KEKER VAN NEST & PETERS

Talk to Me Goose: A Survey of Pending IP Legislation

November 17, 2022

Presenters

Sharif Jacob

sjacob@keker.com

Kristen Lovin

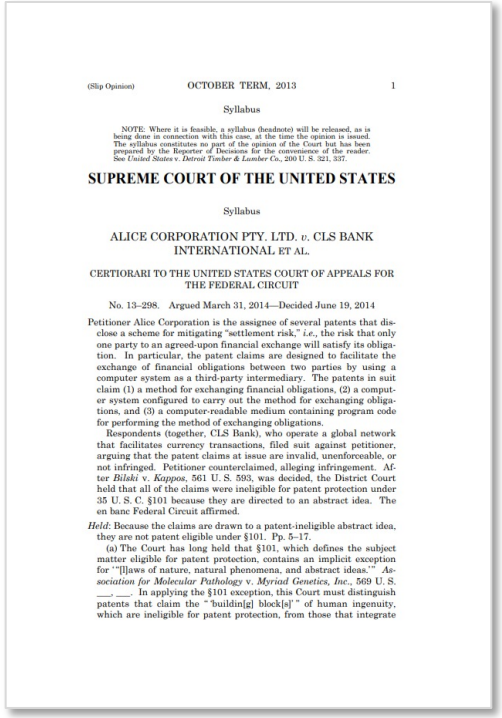
klovin@keker.com

Agenda

- **Efforts to Overhaul Patent Eligibility Under § 101**
- **Patent Trial and Appeal Board (PTAB) Reform**
- **Policy re: Standard-Essential Patents**
- **Legislation and Administrative Efforts to Promote Diversity**

Efforts to Overhaul Patent Eligibility Under § 101

§ 101 – Quick Review



(Slip Opinion) OCTOBER TERM, 2013 1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ALICE CORPORATION PTY. LTD. *v.* CLS BANK INTERNATIONAL ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 13–298. Argued March 31, 2014—Decided June 19, 2014

Petitioner Alice Corporation is the assignee of several patents that disclose a scheme for mitigating "settlement risk," *i.e.*, the risk that only one party to an agreed-upon financial exchange will satisfy its obligation. In particular, the patent claims are designed to facilitate the exchange of financial obligations between two parties by using a computer system as a third-party intermediary. The patents in suit claim (1) a method for exchanging financial obligations, (2) a computer system configured to carry out the method for exchanging obligations, and (3) a computer-readable medium containing program code for performing the method of exchanging obligations.

Respondents (together, CLS Bank), who operate a global network that facilitates currency transactions, filed suit against petitioner, arguing that the patent claims at issue are invalid, unenforceable, or not infringed. Petitioner counterclaimed, alleging infringement. After *Bilski* v. *Kappos*, 561 U. S. 593, was decided, the District Court held that all of the claims were ineligible for patent protection under 35 U. S. C. §101 because they are directed to an abstract idea. The en banc Federal Circuit affirmed.

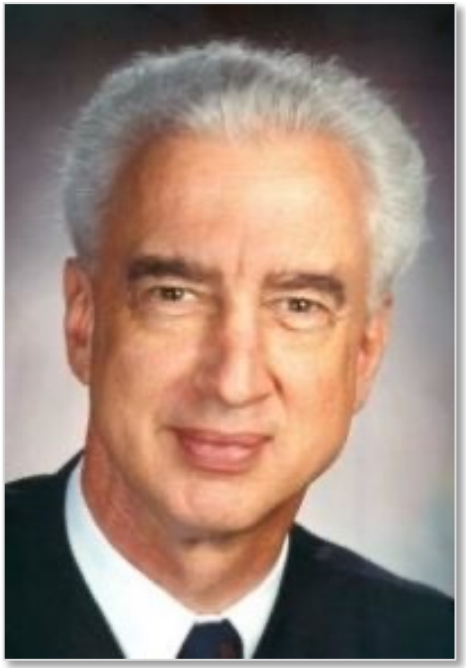
Held: Because the claims are drawn to a patent-ineligible abstract idea, they are not patent eligible under §101. Pp. 5–17.

