



Alice: Adventures in Wonderland

"It would be so nice if something would make sense for a change..."

Kevin Meek

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Alice: Adventures in Wonderland

- Introduction to *Alice v. CLS Bank*
- Should companies change strategy in light of Alice?
 - Patent Acquisition and Valuation
 - Filing Targets and Budgets
 - Portfolio Reevaluation and Reorganization
- Litigation Statistics Post-*Alice*
- Upcoming Course Correction at the Federal Circuit?



Introduction to *Alice v. CLS Bank*

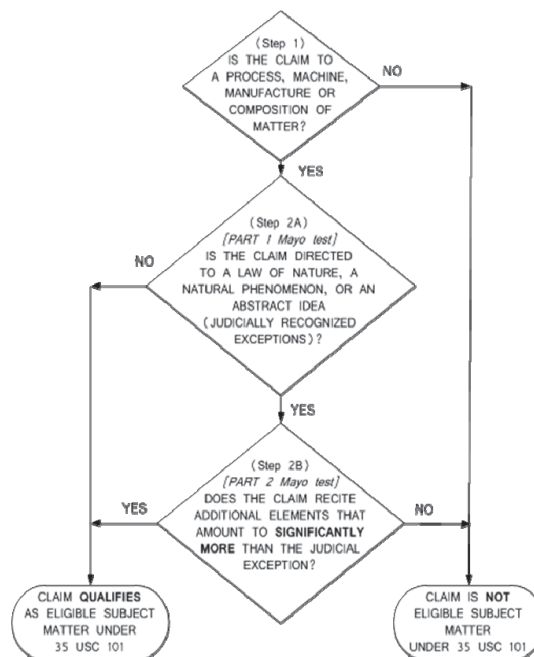
- The Supreme Court announced the test for patent eligible subject matter in *Alice v. CLS Bank* on June 14, 2014.
- The two-step test in *Mayo* test governs all eligibility questions:
 - Step One: Is the claim directed to a law of nature, natural phenomena, or an **abstract idea**?
 - Step Two: If so, is any element, or combination of elements, in the claim sufficient to ensure that the claim as a whole amounts to **significantly more** than the judicial exception?
 - elements should be considered both individually and as an ordered combination
 - use of a general computer is not enough



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Patent Acquisition and Valuation



- How does your company "use" its patent assets?
 - Marketing "exclusivity"
 - Attract capital/meet VC requirements
 - Prompt voluntary design-arounds by competitors
 - Provide leverage during negotiation/counterclaims
 - Assert against competitors
- The way a company plans to "use" its patent assets can affect how they are valued
- Be wary of patents that might be vulnerable to a Section 101 challenge

Filing Targets and Budgets

| Tech Center | Jan-15 | Feb-15 | Mar-15 | Apr-15 | May-15 | Jun-15 | Jul-15 | Aug-15 | Sep-15 |
|-------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| 1600 | 13.1% | 14.0% | 10.9% | 12.4% | 11.9% | 18.6% | 13.0% | 13.3% | 13.0% |
| 1700 | 1.7% | 2.1% | 2.6% | 2.0% | 2.0% | 7.8% | 1.5% | 1.5% | 1.7% |
| 2100 | 16.7% | 15.8% | 10.7% | 17.0% | 12.4% | 21.2% | 14.9% | 14.3% | 13.9% |
| 2400 | 13.1% | 10.5% | 9.1% | 12.1% | 11.0% | 19.7% | 15.1% | 15.2% | 13.7% |
| 2600 | 8.9% | 7.8% | 2.7% | 7.8% | 6.5% | 14.8% | 9.7% | 9.3% | 9.3% |
| 2800 | 3.3% | 2.9% | 2.4% | 3.2% | 3.4% | 9.0% | 3.0% | 2.6% | 2.7% |
| 3600 | 28.7% | 42.4% | 28.6% | 32.6% | 31.4% | 37.7% | 29.4% | 27.5% | 27.9% |
| 3700 | 8.0% | 8.1% | 6.2% | 6.7% | 5.8% | 13.2% | 8.2% | 7.3% | 7.5% |

| | |
|------|--|
| 1600 | Biotech and Organic Chemistry |
| 1700 | Chemical and Materials Eng. |
| 2100 | Computer Architecture, Software, and Information Security |
| 2400 | Computer Networks, Multiplex Comm., Video Distribution, Security |
| 2600 | Communications |
| 2800 | Semiconductors, Electrical and Optical Systems and Components |
| 3600 | E-commerce |
| 3700 | Mechanical Engineering, Manufacturing, Products |

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29th Annual Technology Law Conference session
"Protecting Your Technology Post-*Alice*?"