UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2011-1301

CLS BANK INTERNATIONAL,

Plaintiff-Appellee,

AND

CLS SERVICES LTD.,

Counterclaim-Defendent Appellee,

v.

ALICE CORPORATION PTY. LTD.,

Defendent-Appellant

Appeal from the United States District Court for the District of Columbia in No. 07-CV-0974, Judge Rosemary M. Collyer.

Brief of Amicus Curiae of Stephen R. Stites on En Banc Rehearing In Support of Affirmation of Judgment.

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CERTIFICATE OF INTEREST

Stephen R. Stites certifies the following pursuant to Federal Circuit Rule 47.4:

1. The full name of every party or amicus represented by me is:

   Stephen Robert Stites

2. The name of the real party in interest represented by me is:

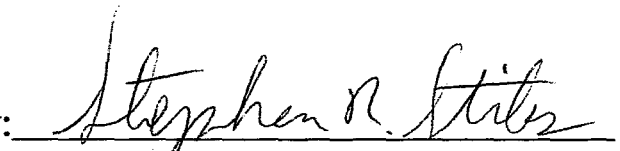
   Stephen Robert Stites

3. All parent companies and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

   There are no parent companies or any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this case are:

   There are no law firms and the partners or associates that appeared for the party or amicus who are now represented by me in the trial court or agency or are expected to appear in this case.

October 19, 2012 By: 

Stephen R. Stites

Pro Se

STATEMENT REGARDING AUTHORSHIP AND/OR FUNDING

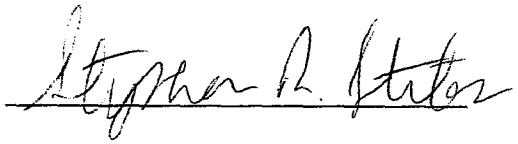
Stephen R. Stites certifies the following pursuant to Federal Rules of Appellate Procedure 29(c)(5):

(A) No party's counsel authored this brief in whole or in part.

(B) No party or party's counsel contributed money that was intended to fund preparing or submitting this brief.

(C) No person - other than the amicus curiae, Stephen R. Stites - contributed money that was intended to fund preparing or submitting this brief.

Dated: November 1, 2012

By: 

Stephen R. Stites Pro Se

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STATEMENT OF INTEREST OF AMICUS CURIAE

I, Stephen R. Stites, am retired after a career beginning in 1967 which included software development and management in information technology. Since 2002 I have been active in the Open Source software movement as a hobby.

I am very concerned that software patents are a very harmful economic drag on the software industry. The software patent game is a less than a zero sum game for the participants and has a large inhibiting effect on software innovation. I am respectfully submitting this *amicus curiae* brief urging the Court to find that software patents are invalid.

AUTHORITY TO FILE

The Amicus Curiae has authority to file pursuant to the UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT's October 9, 2012 Order granting rehearing *en banc* and allowing the filing of amicus briefs without leave of court.

STATEMENT OF AMICUS CURIAE

The basics of computer technology as it relates to patent law:

Computers were invented independently by Britain, the United States, and Germany during WW II. The defining feature of a computer is that it has an instruction set, typically 100 to 200 instructions, which can be used in an infinite variety of ways without having to make any changes to the computer hardware. One of the goals in creating programmable computers was to stop having to redesign and rebuild a new machine for any new application. A computer's instruction set is the sum total of every function that computer is capable of doing. Electrical engineers do not design computer hardware to run word processing or to run payroll or to run web browsers or to control chemical vats or to run a method of exchanging obligations. They design computer hardware to run an instruction set.

Computer programs are algorithms. A programmer creates a list of hardware instructions for the computer to follow.

The programmer structures the list so that the computer does some complex procedure that the programmer considers useful. A simple program might contain thousands of hardware instructions. A complex program might contain millions of hardware instructions. A programmer keeps his programs from descending into chaos by creating algorithms within algorithms within algorithms. No computer program creates, alters, or destroys any of the computer hardware instruction set. Computer programs issue a computer's hardware instructions over and over again in an infinite variety of orderings. Programming a computer to do something useful is analogous to solving a mathematical problem using the rules of algebra, calculus, or trigonometry. The hardware instruction set is the set of rules of the mathematical system the computer programmer is working within.

The court order asks the question:

> "a. What test should the court adopt to determine whether a computer-implemented invention is a "patent ineligible" idea; and when, if ever, does the presence of

> a computer in a claim lend patent eligibility to an otherwise patent-ineligible idea?"

My answer:

The presence of a computer can lend patent eligibility to an otherwise patent-ineligible idea only if the software implementation of the idea changes, adds to, or deletes a computer function. The software has to change, add to, or delete instructions in the computer's instruction set. Since software is incapable of changing, adding to, or deleting hardware instructions then a computer can never lend patent eligibility to any software. Computer software cannot be patented by "referencing the hardware".

The court order asks the question:

> "b. In accessing patent eligibility under 35 U.S.C. S 101 of a computer-implemented invention, should it matter whether the invention is claimed as a method, system, or storage medium; and should such claims at times be considered equivalent for S 101 purposes?"

My answer:

In *Gottschalk v. Benson 409 U.S. 63* the United States Supreme Court ruled that a process claim directed to a algorithm, as such, was not patentable because "the patent would wholly pre-empt the mathematical formula and in practical effect would be a patent on the algorithm itself." Since a computer program is made up of algorithms and nothing but algorithms then computer programs are not patentable. Therefore whether a computer-implemented invention is a method, system, or storage medium is irrelevant.

CONCLUSION:

A computer program listing is covered by copyright but is not patentable just as a paper describing the solution to a mathematical problem can be copyrighted but not patented. Therefore the United States Court Of Appeals For The Federal Circuit should uphold the district court's summary judgment of invalidity.

Dated: November 1, 2012 Respectfully submitted,

By: Stephen R. Stites

Stephen R. Stites Pro Se

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). The brief contains 728 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief was prepared by Stephen R. Stites in a proportionally spaced typeface using LibreOffice Writer 3.3.2 running on Debian Linux in Nimbus Roman No9 L 15 point font.

Dated: October 19, 2012

BY: Stephen R. Stites
Stephen R. Stites
Pro Se

CERTIFICATE OF SERVICE

The undersigned certifies that on this 1st day of November, 2012, I caused two copies of this Brief Of Stephen R. Stites As Amicus Curiae Supporting Defendent-Appellant On Rehearing *En Banc* to be served by the United States Post Office on the following:

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The undersigned also certifies that on this 1st day of November, 2012, I caused thirty one (31) copies of this Brief Of Stephen R. Stites As Amicus Curiae Supporting Defendent-Appellant On Rehearing *En Banc* to be filed with the Court at the following address:

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Dated: November 1, 2012

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