(a) The Court has long held that §101, which defines the subject matter eligible for patent protection, contains an implicit exception for "'[l]aws of nature, natural phenomena, and abstract ideas.'" *Association for Molecular Pathology* v. *Myriad Genetics, Inc.*, 569 U. S. ___, ___. In applying the §101 exception, this Court must distinguish patents that claim the "'buildin[g] block[s]'" of human ingenuity, which are ineligible for patent protection, from those that integrate

***Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014)**

- **2-step validity inquiry:**
  - Are claims directed to an abstract concept?
  - Do claims add an "inventive concept"?
- **No "do it on a computer" claims**
- **No limiting use of abstract concept to a particular technological environment**

§ 101 Reform – How did we get here?



Hon. Paul Michel (ret.)

"I spent 22 years on the Federal Circuit and 9 years since dealing with patent cases, and I cannot predict in a given case whether eligibility will be found or not found. If I can't do it, how can bankers, venture capitalists, business executives, and all the other players in the system make reliable predictions and sensible decisions?"

§ 101 Reform – How did we get here?

- **March 5, 2021: Letter from Sens. Tillis, Coons, Hirono, Cotton to USPTO**

> If the United States is going to continue leading in all of these technology sectors, we can no longer continue to ignore the fact that current eligibility jurisprudence has had a dramatic negative impact on investment, research, and innovation. The lack of clarity has not only
>
> It is past time that Congress act to address this issue. To assist us as we consider what legislative action should be taken to reform our eligibility laws, we ask that you publish a request for information on the current state of patent eligibility jurisprudence in the United States, evaluate the responses, and provide us with a detailed summary of your findings. We are particularly

- **July 9, 2021 – October 15, 2021: USPTO solicited and received comments**

SUMMARY:

At the request of Senators Tillis, Hirono, Cotton, and Coons, the United States Patent and Trademark Office (USPTO) is undertaking a study on the current state of patent eligibility jurisprudence in the United States, and how the current jurisprudence has impacted investment and innovation, particularly in critical technologies like quantum computing, artificial intelligence, precision medicine, diagnostic methods, and pharmaceutical treatments. The USPTO seeks public input on these matters to assist in preparing the study.

§ 101 Legislative Proposals

Patent Eligibility Restoration Act of 2022, S.4734

- Introduced 8/2/2022 by Thom Tillis (R-NC)
- Latest action: 8/2/2022 - Read twice and referred to the Committee on the Judiciary

Restoring America's Leadership in Innovation Act, H.B. 5874

- Introduced 11/4/2021 by Thomas Massie (R-KY)
- Latest action: 11/4/2021 - Referred to the House Committee on the Judiciary

Patent Eligibility Restoration Act of 2022, S.4734

Lays out particular "eligibility exclusions"

"(b) ELIGIBILITY EXCLUSIONS.—

"(1) IN GENERAL.—Subject to paragraph (2), a person may not obtain a patent for any of the following, if claimed as such:

"(A) A mathematical formula, apart from a useful invention or discovery.

"(B) A process that—

"(i) is a non-technological economic, financial, business, social, cultural, or artistic process;

"(ii) is a mental process performed solely in the human mind; or

"(iii) occurs in nature wholly independent of, and prior to, any human activity.

"(C) An unmodified human gene, as that gene exists in the human body.

"(D) An unmodified natural material, as that material exists in nature.

"(2) CONDITIONS.—

"(A) CERTAIN PROCESSES.—Notwithstanding paragraph (1)(B)(i), a person may obtain a patent for a claimed invention that is a process described in such provision if that process is embodied in a machine or manufacture, unless that machine or manufacture is recited in a patent claim without integrating, beyond merely storing and executing, the steps of the process that the machine or manufacture perform.

"(B) HUMAN GENES AND NATURAL MATERIALS.—For the purposes of subparagraphs (C) and (D) of paragraph (1), a human gene or natural material that is isolated, purified, enriched, or otherwise altered by human activity, or that is otherwise employed in a useful invention or discovery, shall not be considered to be unmodified.

Patent Eligibility Restoration Act of 2022, S.4734

Gives guidance on determining eligibility

"(c) ELIGIBILITY.—

"(1) IN GENERAL.—In determining whether, under this section, a claimed invention is eligible for a patent, eligibility shall be determined—

"(A) by considering the claimed invention as a whole and without discounting or disregarding any claim element; and

"(B) without regard to—

"(i) the manner in which the claimed invention was made;

"(ii) whether a claim element is known, conventional, routine, or naturally occurring;

"(iii) the state of the applicable art, as of the date on which the claimed invention is invented; or

"(iv) any other consideration in section 102, 103, or 112.

