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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**LML PATENT CORP.**

**Plaintiff,**

**v.**

**JPMORGAN CHASE & CO., et al.,**

**Defendants.**

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**CIVIL ACTION NO. 2:08-CV-448 (DF)**

**ORDER**

Before the Court is Defendants JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A.'s (collectively, "JPMC's") Motion for Summary Judgment of Invalidity of the Asserted Claims of United States Patent No. RE40,220. Dkt. No. 581. Also before the Court are Plaintiff's response and JPMC's reply. Dkt. Nos. 587 & 591. The Court held a hearing on August 23, 2010. *See* 8/23/2010 Minute Entry, Dkt. No. 594. Having considered the briefing, oral arguments of counsel, and all relevant papers and pleadings, the Court finds that Plaintiff's motion should be DENIED.

Before the Court is the Motion of Defendants JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. to Dismiss Plaintiff's Fifth Amended Complaint Under *Bilski*. Dkt. No. 429. As noted in Section I, below, this motion should be DENIED AS MOOT.

Before the Court is LML's Opposed Motion to Strike JPMorgan's Motion to Dismiss Plaintiff's Fifth Amended Complaint for Failing to Comply with the Court's Orders Regarding Motion Practice. Dkt. No. 446. As noted in Section I, below, this motion should be DENIED AS MOOT.

## I. BACKGROUND

Plaintiff asserts United States Patent No. RE 40,220 (the “’220 Patent”), which is titled “Check Writing Point of Sale System” and which is directed to electronic consumer payments as an alternative to paper checks, credit cards, or cash. *See* ’220 Patent, Dkt. No. 493 at Ex. 2.

JPMC originally moved to dismiss Plaintiff’s Fourth Amended Complaint under the decision of the United States Court of Appeals for the Federal Circuit in *In re Bilski*. 545 F.3d 943 (Fed. Cir. 2008). The Court dismissed JPMC’s motion as moot after Plaintiff filed its Fifth Amended Complaint, as to which JPMC filed another motion to dismiss under *Bilski*. *See* 5/20/2010 Order, Dkt. Nos. 463; Dkt. No. 429. At the July 29, 2010 hearing on that motion to dismiss, the Court ordered new briefing in light of the decision of the Supreme Court of the United States in the appeal of *In re Bilski*. *See* 7/29/2010 Minute Entry, Dkt. No. 572 at 3; 7/29/2010 Mot. Hr’g Tr., Dkt. No. 585 at 18:14-23:17; *Bilski v. Kappos*, 561 U.S. ----, 130 S.Ct. 3218 (2010).

The Court then granted JPMC’s unopposed request that the amended motion be filed as a motion for summary judgment rather than as a motion to dismiss. *See* 8/6/2010 Order, Dkt. No. 580. This is the motion for summary judgment (Dkt. No. 581) that the Court now considers. Further, because JPMC’s motion for summary judgment supersedes JPMC’s motion to dismiss, that motion to dismiss (Dkt. No. 429) and Plaintiff’s motion to strike (Dkt. No. 446) should both be DENIED AS MOOT.

Plaintiff asserts Claims 69, 70, 72, 78, 79, 80, 82, 84, and 93 of the ’220 Patent. Dkt. No. 587 at 2. The Court also granted Plaintiff leave to assert Claim 74. *See* Opposed Motion for Leave to Amend LML’s Infringement Contentions, Dkt. No. 479; *see* 9/7/2010 Order, Dkt. No.

601. For convenience, the Court here reproduces these claims and the claims from which they depend:

67. A method of processing consumer payment from a checking account comprising:  
receiving account information via a communication network, the account information relating to a checking account;  
storing the account information;  
verifying the account information;  
receiving transaction event information;  
storing the transaction event information; and  
transmitting the account information and the transaction event information to a financial institution to initiate an electronic funds transfer.

68. The method of claim 67 wherein the account information comprises a routing number, an account number, and a bank check serial number.

69. The method of claim 68 wherein the electronic funds transfer is an ACH transaction.

70. The method of claim 67 wherein the electronic funds transfer comprises settlement through an electronic settlement network selected from the group comprising national authorization networks, regional authorization networks, and ACH network.

...

72. The method of claim 67 wherein the electronic funds transfer comprises debiting a consumer account and crediting a merchant account.

