Down the IP Rabbit Hole:

Where has *Alice* taken us, and where are we heading?

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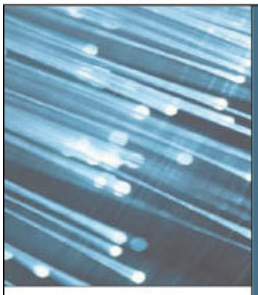


A Brief Recap of the State of the Law

35 USC § 101

What is patentable?

- "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."
- "Anything under the sun", except:
  - Products of Nature
  - Natural Phenomena
  - Abstract Ideas

Abstract Ideas

What are they?

- "[O]ne may not patent an idea… the patent would wholly pre-empt the mathematical formula and in practical effect would be a patent on the algorithm itself." *Gottschalk v. Benson* (1972).
- Field of use / post solution activity does not make a claim relating to mathematical formula or natural phenomenon patentable; there must be a separate inventive concept. *Parker v. Flook* (1978).
- "The laws of nature, physical phenomena, and abstract ideas have been held not patentable." *Diamond v. Chakrabarty* (1980).

Bilski v. Kappos (2010)

A method of hedging losses in one segment of the energy industry by making investments in other segments of that industry.

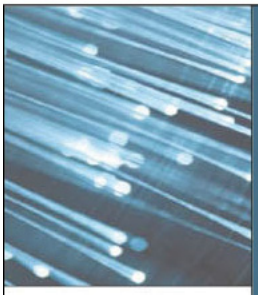
- The machine-or-transformation test rejected as the sole test.
- "The concept of hedging, described in [the claims] is an unpatentable abstract idea, just like the algorithms at issue in *Benson* and *Flook*."
- No categorical exclusion of business method patents … (in theory).

Alice v. CLS Bank (2014)

- Subject matter: maintain temporary account balances; update the temporary balances with transactions that the parties' financial resources allowed; at the end of the day, carry out the permitted transactions on the real accounts.
- A type of intermediary set of accounts that tried to reduce the risk that only one party would perform the exchange on the real accounts.
- CLS Bank processed many trillions of dollars every day in real-world transactions in 17 different currencies using these inventions.

Alice v. CLS Bank (2014)

- The Supreme Court unanimously invalidated the patent because the claims cover an abstract idea.
- What is an abstract idea?
  - Several examples of abstract ideas:
    - fundamental economic practices "long prevalent" in commerce;
    - methods of organizing human activities;
    - an idea itself; and
    - mathematical relationships/formulas.
- "In any event, we need not labor to delimit the precise contours of the 'abstract ideas' category."

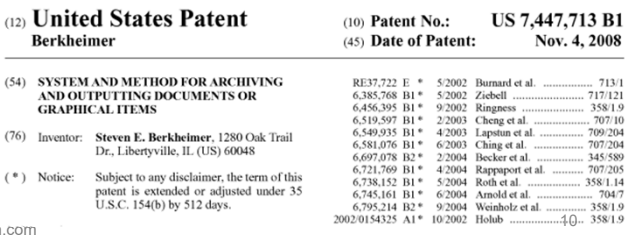


Litigation Trends

Berkheimer v. HP (Fed. Cir. 2018)

Background

- Patent-in-suit related to processing and archiving files in a digital asset management system.
- District court granted summary judgment of invalidity on some of the asserted claims under § 101, and held some additional claims to be indefinite.
- Berkheimer appealed to the Federal Circuit.



(12) **United States Patent**
Berkheimer

(10) **Patent No.: US 7,447,713 B1**
(45) **Date of Patent: Nov. 4, 2008**

(54) **SYSTEM AND METHOD FOR ARCHIVING AND OUTPUTTING DOCUMENTS OR GRAPHICAL ITEMS**

(76) Inventor: **Steven E. Berkheimer**, 1280 Oak Trail Dr., Libertyville, IL (US) 60048

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 512 days.