Patent Eligibility Restoration Act of 2022, S.4734

Implications for scope

- Diagnostic techniques and treatments are patentable
- Potentially expands eligibility to software that would otherwise be an invalid abstract idea—i.e., “technological” economic, financial, business, social, cultural, or artistic processes
- Potentially brings back machine or transformation test
- Potentially expands the scope of coverage for genes and natural material—i.e., if “unmodified”

Patent Eligibility Restoration Act of 2022, S.4734

Many vague terms – may not be clearer than *Alice* itself

"(b) ELIGIBILITY EXCLUSIONS.—

"(1) IN GENERAL.—Subject to paragraph (2), a person may not obtain a patent for any of the following, if claimed as such:

"(A) A mathematical formula, apart from a **useful** invention or discovery.

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"(i) is a **non-technological** economic, financial, business, social, cultural, or artistic process;

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Patent Eligibility Restoration Act of 2022, S.4734

Implications for process

- Uses step 1 lens of looking at the "claim as a whole"
- Eliminates step 2 considerations re: conventionality
  - Shifts fight to one-level question of whether the claim falls within one of the categorical exclusions
- Unclear whether *Berkheimer*/*Aatrix* still applies – may make § 101 more of a legal inquiry that can be decided on Rule 12 motions

Restoring America's Leadership in Innovation Act, H.B. 5874

One narrow exception + Abrogates *Alice*, *Bilski*, *Myriad*, and *Mayo*

"(b) EXCEPTION.—A claimed invention is ineligible patent subject matter under subsection (a) if the claimed invention as a whole, as understood by a person having ordinary skill in the art, exists in nature independently of and prior to any human activity, or exists solely in the human mind.

…

(3) this amendment effectively abrogates Alice Corp. v. CLS Bank International, 573 U.S. 208 (2014), Bilski v. Kappos, 561 U.S. 593 (2010), Association for Molecular Pathology v. Myriad Genetics, 569 U.S. 576 (2013), Mayo Collaborative Services v. Prometheus Laboratories, 566 U.S. 66 (2012), and its predecessors to ensure that life sciences discoveries, computer software, and similar inventions and discoveries are patentable, and that those patents are enforceable.

Also:

- **Eliminates Patent Trial & Appeal Board & *Inter Partes* Review and re-establishes Board of Patent Appeals & Interferences**
- **Reverts to first-to-file system**

Patent Trial and Appeal Board (PTAB) Reform

PTAB – Quick Review

PTAB: Administrative tribunal within USPTO that reviews examiner rejections and decides petitions for *inter partes* review (IPRs)

IPRs:

- Administrative trial proceeding within USPTO to challenge validity of patent claims
- Limited to anticipation and obviousness challenges based on prior art patents and printed publications
- Time limit: must be commenced within 1 year of service of complaint for patent infringement

PTAB Reform – How did we get here?

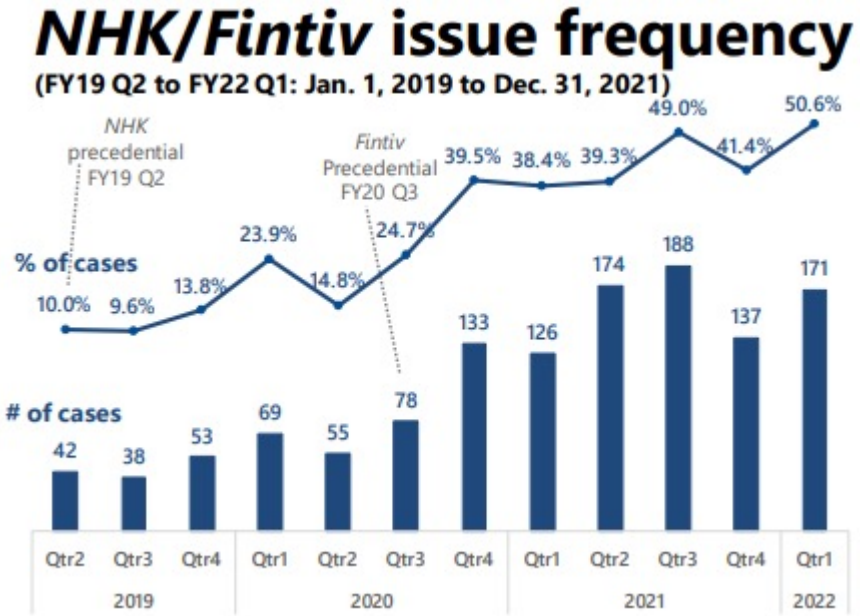
Emerging Trends:

- Discretionary Denials
- Perceived gamesmanship and abuses
  - Repeat petitions
  - Deliberately delaying or losing an instituted challenge in exchange for consideration
    - *OpenSky Industries v. VLSI* (IPR2021-01064) & *Patent Quality Assurance v. VLSI* (IPR2021-01229)

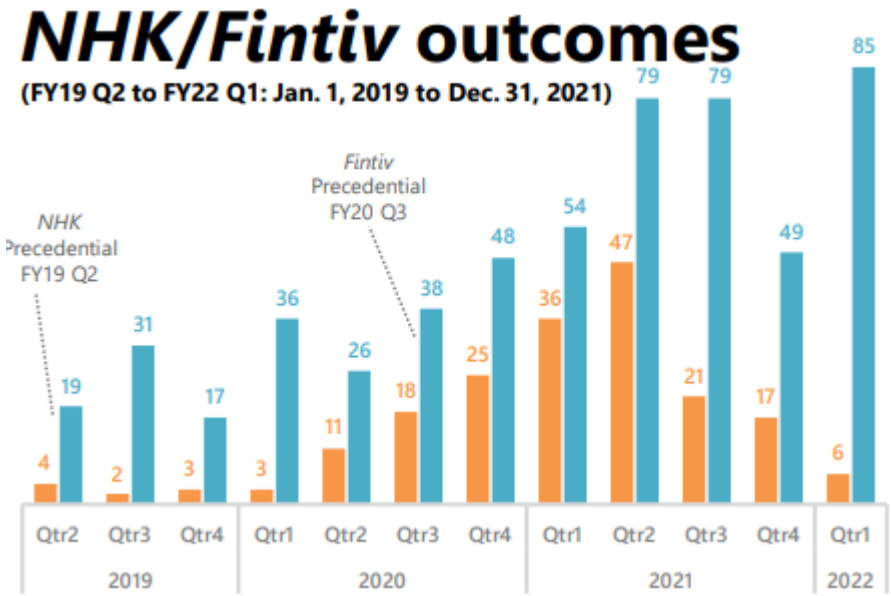
Discretionary Denials

- ***NHK Spring Co., Ltd. v. Intri-Plex Techs., Inc.*, Case IPR2018- 00752, Paper 8 (Sept. 12, 2018) (designated precedential May 7, 2019)**
  - Denied institution based on parallel litigation
- ***Apple Inc. v. Fintiv, Inc.*, IPR 2020-00019, Paper 11 (PTAB Mar. 20, 2020) (designated precedential May 5, 2020)**
  - Set out six factor test for denying intuition based on parallel litigation
    - 1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
    - 2. proximity of the court 's trial date to the Board's projected statutory deadline for a final written decision;
    - 3. investment in the parallel proceeding by the court and the patties;
    - 4. overlap between issues raised in the petition and in the parallel proceeding;
    - 5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
    - 6. other circumstances that impact the Board's exercise of discretion, including the merits.

Discretionary Denials



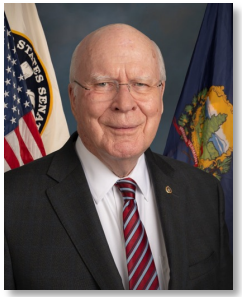
In this graphic, the bars show the number of cases where *NHK/Fintiv* was raised, and the line shows the percent of all cases in which *NHK/Fintiv* was raised.