...

74. The method of claim 67 wherein the communication network comprises the Internet.

75. A method for eliminating the physical presentment of a bank check for payment of goods or services, comprising:  
receiving account information from a signed bank check that was received via mail or at a lock box location;  
verifying the accuracy of the account information;  
receiving a transaction amount as entered on the bank check;  
storing the account information and the transaction amount; [and]

transmitting the account information and the transaction amount to a financial institution to initiate an electronic funds transfer.

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77. The method of claim 75, wherein the account information comprises a routing number, an[] account number and a bank check serial number.

78. The method of claim 77 wherein the signed bank check is a source document.

79. The method of claim 77, further comprising receiving merchant data from any one of multiple, unrelated merchants.

80. The method of claim 79, wherein the merchant data is compared to data in a merchant database comprising information regarding multiple, unrelated merchants that are authorized to use the method.

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82. The method of claim 75 wherein the electronic funds transfer comprises settlement through an electronic settlement network selected from the group comprising national authorization networks, regional authorization networks, and ACH network.

83. A method for eliminating the physical presentment of a bank check for payment of goods or services, comprising:

- receiving a signed bank check including authorization to convert the bank check process to an electronic funds transfer process via mail or at a lock box location;

- reading, with an optical or magnetic reader, preprinted account information from the signed bank check;

- verifying the accuracy of the account information;

- receiving a transaction amount as entered on the bank check;

- transmitting the account information and the transaction amount to a central computer;

- storing the account information and the transaction amount; [and]

- transmitting the account information and the transaction amount to a financial institution to initiate an electronic funds transfer.

84. The method of claim 83, wherein the signed bank check is a source document.

...

**93. A system for electronic processing and settlement of consumer payment for goods or services comprising:**

at least one terminal adapted to receive consumer bank account information from a consumer communicating with the terminal over the Internet;  
a central computer system;

at least one central computer system communication interface for electronic communication between at least one terminal and the central computer system; and

at least one database for performing a consumer bank account status search, and further enabling electronic funds transfer communication for transferring funds without presentment of a bank check to an issuing financial institution.

## **II. LEGAL PRINCIPLES**

In a motion for summary judgment, the moving party has the initial burden of showing that there is no genuine issue of any material fact and that judgment should be entered as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). “The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). An issue is “material” where it involves a fact that might affect the outcome of the suit under the governing law of the underlying cause of action. *See Burgos v. S.W. Bell Tel. Co.*, 20 F.3d 633, 635 (5th Cir. 1994) (citing *Liberty Lobby*, 477 U.S. at 248)). The nonmovant is not required to respond to a motion for summary judgment until the movant first meets its burden of demonstrating that there are no factual issues warranting trial. *Ashe v. Corley*, 992 F.2d 540 (5th Cir. 1993). Once the movant has shown the absence of material fact issues, however, the opposing party has a duty to respond, via affidavits or other means, asserting specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). “Summary judgment will not lie if the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury could return a verdict for the

nonmoving party.” *Liberty Lobby*, 477 U.S. at 248.

Title 35, United States Code, Section 101 (“Section 101”) defines the subject matter that may be patented:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The parties have not specifically addressed the burden of proof for showing invalidity based on lack of patentable subject matter, and the Court has found no authority directly on point. Because the ’220 Patent is an issued patent, the Court assumes that the statutory presumption of validity applies and that JPMC bears the burden of showing invalidity by clear and convincing evidence. *See* 35 U.S.C. § 282; *see, e.g., Eli Lilly & Co. v. Teva Pharm. USA, Inc.*, --- F.3d ----, 2010 WL 3421360, at \*6 (Fed. Cir. Sept. 1, 2010).

### III. THE PARTIES’ POSITIONS

In its motion to dismiss, JPMC argued that the claims at issue fail to satisfy Section 101 because they cannot meet the “machine or transformation” test of the Federal Circuit’s *In re Bilski* decision. *See* Dkt. No. 429. Plaintiff originally made no substantive response, arguing instead that JPMC’s motion was a premature, unauthorized motion for summary judgment. *See* Dkt. Nos. 445 & 446. Then, by agreement of the parties, the Court authorized JPMC to file the present summary judgment motion as to the asserted claims. *See* 8/6/2010 Order, Dkt. No. 580.

