

**Patent Law:
A Few Significant Pending Cases**

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I. *Bilksi v. Kappos* (SCt)

A. Facts

1. Technology

- a. Method for hedging risk of consumption of commodity

2. Claim set

- a. Method, not tied to particular apparatus

B. Lower Court decision

C. Issues

- 1. Status of business methods; vitality of *State Street Bank*

- 2. Whether to modernize *Cochrane v. Deener*, 94 U.S. 780 (1876)

- 3. Whether to address statutory/non-statutory hybrid inventions

D. Oral argument: 9 Nov 2009.

II. *Ariad Pharm., Inc. v. Eli Lilly* (Fed. Cir.)

A. Facts

1. Technology

- a. Discovery of basic chemical pathway
- b. No workable embodiment for disrupting pathway

2. Claim set

- a. Generic claims to all methods of interfering with chemical pathway

B. Lower court decision

C. Earlier Federal Circuit decision

D. Issues:

1. Description requirement

2. Enablement issues

E. Oral argument: 14 Dec 2009

III. *Assoc. for Molecular Pathology v. USPTO* (SDNY)
 (“*ACLU v. Myriad*”)

A. Facts

1. Technology

- a. Discovery of statistical correlation between BRCA1 and BRCA2 gene mutations, and breast/ovarian cancers

2. Claim set

- a. Isolated genomic material
- b. Diagnostic methods

3. Plaintiffs

4. Defendants

B. Asserted grounds of invalidity

1. Section 101 - statutory subject matter

2. U.S. Constitution:

- a. First Amendment

b. Art. 1, Sec. 8, cl. 8.

C. Procedural motions and outcome

D. Summary judgment motion for invalidity of asserted claims

E. Issues

1. Constitutional grounds

2. Statutory grounds

F. Oral argument 29 Jan 2010