RE37,722	E *	5/2002	Burnard et al.	713/1
6,385,768	B1 *	5/2002	Ziebell	717/121
6,456,395	B1 *	9/2002	Ringness	358/1.9
6,519,597	B1 *	2/2003	Cheng et al.	707/10
6,549,935	B1 *	4/2003	Lapstun et al.	709/204
6,581,076	B1 *	6/2003	Ching et al.	707/204
6,697,078	B2 *	2/2004	Becker et al.	345/589
6,721,769	B1 *	4/2004	Rappaport et al.	707/205
6,738,152	B1 *	5/2004	Roth et al.	358/1.14
6,745,161	B1 *	6/2004	Arnold et al.	704/7
6,795,214	B2 *	9/2004	Weinholz et al.	358/1.9
2002/0154325	A1 *	10/2002	Holub	358/1.9

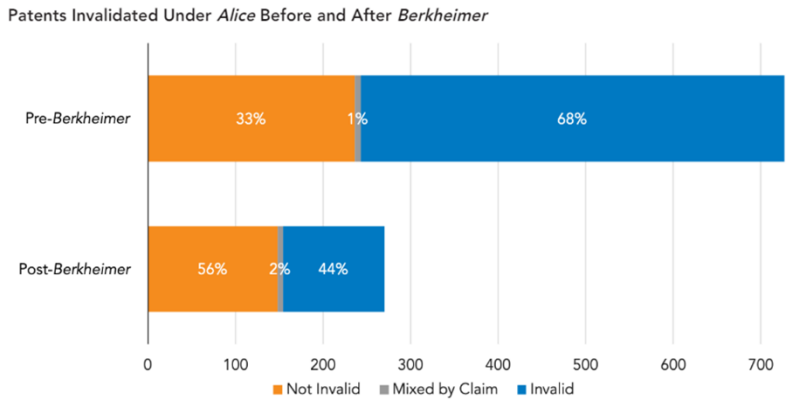
Berkheimer v. HP (Fed. Cir. 2018)

Why is it significant?

- As to Alice step 1, Federal Circuit found claims to be directed to the abstract idea of parsing, comparing, storing and editing data.
- However, when analyzing Alice step 2, held that there are questions of fact underlying patent eligibility in some cases, which may make summary judgment inappropriate in said cases.
- Specifically, Judge Moore wrote that whether the claims cover only conventional activities requires a factual determination, which can make it impossible to conclude claims are ineligible on summary judgment.

§ 101 Decisions Pre- and Post-*Berkheimer*

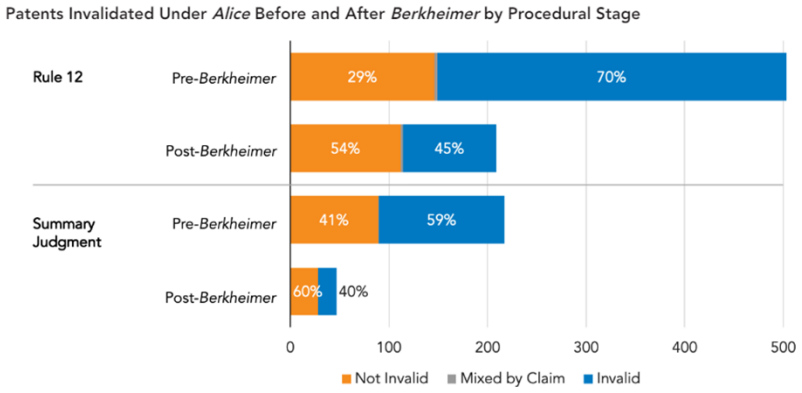
Data as of July 9, 2019



Source: https://www.rpxcorp.com/intelligence/blog/q2-in-review-alice-reined-in-as-invalidation-rate-drops-while-patent-litigation-picks-up/

§ 101 Decisions Pre- and Post-*Berkheimer*

By Litigation Stage



Source: https://www.rpxcorp.com/intelligence/blog/q2-in-review-alice-reined-in-as-invalidation-rate-drops-while-patent-litigation-picks-up/

Cellspin v. Fitbit (Fed. Cir. 2019)

***Berkheimer's* impact continues….**

- The district court found the patent-in-suit to be directed towards the abstract idea of "acquiring, transferring, and publishing data and multimedia content on one or more websites" under Alice step 1.
- As to step 2, the district court found the claims did not recite an "inventive concept", and in a footnote noted Cell-spin's argument that there was a factual dispute about whether the "combination" of these elements was "well-understood, routine and conventional" – yet didn't address the argument for 2 reasons:
  - (1) Distinguished *Berkheimer* as at summary judgment stage, not motion to dismiss; and
  - (2) Cell-spin failed to identify a portion of the patent-in-suit's specification that described the inventive concept that Cell-spin alleged in its complaint.