JPMC argues that the asserted claims recite “an unpatentable abstract idea” under *Bilski*, as well as under three so-called “guidepost[]” decisions of the Supreme Court: *Gottschalk v. Benson*, 409 U.S. 63 (1972), *Parker v. Flook*, 437 U.S. 584 (1978), and *Diamond v. Diehr*, 450 U.S. 175 (1981). Dkt. No. 581 at 3 & 5-15. JPMC urges that failure to satisfy the “machine or

transformation” test of the Federal Circuit’s *In re Bilski* decision is “a useful and important clue” that a claim is not directed to patentable subject matter. *Id.* at 4 (quoting *Bilski*, 130 S.Ct. at 3227). JPMC submits that the asserted claims of the ’220 Patent involve receiving and transmitting account and transaction data without any machine or transformation, and JPMC argues that the asserted claims relate only to manipulation of legal obligations in a manner found unpatentable by the Supreme Court in *Bilski*. *Id.* at 11-15.

Plaintiff responds that JPMC’s motion focuses on non-asserted Claim 67 and “fails to offer a claim-by-claim argument,” which Plaintiff argues is insufficient to support summary judgment because validity is assessed on a claim-by-claim basis. Dkt. No. 587 at 6 & 11. As to the merits, Plaintiff responds that *Benson*, *Flook*, and similar cases on which JPMC relies are distinguishable as relating to mathematical formulas or abstract ideas. Dkt. No. 587 at 5 & 7-8. Plaintiff argues that the asserted claims recite “a practical solution to real-world payment-processing problems” that cannot be performed entirely in someone’s head, as JPMC suggests. *Id.* at 8-9. Plaintiff further argues that to whatever extent the “machine-or-transformation test” is still relevant, Plaintiff’s asserted claims pass the test. *Id.* at 11-21.

JPMC replies that under *Bilski* the machine-or-transformation test remains an important tool and that a claim need not be directed to a mathematical formula to be unpatentable. Dkt. No. 591 at 1-2. As to Plaintiff’s argument that its claims are directed to “real-world payment-processing problems,” JPMC replies that patentability stems from the scope of the claims, not problem solving. *Id.* at 3. JPMC urges the Court to reject Plaintiff’s attempts to anchor the claims to token “machines” that “add virtually nothing ‘to the underlying abstract principle.’” *Id.* at 4 (quoting *Bilski*, 130 S.Ct. at 3231). JPMC submits that “there is nothing ‘specially adapted’

or ‘particular’ about any of the recited components.” *Id.* at 9. As to Claim 67 and its dependents, JPMC argues that no transformation occurs because “[i]n fact, it is essential to the claimed method that the account information *not* be transformed, and the method accordingly includes a verification step.” *Id.* at 7.

#### IV. DISCUSSION

##### A. *Bilski*

As to *Bilski*, “[r]ather than adopting categorical rules that might have wide-ranging and unforeseen impacts, the [Supreme] Court resolves this case narrowly on the basis of this Court’s decisions in *Benson*, *Flook*, and *Diehr*, which show that petitioners’ claims are not patentable processes because they are attempts to patent abstract ideas.” *Bilski*, 130 S.Ct. at 3229-30. *Bilski* therefore did not provide any sweeping, categorical rule that this Court can apply to the ’220 Patent. Instead, the Court considers the “guideposts” cited by *Bilski* and the policies and principles set forth in *Bilski* itself. *Id.* at 3231.

*Benson* rejected what the Court characterized as an attempt to “wholly pre-empt [a] mathematical formula and in practical effect . . . patent . . . the algorithm itself.” *Id.* at 3230. Instead, the “basic tools of scientific and technological work” should remain in the public domain. *Id.* at 3258 (Breyer, J., concurring in judgment) (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). *Flook* stated that the prohibition against patenting abstract ideas “cannot be circumvented by attempting to limit the use of the formula to a particular technological environment” or adding “insignificant postsolution activity.” *Id.* at 3230. *Diehr* explained that while an abstract idea, law of nature, or mathematical formula could not be patented, “an application of a law of nature or mathematical formula to a known structure or process may well



be deserving of patent protection.” *Id.*

In *Bilski*, the Supreme Court rejected the Federal Circuit’s position that the “machine-or-transformation test” is the exclusive test for patentability of processes. *Id.* at 3227. Justice Kennedy, in a portion of *Bilski* joined by three other Justices, submitted that the law is concerned with “striking the balance between protecting inventors and not granting monopolies over procedures that others would discover by independent, creative application of general principles.” *Id.* at 3228. The Court cautioned that “[n]othing in this opinion should be read to take a position on where that balance ought to be struck.” *Id.* Justice Kennedy, joined by three other Justices, nonetheless found that Section 101 must pose some bar to “flood[ing]” and “chill[ing]” innovation:

The Information Age empowers people with new capacities to perform statistical analyses and mathematical calculations with a speed and sophistication that enable the design of protocols for more efficient performance of a vast number of business tasks. If a high enough bar is not set when considering patent applications of this sort, patent examiners and courts could be flooded with claims that would put a chill on creative endeavor and dynamic change.

*Id.* at 3229. Because a majority of the Court did not join these comments, they provide only persuasive rather than binding guidance on evaluating patentability. Specifically, Justice Scalia joined Justice Kennedy’s opinion as to all but Parts II-B-2 and II-C-2, in which the above comments appear.

Still, the vote of Justice Scalia is illuminated somewhat by Part II of Justice Breyer’s concurrence, which Justice Scalia joined and which set forth four guiding principles: first, “phenomena of nature . . . , mental processes, and abstract intellectual concepts are not patentable under § 101”; second, “transformation and reduction of an article to a different state or thing is *the clue* to the patentability of a process claim that does not include particular machines”; third,

“the machine-or-transformation test . . . has never been the ‘sole test’ for determining patentability”; and fourth, “although the machine-or-transformation test is not the only test for patentability, this by no means indicates that anything which produces a useful, concrete, and tangible result, is patentable.” *Id.* at 3258-59 (citations and internal quotation marks omitted). Further, Justice Scalia joined Justice Breyer’s statement that “in reemphasizing that the ‘machine-or-transformation’ test is not necessarily the sole test of patentability, the Court intends neither to de-emphasize the test’s usefulness nor to suggest that many patentable processes lie beyond its reach.” *Id.* at 3259.

The claims at issue in *Bilski* related to hedging risk, and the Court concluded that “[a]llowing petitioners to patent risk hedging would pre-empt use of this approach in all fields, and would effectively grant a monopoly over an abstract idea.” *Id.* at 3231. Justice Stevens, concurring in the judgment, submitted that “the Court artificially limits petitioners’ claims to hedging, and then concludes that hedging is an abstract idea rather than a term that describes a category of processes including petitioners’ claims.” *Id.* at 3235. Although Justice Stevens, joined by three other Justices, would categorically reject business patents (*id.* at 3257), Justice Steven’s observation cautions that a court’s characterization of a claim is just as important as the rules of patentability applied thereto.

The Court’s characterization of the claims in *Bilski* suggests that the key task in evaluating a claim for patentable subject matter is resolving the point of generality at which a claim collapses into an underlying abstract idea and thereby becomes unpatentable. *See also Diehr*, 450 U.S. at 205-207 (Stevens, J., dissenting) (“Indeed, the outcome of such litigation is often determined by the judge’s understanding of the patent application.”). As the Court has

noted, “[t]he line between a patentable ‘process’ and an unpatentable ‘principle’ is not always clear.” *Flook*, 437 U.S. at 589.

Since *Bilski*, at least one district court has found claims of an issued patent invalid for “claim[ing] an abstract idea” despite recitation in the claims of various steps such as transmitting and receiving. See *Ultramercial, LLC v. Hulu, LLC*, No. CV 09-06918, 2010 WL 3360098, at \*1-2 & \*6 (C.D. Cal. Aug 13, 2010).

## **B. Analysis**

Turning then to the asserted claims, quoted in Section I, above, Claim 67 recites a method in which account information is received “via a communication network,” stored, verified, and transmitted. Claim 69 requires that “the account information comprises a routing number, an account number, and a bank check serial number” and that “the electronic funds transfer is an ACH transaction.” Claim 70 recites that the electronic funds transfer comprises certain networks. Claim 72 recites that the electronic funds transfer comprises “debiting a consumer account and crediting a merchant account.” Claim 74 recites that the communication network for receiving the account information comprises the Internet.

