



## Section 101 Issues in Patent Litigation

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### Agenda

- **35 U.S.C. § 101**
- **Recent Developments in the Courts**
- **Who benefits from current state of the law?**
  - Pro-Plaintiff Considerations
  - Pro-Defendant Considerations

## Patentable Subject Matter

### 35 U.S.C. § 101 - Inventions 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.

## Eligibility Framework (*Alice*)

- Step 1
  - Are the claims directed to a patent ineligible concept?
    - Laws of Nature
    - Natural Phenomena
    - Abstract Idea
- Step 2
  - If so, does the claim contain an “inventive concept” sufficient to “transform” ineligible concept into a patent-eligible subject matter?

## Judicial Exceptions

- **Laws of Nature**
  - Gravity
  - The chemical principle underlying the union between fatty elements and water.
- **Natural Phenomenon**
  - Naturally occurring plants and minerals
  - Isolated naturally occurring DNA fragments (*Myriad*)
  - Naturally occurring associations between genes and diseases
- **Abstract Ideas**
  - Intermediated settlement (*Alice*)
  - Risk hedging (*Bilski*)
  - Managing relationships or transactions between people (*buySAFE*)
  - Collecting, analyzing, and displaying information (*Electric Power Group*)

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First appeared as part of the conference materials for the

15<sup>th</sup> Annual Advanced Patent Law Institute session

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