Limits of Property

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Land
Land

from the earth to the heavens
Land
oil & gas
water
migratory fowl
airplanes
“fuzzy” boundaries
Abstract Patent Claims
Abstract Patent Claims

Unidentified technologies
Karmarkar,
Patent 4,744,028
technology
+
law
CLAIM:
Software patents are no different
<table>
<thead>
<tr>
<th>Technology</th>
<th>Probability patent in suit</th>
<th>Percent of lawsuits (2002)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chemical</td>
<td>1.1%</td>
<td>13%</td>
</tr>
<tr>
<td>Complex</td>
<td>2.0%</td>
<td>34%</td>
</tr>
<tr>
<td>Other</td>
<td>2.2%</td>
<td></td>
</tr>
<tr>
<td>Software</td>
<td>4.6%</td>
<td>26%</td>
</tr>
<tr>
<td>business methods</td>
<td>13.7%</td>
<td>4%</td>
</tr>
<tr>
<td>Biotechnology</td>
<td>3.2%</td>
<td>3%</td>
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</table>
## Fuzzy boundaries

<table>
<thead>
<tr>
<th></th>
<th>Relative frequency of claim construction appeal</th>
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<tbody>
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<td>ALL</td>
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<tr>
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<tr>
<td>Other</td>
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<tr>
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<tr>
<td>business methods</td>
<td>6.7</td>
</tr>
<tr>
<td>Biotechnology</td>
<td>2.4</td>
</tr>
</tbody>
</table>
CLAIM:
PTO needs to adapt
Software patents
All patents

Probability Patent in Lawsuit within 4 years of issue
CLAIM:
Technology distinctions will be evaded
Taxes?
Pharma compositions?
Medical activities (287c)?
Software Patent Propensity

- Hall-Ziedonis (semiconductor)
- Poisson (Col. 5.1)
- Poisson fixed effects (Col. 5.5)
CLAIM:
Bilski solves all
“principles” of manufacture
Abstract patents
subject matter
enablement
functional claiming
belt
+
suspenders