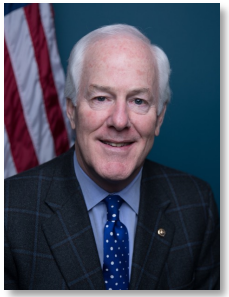
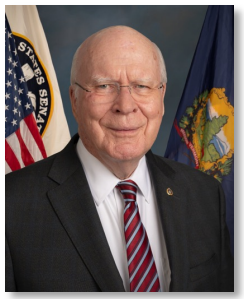
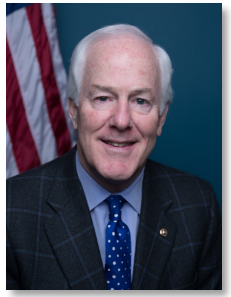


This graphic shows the outcomes of DIs that analyze *NHK/Fintiv*, specifically, the number of **NHK/Fintiv denials (orange)** versus the number of **NHK/Fintiv institutions (light blue)**.

Source: USPTO (https://www.uspto.gov/sites/default/files/documents/ptab_parallel_litigation_study_20220621_.pdf)

PTAB Legislative Proposals



Patent Trial and Appeal Board Reform Act of 2022, S.4417

- Introduced 6/16/2022 by Patrick Leahy (D-Vt.), Thom Tillis (R-N.C.), and John Cornyn (R-Texas)
- Latest action: 6/16/2022 - Read twice and referred to the Committee on the Judiciary

Restoring the America Invents Act, S.2891

- Introduced 9/29/2021 by Patrick Leahy (D-Vt.) and John Cornyn (R-Texas)
- Latest action: 9/29/2021 - Read twice and referred to the Committee on the Judiciary

Patent Trial and Appeal Board Reform Act of 2022

Overview of changes:

1. Eliminates discretionary denials based on parallel litigation
2. Introduces provisions to combat abuses
3. Modifies certain legal standards and rights
4. Introduces procedural changes

Patent Trial and Appeal Board Reform Act of 2022

1. Eliminates discretionary denials

"(f) INSTITUTION NOT TO BE DENIED BASED ON PARALLEL PROCEEDINGS.—In deciding whether to institute an inter partes review proceeding, the Director shall not in any respect consider an ongoing civil action or a proceeding before the International Trade Commission under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), other than with respect to—

Pros:

- Addresses current complaints about *Fintiv*, i.e.:
  - Encourages forum-shopping to fast-to-trial districts
  - Relies on unpredictable trial dates

Cons:

- Too draconian – the USPTO should be left to work through these kinks itself

Patent Trial and Appeal Board Reform Act of 2022

2. Provisions to combat abuses:

- **Repeat petitions:** IPR cannot be instituted if IPR was previously instituted on one or more claims filed on a different day by the same petitioner, or a real party in interest or privy
  - *Does not cover multiple petitions filed on the same day*
- **Bad faith conduct:** Director must prescribe sanctions against petitioners who offer to deliberately delay or lose an instituted challenge for consideration

Patent Trial and Appeal Board Reform Act of 2022

3. Provisions re: legal standards, rights, & entitlements:

- **Claim construction standard:** must use same standard used in civil actions (*Philips*)
  - *Does not change standard of review to be same as civil actions (clear and convincing vs. preponderance)*
- **Right to appeal:** any party that reasonably expects another person to assert estoppel based on a final written decision has the right to appeal to the Federal Circuit
  - *No need to show Article III standing*
- PTO must cover the reasonable litigation expenses of small businesses

Patent Trial and Appeal Board Reform Act of 2022

4. Procedural changes:

- Supervisors who are not members of a panel cannot engage in *ex parte* communication with a panel concerning a matter pending before them
- Any rehearing decision must be issued in a separate opinion
- After a final written decision issues, Director must cancel claims determined to be unpatentable within 60 days
- Director must decide any request for reconsideration within 120 days

Restoring the America Invents Act, S.2891

- Similar provisions to Patent Trial and Appeal Board Reform Act
- Highlights:
  - Eliminates discretionary denials
  - Does not address serial petitions
  - Allows IPRs of patents based on double patenting, instead of just obviousness and anticipation
  - Permits the government to file IPR petitions

Policy re: Standard-Essential Patents

Standard Essential Patents (SEPs) – Quick Review

- **Standard Essential Patents (SEPs):** patents that must be practiced in order to accomplish the standard
  - Essentiality is determined by "whether the claim elements read onto mandatory portions of a standard that standard-compliant devices must incorporate." *Godo Kaisha IP Bridge 1 v. TCL Commc'n Tech. Holdings Ltd.*, 967 F.3d 1380, 1385 (Fed. Cir. 2020).
- Creates a windfall for owners of patents covering a technology employed by the standard
- Standards-settings organizations often require owners of standard-essential patents to promise to license their patents on FRAND terms

