

# RECENT DEVELOPMENTS AT ITC

Anne Goalwin, U.S. International Trade Commission

Daniel P. Muino, Morrison & Foerster LLP

March 10, 2017

## Important Developments in 2016

---

- Section 101 patentability challenges at the ITC
- ITC's accelerated disposition programs
  - 100-day Early Disposition Program
  - Expedited procedures for modifications and advisory opinions regarding new and re-designed products
- ITC's jurisdiction over electronic transmissions in wake of *Clear Correct v. ITC*
- PTAB proceedings and ITC investigations

1

## Section 101 Overview

---

- **35 U.S.C. § 101** : 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.
- Judicial Exceptions:
  - Laws of Nature
  - Natural Phenomenon
  - *Abstract Ideas*

2

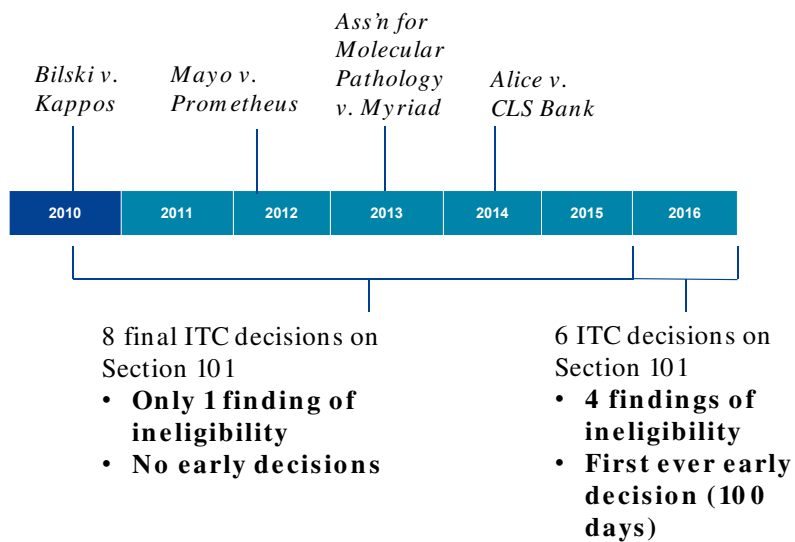
## Section 101 Overview

---

- *Bilski*
  - Preemption
  - Effective grant of a patent monopoly over an abstract idea
- *Mayo*
  - Abstract idea can be patentable if the claims recite an inventive concept
- *Alice*
  - Formalized the two-step framework
  - STEP 1: Claims directed towards patent-ineligible judicial exception
  - STEP 2: If so, do the claims have an inventive concept to “integrate the building blocks into something more.”
    - Generic computer implementation not inventive

3

## Section 101 Patentability Challenges at ITC



4

## ITC Section 101 decisions in 2016

- *Network Devices*, Inv. 944 (validity upheld)
- *Light-Emitting Diode Products*, Inv. 947 (validity upheld)
- *Activity Tracking Devices* (Jawbone v. Fitbit), Inv. 963 (patents found invalid)
- *Wearable Activity Tracking Devices* (Fitbit v. Jawbone), Inv. 973 (certain patent claims found invalid)
- *Automated Teller Machines*, Inv. 972 (certain patent claims found invalid)
- *Portable Electronic Devices*, Inv. 994 (patent found invalid in 100-day proceeding)

5

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Recent Developments at ITC

Also available as part of the eCourse

[2017 Advanced Patent Law \(USPTO\) eConference](#)

First appeared as part of the conference materials for the  
12<sup>th</sup> Annual Advanced Patent Law Institute session

"Recent Developments at the ITC"