Cellspin v. Fitbit (Fed. Cir. 2019)

***Berkheimer's* impact continues….**

- Federal Circuit agreed the patent-in-suit was directed to an abstract idea, but disagreed with the step 2 analysis and the district court's discounting of *Berkheimer.*
- Cell-spin cited to allegations in its complaint to support its inventive concept argument, in accordance with *Aatrix*.
- The Federal Circuit held that despite the failure of Cell-spin to cite to anything in the specification, its reliance on "specific, plausible factual allegations about why aspects of its claimed inventions were not conventional" was enough to at least raise a factual question that made dismissal improper.

MyMail v. ooVoo (Fed. Cir. 2019)

***Berkheimer's* impact continues…**

- Patents directed to methods of modifying toolbars displayed on Internet-connected device (i.e., personal computers).
- The term "toolbar" was previously construed by an earlier proceeding in E.D. Tex., but not addressed in the current N.D. Cal. case.
- Under step 1, the district court found that because the claims "fall within the category of gathering and processing information" and "recite a process comprised of transmitting data, analyzing data, and generating a response to transmitted data" – then they were directed towards an abstract idea.

MyMail v. ooVoo (Fed. Cir. 2019)

***Berkheimer*'s impact continues…**

- Under step 2, district court found that there was no saving "inventive concept" because the claims recited generic components and the specification confirmed that toolbars are already widespread in use.
- Majority held that district court erred by not resolving claim construction dispute before analyzing eligibility, but would not address construction at the appeal stage.
- Judge Lourie, however, dissented stating that "[i]n my view, the claims at issue are clearly abstract, regardless of claim construction."

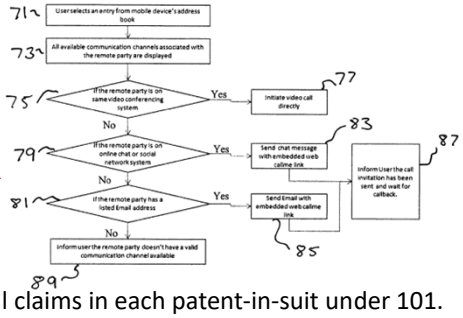
Potential Pitfalls After *MyMail*

- The *MyMail* ruling did ***not*** hold that judges must always perform a claim construction analysis before ruling on patent eligibility — only that they must do so when there is a dispute between the parties.
  - However, this could result in patent owners raising claim construction issues in an effort to create a roadblock to early invalidity decisions.
- Early claim construction disputes have several potential issues, including:
  - Patent owner hasn't yet seen all of the asserted prior art;
  - Patent owner may not know exactly how the infringing device works; and/or
  - Adopting patent owner's proposed construction may still result in the court finding the patent(s) invalid.
- Despite these potential issues, if faced with a motion to dismiss, patent owner should raise every issue possible to try to defeat the motion.

Recent § 101 Decisions in District Court

***Krush Techs. LLC v. Zoom Video Communcs. Inc.*, No. C 19-01841-WHA (N.D. Cal. July 23, 2019)**

- Very short opinion.
- The patents-in-suit are generally directed to video teleconferencing systems.

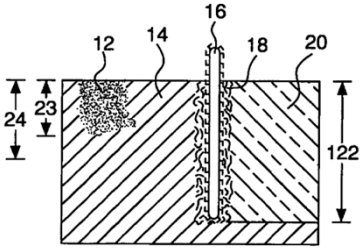


- Defendant moved to dismiss all claims in each patent-in-suit under 101.
- Judge Alsup walked through the 2-step Alice test, holding that while a 101 eligibility determination is a matter of law – there were underlying issues of fact which made dismissal at this particular stage improper.
- Defendant's motion to dismiss was **DENIED**.

Recent § 101 Decisions in the District Court

***CBA Environmental Servs., Inc. v. Toll Brothers, Inc. et al*, No. 3:18-cv-13294 (D.N.J. July 31, 2019)**

- The patent-in-suit relates to an *in situ* method of reducing concentrations of contaminates in soil to environmentally acceptable levels.
- The Court rejected plaintiff's argument that the *Mayo/Alice* test did not apply because the patent claims in question are not related to software.
- The Court said: "*Alice* itself does not mandate that the test be applied only to software patents, rather it is generally applied to method-related patents."



Recent § 101 Decisions in the District Court

***CBA Environmental Servs., Inc. v. Toll Brothers, Inc. et al*, No. 3:18-cv-13294 (D.N.J. July 31, 2019)**

- Defendants argued that the patent-in-suit is directed to the abstract idea of dilution and are therefore ineligible for patent protection.
  - Specifically, Defendants reasoned that dilution is abstract because an individual can calculate the end result of the process in his or her mind.
- The Court agreed that dilution is an abstract process, but ultimately disagreed with defendants because the claim 1 of the patent-in-suit reveals that that the patent utilizes specialized machinery to blend or mix soil.
  - "*Berkheimer* demonstrates that non-routine or unconventional improvements described in the specification, and recited in the claims, may defeat motions to dismiss that argue that claims are patent ineligible.