Standard Essential Patents (SEPs) – Complications

1. **Piecemeal Adjudication:** Different US courts deciding essentiality and the FRAND rate

2. **Injunctions:** SEP owner's threat of seeking injunction may coerce the accused infringer to accept higher, non-FRAND rates

3. **Global FRAND determinations:** Court orders parties to enter into global license, which…
   - Deprives the patent owner of enforcing these patents in another jurisdiction
   - Sets a rate which could be too high or too low in other jurisdictions

4. **Anti-suit injunctions:** Court enjoins a party from enforcing patents in another jurisdiction
   - China has done this with increasing frequency
     - But we've done it too. *See, e.g., Microsoft v. Motorola,* 2013 U.S. Dist. LEXIS 60233 (W.D. Wash., 2013), *aff'd* 795 F.3d 1024 (9th Cir. 2015) (barring Motorola Mobility from enforcing Mannheim SEP injunctions).
   - 2/22/2022: EU requested WTO dispute consultations with China over its ASI practices (WT/DS611/1)

US Policy on Injunctions - Back in the Trump days…

POLICY STATEMENT ON REMEDIES FOR STANDARDS-ESSENTIAL PATENTS SUBJECT TO VOLUNTARY F/RAND COMMITMENTS[1]

December 19, 2019

"All remedies available under national law, including injunctive relief and adequate damages, should be available for infringement of standards-essential patents subject to a F/RAND commitment, if the facts of a given case warrant them. Consistent with the prevailing law and depending on the facts and forum, the remedies that may apply in a given patent case include injunctive relief, reasonable royalties, lost profits, enhanced damages for willful infringement, and exclusion orders issued by the U.S. International Trade Commission."

US Policy on Injunctions - Now…

"Where a potential licensee is willing to license and is able to compensate a SEP holder for past infringement and future use of SEPs subject to a voluntary F/RAND commitment, seeking injunctive relief in lieu of good-faith negotiation is inconsistent with the goals of the F/RAND commitment."

US Policy on Injunctions - Now…

"The U.S. Patent & Trademark Office (USPTO), the National Institute of Standards and Technology (NIST), and the U.S. Department of Justice, Antitrust Division (DOJ) hereby withdraw the December 19, 2019 Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments (2019 Policy Statement). After considering potential revisions to that statement, the Agencies have concluded that withdrawal best serves the interests of innovation and competition."

Legislative Proposals

Defending American Courts Act, S.3772

- Introduced 3/8/2022 by Thom Tillis (R-N.C.)
- Latest Action: 3/8/2022 Read twice and referred to the Committee on the Judiciary

Standard Essential Royalties Act

- Not formally before Congress

Defending American Courts Act, S.3772

Imposes disincentives for bad actors seeking to enforce a foreign anti-suit injunction in the US

"(b) CIVIL ACTION PRESUMPTIONS.—Upon a finding of infringement of a patent under section 271 in a civil action against any person that has asserted an anti-suit injunction in any tribunal of the United States seeking to restrict the claim of infringement of the patent on the basis of the anti-suit injunction, the court shall presume that—

"(1) the infringement is willful when determining whether to increase damages under section 284; and

"(2) the action is exceptional when determining whether to award attorney fees under section 285.

"(c) PATENT TRIAL AND APPEAL BOARD.—In determining whether to institute a review under chapter 31 or 32 with respect to a patent, the Director shall decline to institute such a review if the petitioner, real party in interest, or privy of the petitioner has asserted an anti-suit injunction in any tribunal of the United States seeking to restrict a claim for infringement of the patent on the basis of the anti-suit injunction.

Standard Essential Royalties Act

Creates a single court in DC to determine FRAND rates

SEC. 3. TECHNICAL STANDARDS ROYALTY COURT

…

"**§ 221. Appointment of judges; offices.**

"(a) The President shall appoint, by and with the advice and consent of the Senate, five judges who shall constitute a court of record known as the Standards Royalty Court (hereinafter "court" in this chapter). The court is a court established under Article III of the Constitution of the United States.