JPMC argues that these claims are not “tied to a particular machine or apparatus,” recite no transformation, and set forth mere “post-solution field-of-use limitations” on the electronic funds transfer. Dkt. No. 591 at 6-7. JPMC submits that mere “data-gathering” is not enough to support patentability. *Id.* at 9 (citing *In re Bilski*, 545 F.3d at 963). JPMC concludes that Claim 67 pre-empts the entire “abstract idea” of receiving, storing, verifying, and transmitting account information so long as some transaction event information is involved, as recited. *Bilski*, 130 S.Ct. at 3231. For example, although the ’220 Patent is apparently directed to computerized

systems, Claim 67 does not include any limitation that would preclude its being carried out by hand. *See Benson*, 409 U.S. at 67 (“The mathematical procedures can be carried out in existing computers long in use, no new machinery being necessary. And, as noted, they can also be performed without a computer.”).

The “electronic funds transfer” recited in Claim 67 is of little help in this regard, being merely “initiate[d]” by a financial institution. Claim 67 does not recite the steps of such a transfer. Nor do dependent Claims 69, 70, 72, or 74, which merely recite properties of the electronic funds transfer. The actual steps of an electronic funds transfer thus relate to “post-solution activity” that cannot “transform an unpatentable principle into a patentable process” because to allow such a result would “exalt[] form over substance.” *Flook*, 437 U.S. at 590. In other words, *Flook* rejected the notion that an abstract idea can be made patentable by limiting the claims to particular fields of use. *Id.* at 589-90, 595. Nonetheless, the recitation of “initiat[ing] an electronic funds transfer” demonstrates some practical application for the claims.

On balance, Claim 67 recites more than an abstract idea. Two distinct sets of information, namely the account information and the transaction event information, are transformed into a request for an electronic funds transfer. In addition, the “storing” and “verifying” steps further take the claim beyond an abstract idea and into an actual practical application, regardless of whether these and other particular steps of the claim were themselves well-known. *See Diehr*, 450 U.S. at 188-90. Claims 69, 70, 72, and 74, which depend from Claim 67, accordingly amount to more than a mere passing-through of information and are “sufficiently definite to confine the patent monopoly within rather definite bounds.” *Benson*, 409 U.S. at 69 (discussing *Corning v. Burden*, 15 How. (56 U.S.) 252 (1853)). The transformation

prong of the machine-or-transformation test is thus satisfied. To whatever extent the machine-or-transformation test is found not met, if any, *Bilski* rejected the exclusivity of that test. Finally, Claims 69, 70, 72, and 74 are not within any of the prohibited categories mentioned in, for example, the case of *Diehr*, which referenced “new mineral[s],” “new plant[s],” Einstein’s “celebrated law that  $E = mc^2$ ,” and “the law of gravity” as examples of unpatentable subject matter. 450 U.S. at 185. JPMC has thus failed to show by clear and convincing evidence that Claims 69, 70, 72, and 74 violate the patentable subject matter requirement of Section 101.

Claim 75 recites “[a] method for eliminating the physical presentment of a bank check for payment of goods or services” including receiving account information from a signed bank check and verifying, storing, and transmitting the account information. A transaction amount is also received, stored, and transmitted. Claim 77 recites that “the account information comprises a routing number, an[] account number[,], and a bank check serial number.” Claim 78 depends from Claim 77 and requires that “the signed bank check is a source document.” Claim 79 depends from Claim 77 and requires receiving merchant data from multiple merchants recites. Claim 80 depends from Claim 79 and requires comparing the merchant data in a merchant database. Claim 82 depends from Claim 75 and recites that the electronic funds transfer comprises certain networks.

JPMC appears to demand some “mechanical or electrical components” for patentability. Dkt. No. 591 at 8. JPMC also re-urges that the account information is merely passed through without transformation. *Id.* On balance, Claim 75 is anchored to a particular application in which these two distinct sets of information are transformed into a request for an electronic funds transfer. In addition, the “storing” and “verifying” steps further take the claim beyond an abstract

idea and into an actual practical application. Claims 78, 79, 80, and 82, which depend from Claim 75, accordingly amount to more than a mere passing-through of information. The transformation prong of the machine-or-transformation test is thus satisfied. Alternatively, to whatever extent the machine-or-transformation test is found not met, if any, *Bilski* rejected the exclusivity of that test. Finally, Claims 78, 79, 80, and 82 are not within any of the prohibited categories mentioned in, for example, the case of *Diehr*, which referenced “new mineral[s],” “new plant[s],” Einstein’s “celebrated law that  $E = mc^2$ ,” and “the law of gravity” as examples of unpatentable subject matter. 450 U.S. at 185. JPMC has thus failed to show by clear and convincing evidence that Claims 78, 79, 80, and 82 violate the patentable subject matter requirement of Section 101.

