

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| CLS BANK INTERNATIONAL | |) | |
| | Plaintiff, |) | |
| | |) | |
| | v. |) | Civil Action No. 07-974(RMC) |
| | |) | |
| ALICE CORPORATION PTY. LTD., | |) | |
| | Defendant. |) | |
| _____ | |) | |

CLS RESPONSE TO ORDER TO SHOW CAUSE

Plaintiff and Counterclaim-Defendant CLS Bank International and Counterclaim-Defendant CLS Services Ltd. (collectively “CLS”) respectfully submit this response to the Court’s June’s 12, 2009 Order to Show Cause respecting the Supreme Court’s grant of *certiorari* in *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008).

There are two independent CLS motions (and corresponding Alice cross-motions) scheduled for oral argument on June 19, 2009: (1) CLS’ Motion for Summary Judgment of No Infringement Within the United States; and (2) CLS’ Motion for Summary Judgment of Invalidity for Lack of Patentable Subject Matter.

CLS submits that this Court should proceed with the oral argument scheduled for June 19, at least with respect to its pending Motion for Summary Judgment of No Infringement.

1. CLS’ Motion for Summary Judgment of No Infringement Within the United States

This CLS motion, which seeks a declaratory judgment of non-infringement, and dismissal of Alice’s counterclaims for patent infringement, is based on the grounds that there is no infringement “within the United States” as required by 35 U.S.C. § 271(a) – i.e., because Alice’s claims do not satisfy the territoriality requirements of the U.S. patent laws. This CLS motion has no relationship whatsoever to the *Bilski* case. Rather, it is based *inter alia* on the fact

that the accused CLS method for settling foreign exchange transactions is performed outside the United States, on computers located outside the United States, and thus does not infringe either Alice's method patent claims or its system patent claims. As this motion presents a separate defense that CLS is entitled to assert, independent and irrespective of the unpatentable subject matter issues addressed by *Bilski*, and as this motion is ripe for decision now, we respectfully submit that the June 19, 2009 oral argument of this motion should proceed as scheduled.

2. CLS' Motion for Summary Judgment of Invalidity for Lack of Patentable Subject Matter

This further CLS motion, which seeks a declaratory judgment that Alice's asserted patents are invalid because they do not claim patentable subject matter, does rely in substantial measure on the Federal Circuit's *en banc* decision in *Bilski*. However, the Supreme Court has only recently granted *certiorari*, has not yet scheduled oral argument, and will likely not reach a decision in the *Bilski* case for quite some time. Accordingly, CLS believes that it would be appropriate for this court to hear oral argument on the basis of the current state of the law on this motion as well, and we are prepared to present argument on that basis if the court is willing to proceed.

Dated: June 15, 2009

Respectfully submitted,

/s/ David O. Bickart

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