…

"**§222. Powers and duties.**

"(a) The court's jurisdiction shall be exclusive over and limited to, and the court shall have all powers in law and equity to adjudicate, actions under section 331 of title 35.

"(b) Cases and controversies shall be heard and determined by a panel of at least three judges.

…

Standard Essential Royalties Act

Narrows the scope of patents subject RAND licensing obligations

"**§ 331. Cause of action.**

"(a) A person shall have remedy by civil action in the Standards Royalty Court (hereinafter "court" in this chapter) to determine a reasonable and non-discriminatory licensing royalty rate for all United States patents that—

"(1) would necessarily be infringed by the practice of a technical standard; and

"(2) are committed to be licensed for reasonable and non-discriminatory royalties or on substantially equivalent terms.

"(b) A patent is committed to be licensed for reasonable and non-discriminatory royalties or on substantially equivalent terms if—

"(1) the patent has been identified by a person that contemporaneously owned the patent in whole or in part as subject to such a commitment; or

"(2) the patent is or has been owned in whole or in part by a person that has committed to license on such terms patents that would necessarily be infringed by the practice of the technical standard.

"(c) A person who participates in a standard-setting process and knowingly allows its technology to be incorporated into the technical standard shall be presumed to have committed to license its patents that claim such technology that is essential to the standard on reasonable and non-discriminatory terms.

Standard Essential Royalties Act

Lays out a legal standard for determining RAND obligations

"**§ 334. Determination and allocation of reasonable royalty rate.**

"(a) The court shall consider all relevant evidence submitted by the parties under section 333. The court may obtain the opinions of independent analysts and experts as to the value, validity, or essentiality of any patent identified under section 333(d)(1), may require by subpoena the production of information or evidence from persons who are not a party to the action, and may assign matters for resolution by a magistrate judge as appropriate.

"(b) Upon briefing and a hearing, the court (without jury) shall determine—

"(1) an overall reasonable royalty rate or rates for implementation of the technical standard;

"(2) each plaintiff's entitlement to its appropriate portion of that royalty rate in view of the value of the technology claimed in the plaintiff's patent claims that is essential to the standard; and

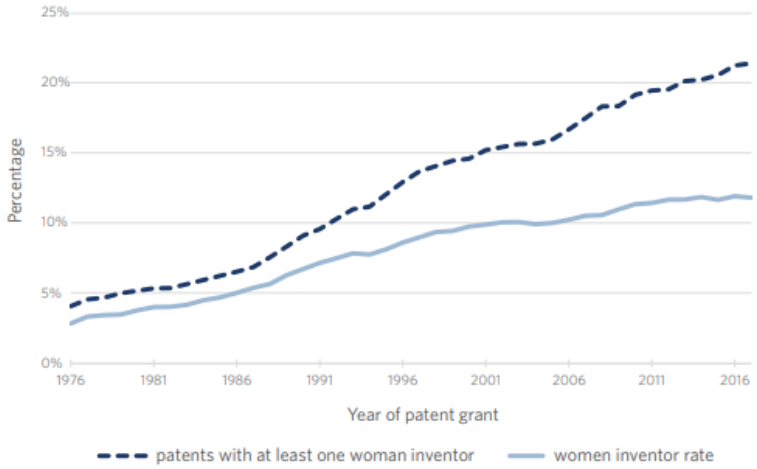
"(3) such other terms as are appropriately included in a license to a defendant.

Legislation and Administrative Efforts to Promote Diversity

Diversity efforts – How did we get here?

- **2018 USPTO SUCCESS Study:**
  - Found that women and minorities are underrepresented as inventors named on U.S. granted patents

Figure 2: Share of women inventors on U.S. granted patents (1976-2016)



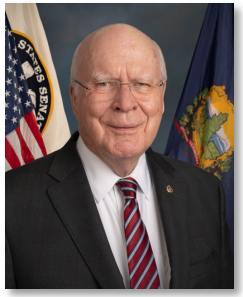
Ethnicity of U.S.-Born Innovators	Percent of Innovation Sample	Percent of United States Population	Rate of Representation
White	59.6%	59.2%	1.0
Asian	1.5%	1.8%	0.8
Black or African American	0.3%	11.3%	0.0
Hispanic	1.4%	11.5%	0.1
Two or More Races	0.9%	1.9%	0.5
Native American	0.9%	0.9%	1.1
Total U.S.-born	**64.5%**	**86.5%**	**0.7**