Claim 84 depends from Claim 83, which recites “[a] method for eliminating the physical presentment of a bank check for payment of goods or services.” The method comprises “receiving a signed bank check including authorization to convert the bank check process to an electronic funds transfer process via mail or at a lock box location.” The method also includes reading account information from the check, as well as verifying, storing, and transmitting the account information. A transaction amount is also received, stored, and transmitted. Claim 84 requires that “the signed bank check is a source document.”

Claim 83 is anchored to a particular application in which two distinct sets of information, the account information and the transaction amount, are transformed into a request for an electronic funds transfer. In addition, the “reading, with an optical or magnetic reader,” “storing” and “verifying” steps further take the claim beyond an abstract idea and into an actual practical application. Claim 84, which depends from Claim 83, accordingly amounts to more than a mere

passing-through of information. The transformation prong of the machine-or-transformation test is thus satisfied. Alternatively, to whatever extent the machine-or-transformation test is found not met, if any, *Bilski* rejected the exclusivity of that test. Finally, Claim 84 is not within any of the prohibited categories mentioned in, for example, the case of *Diehr*, which referenced “new mineral[s],” “new plant[s],” Einstein’s “celebrated law that  $E = mc^2$ ,” and “the law of gravity” as examples of unpatentable subject matter. 450 U.S. at 185. JPMC has thus failed to show by clear and convincing evidence that Claim 84 violates the patentable subject matter requirement of Section 101.

Claim 93 recites a terminal, a central computer system, and at least one database that can determine whether the consumer bank account is approved and can provide electronic communication for transferring funds without presentment of a bank check. *See* 8/4/2010 Claim Construction Order, Dkt. No. 578 at 61-62. The “consumer bank account status search” of Claim 93 takes the claim beyond an abstract idea and into an actual practical application. Claim 93 also recites structure that is “sufficiently definite to confine the patent monopoly within rather definite bounds.” *Benson*, 409 U.S. at 69. In addition, Claim 93 is a system claim, not a method claim, so the machine-or-transformation test appears inapplicable. *See, e.g., In re Bilski*, 545 F.3d at 964.

To whatever extent the test is applicable, the machine prong is satisfied because Claim 93 recites a terminal, a computer system, and a database configured to carry out the consumer bank account status search and “enabl[e] electronic funds transfer communication.” Alternatively, to whatever extent the “machine-or-transformation” test is found not met, if any, *Bilski* rejected the exclusivity of that test. Finally, Claim 93 is not within any of the prohibited categories

mentioned in, for example, the case of *Diehr*, which referenced “new mineral[s],” “new plant[s],” Einstein’s “celebrated law that  $E = mc^2$ ,” and “the law of gravity” as examples of unpatentable subject matter. 450 U.S. at 185. JPMC has thus failed to show by clear and convincing evidence that Claim 93 violates the patentable subject matter requirement of Section 101.

In summary, JPMC has failed to show by clear and convincing evidence that any of the asserted claims of the '220 Patent are invalid based on failure to claim patentable subject matter. JPMC’s motion for summary judgment should therefore be DENIED.

## V. CONCLUSION

Defendants JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A.’s Motion for Summary Judgment of Invalidity of the Asserted Claims of United States Patent No. RE40,220 (Dkt. No. 581) is hereby **DENIED**.

The Motion of Defendants JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. to Dismiss Plaintiff’s Fifth Amended Complaint Under *Bilski* (Dkt. No. 429) is hereby **DENIED AS MOOT**.

LML’s Opposed Motion to Strike JPMorgan’s Motion to Dismiss Plaintiff’s Fifth Amended Complaint for Failing to Comply with the Court’s Orders Regarding Motion Practice (Dkt. No. 446) is hereby **DENIED AS MOOT**. **IT IS SO ORDERED.**