Recent § 101 Decisions in the District Court

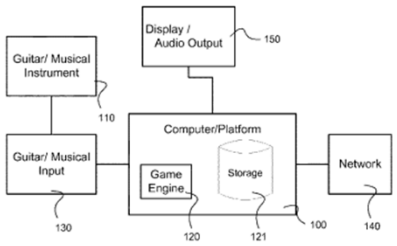
***CBA Environmental Servs., Inc. v. Toll Brothers, Inc. et al*, No. 3:18-cv-13294 (D.N.J. July 31, 2019)**

- In sum, the improvements in the specification, to the extent they are captured in the claims, presented a factual issue regarding whether the invention describes well-understood, routine, and conventional activities.
- Defendant's motion to dismiss was **DENIED**.

Recent § 101 Decisions in the District Court

***Ubisoft Entm't, S.A. v. Yousician OY*, No. 5:18-cv-383-FL (N.D. Cal. Aug. 9, 2019)**

- The patent-in-suit is entitled "interactive guitar game" and discloses software for learning how to play a musical instrument (i.e., the guitar).
- The Court found that the patent is directed towards the abstract idea "of teaching guitar by evaluating a user's performance and generating appropriate exercises to improve that performance."



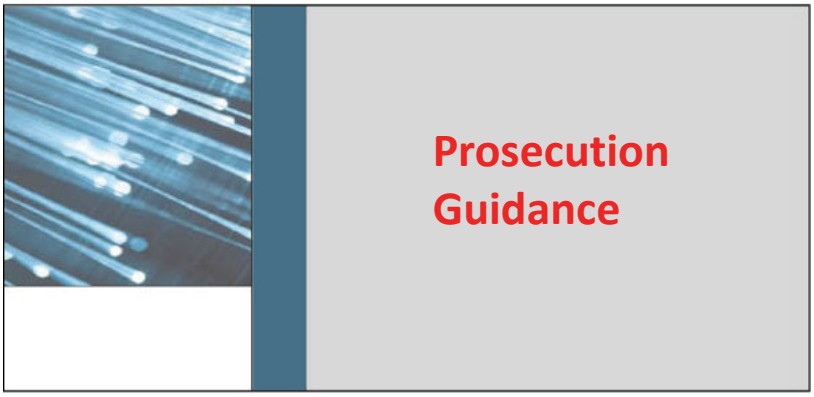
Recent § 101 Decisions in the District Court

***Ubisoft Entm't, S.A. v. Yousician OY*, No. 5:18-cv-383-FL (N.D. Cal. Aug. 9, 2019)**

- The Court did recognize that the claim limitation of changing the difficulty level of a song in response to assessing a user's performance may invite an "inventive concept" argument – it still ultimately found that this limitation too was "vague and lacking innovation."
- The Court also touched on the prosecution history – noting that the examiner initially found the asserted claims ineligible under 101. It seems as though the court only believed the amendments were entered to get around prior art – because the amendments still didn't create an alleged improvement that would pass muster under 101.
- The Court found that the asserted claims were ineligible under 101, and Defendant's motion to dismiss was **GRANTED**.

Impact on District Court Proceedings

- On July 25, 2019, Chief Justice Gilstrap in E.D. Texas issued a "first of its kind" standing order regarding subject matter eligibility contentions.
- Requires accused infringers early in litigation to detail any intended arguments regarding patent eligibility.
- Defendants must present "eligibility contentions" within 45 days of receiving the patent owner's disclosure of the asserted claims and infringement contentions.
- Defendants must include:
  - a chart sketching out their argument (i.e., the patent is directed to an abstract idea or law of nature) along with the factual basis for that argument;
  - a description of the relevant industry at the time of the invention and explain why each element of the disputed patent claims would have been well-understood, routine and conventional; and
  - Production all of the materials they intend to rely upon in their argument.



