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- Toy producers can set up “skunk works”—officially sanctioned renegade research departments—so that these folks can have a home outside of the company’s overwhelming (and sometimes stifling) traditional toy business culture.

- Toy associations can invite high school and college students who are Silicon Valley-bound to attend Toy Fair as a sort of a recruiting trip, similar to how colleges go after high school athletic stars.

- Toy companies can visit Silicon Valley companies and see how they treat their employees. There could be valuable lessons learned in how to not only recruit young people effectively, but how to keep them once they’ve got them.

Similarly, in order to draw more talent of a culturally diverse background to the toy business:

- Toy companies can actively recruit on minority and non-minority college campuses, and even in high schools. Perhaps scholarships could be awarded to promising students of color.

- Toy associations and/or toy companies can get involved in sponsoring toy design contests and fairs. There could even be a top award that results in a trip to Toy Fair or ASTRA’s show, with a buying spree at a toy store for second and third place finishers.

- We can all benefit by having speakers on minority outreach address toy business conferences on how to go about reaching out to minority groups.

Actions like these are not just nice things to do but absolutely essential to the growth of the toy industry. Take a look around your company. Do the faces you see reflect the people who use your products?

If they don’t, shouldn’t they?

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### THE LEGAL DEPARTMENT

## The Evolution of ‘Business Method’

AS WITH MOST THINGS, the law evolves. Usually it’s a slow process, but gradually the law will adapt as necessary to account for changes in the business world—and in society. Familiarity with the bounds of the law and a willingness to use 21st century technology can be a formidable combination in court. Despite its deliberate pace of change, one aspect of intellectual property law is in the process of a dramatic change: whether or not “business methods” are patentable.

Methods have long been recognized as being patentable. For example, you can get a patent on a method for manufacturing bubbles. You can also get a patent on a method for playing a game with a flying disc. You can even get a patent for a method of Internet-based interactive gaming. But where are the limits on what the Patent Office will grant a patent for when it comes to business methods? That is where the law comes in.

About 10 years ago, the enforcement by the courts of what are called “business method” patents began to garner big news in the press. Concurrently, the number of patent applications for business method patents skyrocketed. The Patent Office has now granted patents on things such as methods for implementing income tax strategies, methods for generating insurance quotations and methods for making purchases over the Internet. And though not always, the courts have often been willing to uphold these business method patents when they are challenged. What business methods can be patented? The answer is not exactly clear, but it is about to become clearer.

In a recent appellate court decision called *In re Bilski*, the scope of business methods that may be patented was narrowed. The Court concluded that a method is patentable if “(1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing.” In the *Bilski* case, the inventor attempted to patent a method for hedging risks in commodities trading. Based on the court’s interpretation of the law, *Bilski*’s patent application was rejected. As a result of this revised legal test, hundreds (if not thousands) of patents previously issued by the Patent Office for business methods may now be at risk of being attacked.

This is not the final word on the subject, however. In June the United States Supreme Court agreed to hear the further appeal of the *Bilski* case. Because the Court hears very few cases each year, this is quite unusual. It is difficult to predict whether the Supreme Court will agree with the narrow view of business method patents recently taken by the lower courts. But with history as a guide, one thing is clear: Creative business owners and their lawyers should continue to push the law to protect the intellectual property in the products and processes they develop, regardless of the Supreme Court’s ultimate conclusion.

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