

Essential Causation and the Metaphysics of Patent Law's Abstract-Ideas Exclusion

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The one Federal Circuit opinion cited with approval by the Supreme Court majority in *Bilski* — Judge Rader's dissent — regards abstract claims as “not even susceptible to examination against prior art” because to perform such an examination is to commit the category error of treating an abstract idea as if it were “concrete, tangible technology.” This is an essentially metaphysical approach to the abstract-ideas exclusion. On this view, all that is needed to give a “satisfying account of what constitutes an unpatentable abstract idea” (about which the “machine-or-transformation” test provides only a “clue”) is an explicit account of the patent system's implicit ontological commitments, as revealed through relevant legal principles and practices.

In this Article, I will argue that the patent system's ontology of “useful Arts” extends only to claims whose embodiments have essential causal powers that are employed in use. This condition gives rise to the *essential causation* requirement for patent eligibility. Equally applicable to “the age of iron and steel” and “a time of subatomic particles and terabytes,” the essential causation requirement is fully compatible with the TRIPS requirement that patents be available for inventions “in all fields of technology” and with the Supreme Court's instruction in *Bilski* to develop “limiting criteria that further the purposes of the Patent Act and are not inconsistent with its text.” The requirement also addresses many policy concerns about abstract claims, particularly in the fields of software and business methods.