USPTO Implementing the *Alice* Decision

Long and Winding Road of Guidance

Prior USPTO Resources on Alice/Subject Matter Eligibility:

- 2014 Interim Guidance (Dec. 2014)
- 2015 Update on Subject Matter Eligibility (July 2015)
- 2016 Update on Subject Matter Eligibility (May 2016)

Current USPTO Resources on Alice/Subject Matter Eligibility:

- 2019 Revised Patent Subject Matter Eligibility Guidance (Jan. 2019)
- Subject Matter Eligibility Examples 37-42 (1-36 still relevant, but issued prior to 2019 guidelines)
- Memoranda on Specific Court Decisions (Vanda Pharmaceuticals, Berkheimer, Finjan and Core Wireless)
- (See PTO site at: https://www.uspto.gov/patent/laws-and-regulations/examination-policy/subject-matter-eligibility)

USPTO Implementing the *Alice* Decision

Long and Winding Road of Guidance

Basic Alice Analysis in USPTO (§ 101 Review)

Step 1: Check if Claim Recites a **Statutory Category of Invention** (Process, Machine, Manufacture or Composition of Matter)

Step 2A: Check if Claim Directed to **Judicial Exception** (Law of Nature, Natural Phenomena, or Abstract Idea)

Step 2B: If "yes" to 2A, Check if Claim Recites Additional Elements Amounting to **Significantly More** (i.e., "inventive concept") than the Judicial Exception

USPTO Implementing the *Alice* Decision

Long and Winding Road of Guidance

2019 Revisions to Alice Analysis in USPTO (§ 101 Review)

Simplifies classification of abstract subject matter from the laundry list in prior guidelines to just 3 groupings:

Mathematical Concepts

Mental Processes

Certain Methods of Organizing Human Activity

USPTO Implementing the *Alice* Decision

Long and Winding Road of Guidance

2019 Revisions to Alice Analysis in USPTO (§ 101 Review)

Redefines Step 2A (is claim "directed" to a judicial exception) and breaks the 2A inquiry into "prongs"

2A Prong 1: Is a judicial exception "recited" in the claim

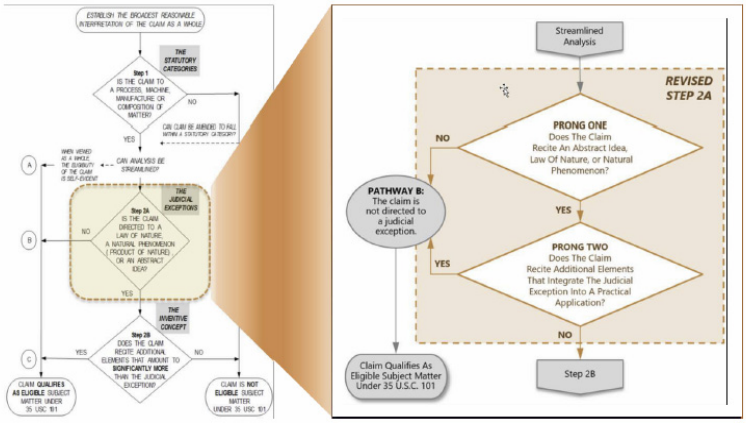
2A Prong 2: If judicial exception recited, is the recited exception integrated into a practical application

- Why is the new 2 prong in the 2019 Guidance Significant?
  - Can avoid tangling with Step 2B and the well-understood, routine and conventional activity standard if integration into a practical application shown

USPTO Implementing the *Alice* Decision

- Revised MPEP Eligibility Flowchart Under 2019 Guidance

MPEP flowchart



Revised Step 2A flowchart

Source: USPTO Patent Quality Chat presentation slides: 2019 Revised Patent Subject Matter Eligibility Guidance, January 10, 2019

USPTO Implementing the *Alice* Decision

Berkheimer Memo

- USPTO's April 19, 2018 Memo regarding Berkheimer v. HP
  - Provides applicants with means to argue against Alice step 2B allegations that an additional element to a claim is <u>well understood, routine or conventional</u> ("WURC").
  - Examiner cannot just make a bare statement on WURC assertion and must back that allegation up with one of:
    - Citation from specification demonstrating WURC aspect;
    - Citation to a court decisions (MPEP 2106.05(d)(II)) identifying the element as WURC;
    - Citation to a publication demonstrating WURC element; or
    - Cite to official notice based on personal knowledge

USPTO Implementing the *Alice* Decision

Latest Subject Matter Eligibility Examples

- New eligibility examples related to abstract subject matter were released January 7, 2019 (Examples 37-42)
- Incorporate new 2-prong test for "directed to" inquiry of step 2A
- 2019 Examples include claims showing
  - Step 2A, Prong 1 eligibility (none of the 3 categories of abstract recited)
  - Step 2B, Prong 2 eligibility (integrates exception into practical application)

