

PRESENTED AT

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Section 101 and Drafting Implications: Lifesciences**Robert L. Stoll**

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Overview of §101

- Four Main Sections of 35 USC That Block Patentability
 - §101: Patentable subject matter
 - §102: Novelty
 - §103: Non-obviousness
 - §112: Written description, enablement, indefiniteness
- §101 is A Broad Filter
 - Sometimes decided early in litigation, thereby ending litigation quickly
 - Sometimes used by defendant to challenge patent used in litigation

Overview of §101

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.

Supreme Court's Judicial Exceptions: Laws of Nature, Natural Phenomena, & *Abstract Ideas*

- Policy Rationale: Avoid Pre-emption
 - DO NOT Preempt use of the "basic tools of scientific & technological work"

Alice Corp. v. CLS Bank U.S. Supreme Court

- **Issue:** Is a computer-implemented scheme for mitigating settlement risk (patent eligible subject matter)
- **Unanimous Decision** (June 19, 2014): NO!
- **Holding:** An intermediated settlement is an **abstract idea**, and merely requiring generic computer implementation fails to transform the claims to eligible subject matter.

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