EPO and US Supreme Court aligned!

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The Supreme Court of the United States issued an opinion on appeal (as Bilski v. Kappos) that affirmed the judgment of the CAFC of affirming the rejection of the patent, but revised many aspects of the CAFC's decision. In their decision, handed down on June 28, 2010, the Supreme Court rejected the machine-or-transformation test as the sole test of process patent eligibility based on an interpretation of the language of 35 USC § 101.

Reading the opinion and listing to US law insiders, it appears that there is the opinion that the Supreme Court of the United States does not favour one test or rule to be the only one decisive test to 35 USC $ 101 since this one test may not be suitable for future technical developments.

In G01/04 and G03/08, the EPO's Enlarged Board of Appeals seems to have the same approach. The 'feature stripping approach' of the EPO, namely to ignore non-technical features in the assessment of inventive step, basically is a case by case approach where no general rule is blindly applied. It leaves a lot of freedom to the examiners to apply 'common sense'. I hope the EPO will make use of it !!