USPTO Implementing the *Alice* Decision

Latest Subject Matter Eligibility Examples

- Step 2A, Prong 1 eligibility (Example 37)

A method of rearranging icons on a graphical user interface (GUI) of a computer system, the method comprising:

receiving, via the GUI, a user selection to organize each icon based on a specific criteria, wherein the specific criteria is an amount of use of each icon;

[NOT ELIGIBLE] determining, by a processor, the amount of use of each icon over a predetermined period of time; and [MENTAL STEP]

[ELIGIBLE]determining the amount of use of each icon using a processor that tracks how much memory has been allocated to each application associated with each icon over a predetermined period of time; and [NO ABSTRACT CATEGORY]

automatically moving the most used icons to a position on the GUI closest to the start icon of the computer system based on the determined amount of use.

USPTO Implementing the *Alice* Decision

Latest Subject Matter Eligibility Examples

- Step 2A, Prong 2 eligibility (Example 40)

A method for monitoring of traffic data through a network appliance connected between computing devices in a network, the method comprising:

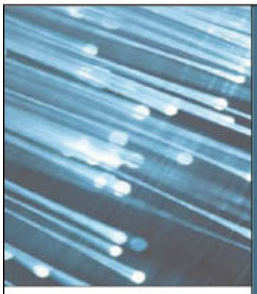
collecting, by the network appliance, traffic data relating to the network traffic passing through the network appliance, the traffic data comprising at least one of network delay, packet loss, or jitter; and

[NOT ELIGIBLE] comparing, by the network appliance, at least one of the collected traffic data to a predefined threshold.

[**OR**]

[ELIGIBLE] comparing, by the network appliance, at least one of the collected traffic data to a predefined threshold; and

collecting additional traffic data relating to the network traffic when the collected traffic data is greater than the predefined threshold, the additional traffic data comprising Netflow protocol data. [INTEGRATED WITH PRACTICAL APPLICATION]



Recent PTAB Decisions

USPTO Implementing the *Alice* Decision

PTAB Guidance on Interpreting 2019 Guidelines

PTAB Decisions

- Ex parte Smith – Delay in trading of automated orders to permit floor-based traders access to trades
  - Eligible – integrates exception (organizing human activity) into a practical application (technical system improvement to permit access in otherwise automated system) (Prong 2)
- Ex parte Fautz – Use of formulas to improve sensitivity of MRI device
  - Eligible – technical solution to a technical problem that improves operation based on physical properties of MRI device (Prong 2)

See https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/precedential-informative-decisions for complete listings

USPTO Implementing the *Alice* Decision

PTAB Guidance on Interpreting 2019 Guidelines

- Ex parte Savescu – Tool for creating project life-cycle workflow
  - NOT Eligible – does not integrate exception (organizing human activity) into a practical application. Generic computer activity to deliver web pages. No improvement on operating efficiency/cost, just routine and conventional use of generic computer (Step 2B)
- Ex parte Kimizuka – Golf club fitting method
  - NOT Eligible – various determinations by a computer could be done by a human (mental processing). No integration into practical application – claims to improving club selection method, not to improving how measurements taken or club is manufactured

USPTO Implementing the *Alice* Decision

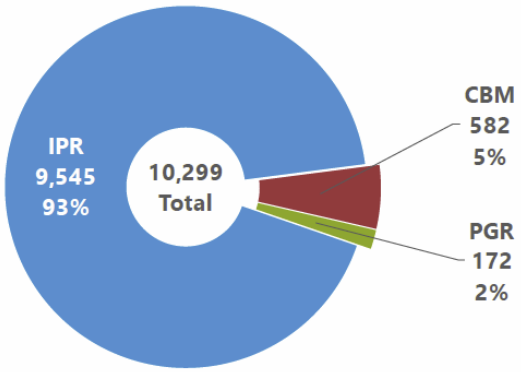
CBM examples

- Covered Business Method Review
  - Applies to "method or corresponding apparatus . . . used in the practice, administration, or management of a financial product or service . . . ."
  - Does not apply to patents for "technological inventions"
  - Sunset of procedure in Sept. 2020 (absent legislative renewal)
- *Wells Fargo v. USAA* (CBMs 2019-00003, -00004 and -00005)
  - Patents related to remote deposit capture of check images
  - PTAB denied institution of these CBMs for insufficient showing that the "technological invention" exception did not apply
- *NASDAQ v. IEX* (CBMs 2018-00038, -00041 and -00042)
  - Patents related to electronic trading systems
  - PTAB denied institution of these CBMs for insufficient showing that the "technological invention" exception did not apply