Source: USPTO (https://www.uspto.gov/sites/default/files/documents/USPTOSuccessAct.pdf)

Legislative Proposals on Diversity

Inventor Diversity for Economic Advancement (IDEA) Act, S.632

- Introduced 3/9/2021 by Mazie Hirono (D-Hawaii)
- Latest action: 4/29/2021 - Committee on the Judiciary. Ordered to be reported with an amendment in the nature of a substitute favorably.



Unleashing American Innovators Act of 2021, S.2773

- Introduced 9/21/2021 by Patrick Leahy (D-Vermont)
- Latest action: 9/21/2021 Read twice and referred to the Committee on the Judiciary.

Inventor Diversity for Economic Advancement Act, S.632

- Requires the USPTO to:
  - Request demographic information from the inventor on each patent application submitted to the USPTO
  - Publish an annual public report about the collected data, including the collected data broken down by the types of technology covered by the patent applications
  - Make the underlying data publicly available

Unleashing American Innovators Act of 2021, S.2773

- USPTO satellite and community outreach offices:
  - Statutory purpose of satellite offices includes outreach and retention activities targeting underrepresented groups and individuals from economically, geographically, and demographically diverse backgrounds.
  - For new satellite offices, PTO must consider, *inter alia*, proximity to populations that are underrepresented in patent filings, including rural populations.
  - 2 new community outreach offices per region to, *inter alia*, educate prospective inventors, including from underrepresented groups
- New pilot program to help prospective first-time patent applicants assess the viability of a potential patent application
- Study on PTO's patent pro bono programs, including they are sufficiently serving underrepresented groups
  - Must use findings to update pro bono programs

PTO Initiatives to Promote Diversity

- **10/18/2022: Request for comment on whether the PTO should:**
  - Revise scientific and technical criteria for admission to practice in patent matters
  - Revise the accreditation requirements for computer science degrees
  - Establish a design patent bar
  - Clarify instructions for limited recognition applicants


NATIONAL ARCHIVES

FEDERAL REGISTER

The Daily Journal of the United States Government

Notice

Expanding Admission Criteria for Registration To Practice in Patent Cases Before the United States Patent and Trademark Office

A Notice by the Patent and Trademark Office on 10/18/2022

PTO Initiatives to Promote Diversity

- **Council for Inclusive Innovation**
  - USPTO initiative to “develop a comprehensive national strategy to increase participation in our innovation ecosystem by encouraging, empowering, and supporting all future innovators. That includes increasing the involvement of women and other underrepresented groups.”

PTO Initiatives to Promote Diversity

“The last thing I want to hit on is DEIA [diversity, equity, inclusion, and accessibility]. I know that the TPAC is focused on DEIA, as are we as an agency. I will say on that for those in the room and online who are at the USPTO, you know that we have one of the greatest workforces in the world. We do not have an issue with our pipeline. People who come into the USPTO, they are diverse. They have diverse views, diverse backgrounds. What we need to do is reshape our system, reshape our hiring practices, reshape our promotion practices, to make sure that we're as inclusive as possible.

“We've already looked at job descriptions and promotion criteria, because we want to be an agency of opportunity. We want to make sure that not only do we hire inclusively but that we promote inclusively. We want everyone to know there are many opportunities to get into higher levels within the USPTO. We're also thinking about the way people make decisions and we know that there's an ask bias. When one person asks for an opportunity, we will think about everybody who's similarly situated to make sure we're providing opportunities for all. We're also going to be rolling out unconscious bias training, to make sure that we're all aware of the fact that if you have a brain, you have bias. We are rolling the training out to everybody within the organization, because we interface not only with each other, but with stakeholders.

“We are also standing up the Council for Inclusive Innovation, where we're going to be working on a national strategy to make sure that everybody can be involved in the innovation ecosystem.

“And it's not just about diversity. It's about everyone—people from underrepresented communities, people who are under-resourced. We want to support everyone.”

7/29/2022 Comments by USPTO Director Kathi Vidal

Questions?

Thank you