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Supreme Court Supports Innovation By Jim Gregson, Account Executive

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In what amounts to good news for technology innovators, the Supreme Court ruled on behalf of CLS Bank in their suit brought against Alice Corporation. Stemming from a patent that had been granted in 1999 to protect a software program for financial trading, the case, and patent, revolved around using a computer program to manage the traditional escrow process. "Stating an abstract idea while adding the words 'apply it with a computer' simply combines those two steps with the same deficient result" was the opinion of Justice Clarence Thomas, writing for the unanimous court. In upholding the status quo, the court confirmed previous decisions that rejected the notion that abstract ideas could be patented.

The news is positive for innovators because many patents have been granted, and are being enforced through injunctions or licensing agreements, that are based on abstract concepts. While the court did not strike down patents that likely would not be granted with the standards of review used today, it did make clear that there will be a higher level of scrutiny when it comes to this notion of computer software performing tasks that have traditionally been performed manually.

The news is not as positive for "patent trolls", those companies whose business is to purchase patents and essentially hope for infringement. These organizations are typically very well funded and have significant resources and expertise in protecting their patents. When they determine one of their patents has been encroached, they will be very aggressive in asserting their rights for compensation.

The hardship for companies is the cost of managing a patent challenge. Whether it is paying legal fees, spending time away from development, or being forced to alter course, a patent infringement lawsuit can be extraordinarily time consuming and expensive. Some frightening statistics:

- According to PricewaterhouseCoopers (PwC's) 2013 survey, average time to trial was 2.3 years (virtually unchanged since 1995)
- In 2012, there were over 5,200 patent infringement suits filed
- From 2007 to 2012 the median damages awarded were \$4.9M
- According to the American Intellectual Property Law Association, the mean cost- just of litigation- was almost \$1.6 million (claims ranging from \$1 million to \$25 million at risk)

If your organization could be sued for patent infringement, a Patent Infringement Defense policy would be important to understand. The right policy would provide coverage in the event your organization infringed on a patent, but perhaps more importantly, would provide coverage for legal defense. Defending a patent infringement lawsuit can be extraordinarily expensive, so while the settlement may be 12-0 in your favor, the legal costs alone could make for some very lean years.

As always, should you have any questions, please contact your [Parker, Smith & Feek Technology Team](#).

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