Three Types of PTAB Review Proceedings

Proceeding	When Available	Applicable to Which Patents?	Scope	Standard to Institute Proceeding
Post Grant Review (PGR)	From patent grant to 9 months after patent grant or reissue	Patent issued under first-inventor-to-file	101, 102, 103, 112, double patenting but not best mode	More likely than not OR Novel or unsettled legal question important to other patents/ applications
***Inter Partes* Review (IPR)**	For first-inventor-to-file, from the later of: (i) 9 months after patent grant or reissue; or (ii) the date of termination of any post grant review of the patent. For first-to-invent, available after grant or reissue (technical amendment)	Patent issued under first-to-invent or first-inventor-to-file	102 and 103 based on patents and printed publications	Reasonable likelihood
Covered Business Method (CBM)	Available 9/16/12 (for first-inventor-to-file only after PGR not available or completed)	Patents issued under first-to-invent and first-inventor-to-file	Same as PGR (some 102 differences)	More likely than not OR Novel or unsettled legal question important to other patents/ applications

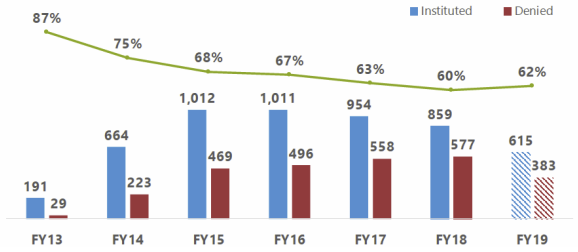
Petitions by Trial Type
(All Time: Sept. 16, 2012 to Jun. 30, 2019)



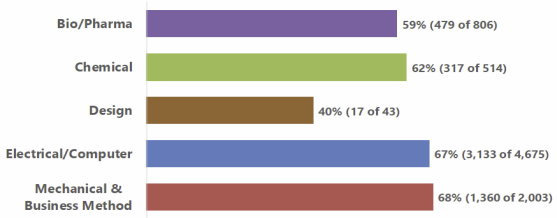
Trial types include Inter Partes Review (IPR), Post Grant Review (PGR), and Covered Business Method (CBM).

Source: USPTO, Trial Statistics IPR, PGR, CBM (June 2019), *available at* https://www.uspto.gov/sites/default/files/documents/Trial_Statistics_2019-06-30.pdf

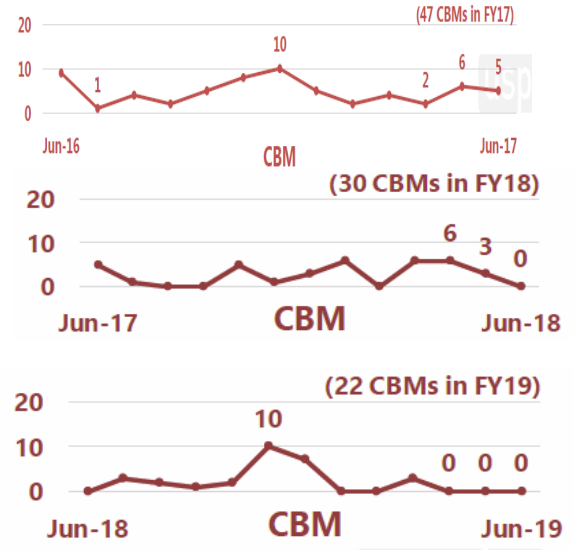
Institution Rates
(FY13 to FY19: Oct. 1, 2012 to Jun. 30, 2019)



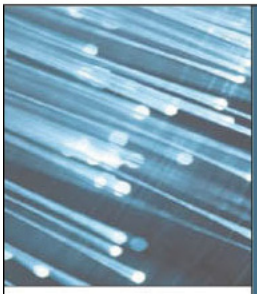
Institution Rates by Technology
(All Time: Sept. 16, 2012 to Jun. 30, 2019)



Source: USPTO, Trial Statistics IPR, PGR, CBM (June 2019), *available at* https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/statistics



Source: USPTO, Trial Statistics
https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/statistics



Legislative Reform

Congress' Proposal

The IP Subcommittee released a draft proposal to revise 35 USC 101 on May 22, 2019.

