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Gottschalk v. Benson (1971)
“If these programs [software] are to patentable, considerable problems are raised which only committees of Congress can manage for broad powers of investigation are needed... The technological problems tendered in the many briefs before us indicate to us that considered action by Congress is needed”

Diamond v. Chakrabarty (1980)
“anything under the sun that is made by man” (1952)

“The broad question whether computer programs should be given patent protection involves policy considerations that this Court is not authorized to address.

Bilski (2010)
“It is important to emphasize that the Court today is not commenting on the patentability of any particular invention, let alone holding that any of the above-mentioned [business method] technologies from the information age should or should not receive patent protection”
AIA (2011):

Sec. 14 - Nothing in this section shall be construed to imply that other business methods are patentable or that other business method patents are valid

Sec. 18(e) - Nothing in this section shall be construed as amending or interpreting categories of patent-eligible subject matter set forth under section 101...
Nothing new under the sun
Nothing new under the sun

RIPE?
Nothing new under the sun

RIPE?
1. 101 is distinct from 102, 103 and 112
2. Laws of Nature, Abstract Ideas and Physical Phenomena
3. Anything made by man is PSM according to Congress
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CLS Bank v. Alice Corp

Possible Myriad cert.
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I. Change the Law without passing a law
   A. Sense of Congress
      1. PSM is not distinct from 102, 103, 112
      2. PSM requires transformation or non-general purpose machine

II. Initiate a Congressional Process

III. Compromise that Everyone can live with
      Sui Generis Registration System (Vessel Hull Protection)

IV. Abdicate Officially
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Article I: Section 8, Clause 8

The Congress shall have the Power...
To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.
Bilski (2010)

...by allowing this defense [273(b)(1)] the statute itself acknowledges that there may be business method patents.