DRAFT OUTLINE OF SECTION 101 REFORM

- Keep existing statutory categories of process, machine, manufacture, or composition of matter, or any useful improvement thereof.
- Eliminate, within the eligibility requirement, that any invention or discovery be both "new and useful." Instead, simply require that the invention meet existing statutory utility requirements.
- Define, in a closed list, exclusive categories of statutory subject matter which alone should not be eligible for patent protection. The sole list of exclusions might include the following categories, for example:
  - Fundamental scientific principles;
  - Products that exist solely and exclusively in nature;
  - Pure mathematical formulas;
  - Economic or commercial principles;
  - Mental activities.
- Create a "practical application" test to ensure that the statutorily ineligible subject matter is construed narrowly.
- Ensure that simply reciting generic technical language or generic functional language does not salvage an otherwise ineligible claim.
- Statutorily abrogate judicially created exceptions to patent eligible subject matter in favor of exclusive statutory categories of ineligible subject matter.
- Make clear that eligibility is determined by considering each and every element of the claim as a whole and without regard to considerations properly addressed by 102, 103 and 112.

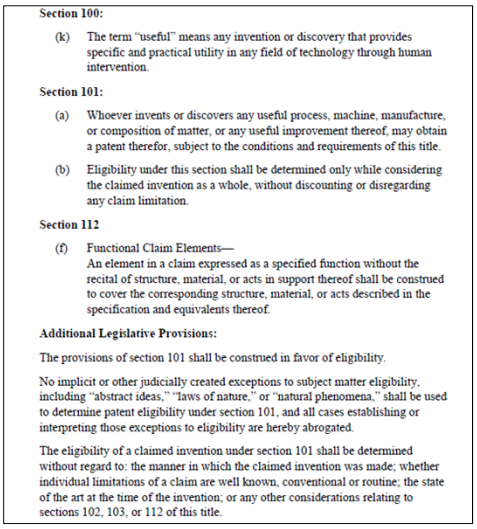
Congress' Proposal

So…will it help?

- The draft proposal includes the prospect of abrogating all decisions establishing or interpreting the judicially created exceptions of "abstract ideas," "laws of nature," or "natural phenomena."
- Furthermore, the proposal states that "[e]ligibility under this section shall be determined only while considering the claimed invention as a whole, without discounting or disregarding any claim limitation."
- These proposed changes are in line with the bipartisan, bicameral framework released in April of 2019.

Congress' Proposal

Congress also released a draft bill for 101 and 112 changes.



Section 100:

(k) The term "useful" means any invention or discovery that provides specific and practical utility in any field of technology through human intervention.

Section 101:

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

(b) Eligibility under this section shall be determined only while considering the claimed invention as a whole, without discounting or disregarding any claim limitation.

Section 112

(f) Functional Claim Elements—
An element in a claim expressed as a specified function without the recital of structure, material, or acts in support thereof shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Additional Legislative Provisions:

The provisions of section 101 shall be construed in favor of eligibility.

No implicit or other judicially created exceptions to subject matter eligibility, including "abstract ideas," "laws of nature," or "natural phenomena," shall be used to determine patent eligibility under section 101, and all cases establishing or interpreting those exceptions to eligibility are hereby abrogated.

The eligibility of a claimed invention under section 101 shall be determined without regard to: the manner in which the claimed invention was made; whether individual limitations of a claim are well known, conventional or routine; the state of the art at the time of the invention; or any other considerations relating to sections 102, 103, or 112 of this title.

Congress' Proposal

- Hearings were held on June 4-5 and 11 (close to Alice's 5 year anniversary).
- Each of the 3 hearings were approximately 2-3 hours in length.
- Access to the hearings, as well as access to testimony and responses to questions for the record for each of the panel members are on the judiciary's website.
- There were a wide mix of opinions across the various hearings and panels. While some were in favor of legislative form, others were starkly against it.

One Potential Consequence of Congress' Proposal

- Aftermath of Williamson v. Citrix
  - Removed any presumption that a claim element lacking "means" language is not covered by 112(f)
- Proposed 112 changes essentially codify the Williamson decision
- Can expect more patent office emphasis on 112(f) analysis in light of potentially fewer 101 rejections.

Questions?

The Association of Corporate Counsel (Chicago) and Brinks Gilson & Lione

Annual Intellectual Property Law Dinner Program

Presented by

Hon. Virginia M. Kendall, U.S. District Court for the Northern District of Illinois

Evi Christou, Intellectual Property Attorney, Brinks Gilson & Lione

Howard Michael , Intellectual Property Attorney, Brinks Gilson & Lione

Thursday, September 5, 2019 | 5:00pm

Gibsons Bar & Steakhouse
1028 North Rush Street
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