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**Recent Developments in Patent Law  
(Fall 2021)**

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# RECENT DEVELOPMENTS IN PATENT LAW (Fall 2021)

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## PATENTABLE SUBJECT MATTER

### Software and Business Method Cases

#### Unpatentable

*In re Bd. of Trs. of the Leland Stanford Junior Univ.*, 991 F.3d 1245 (Fed. Cir. March 25, 2021)

In this appeal from the Patent Trial and Appeal Board (“PTAB”), the Federal Circuit affirmed the claimed statistical methods were subject matter ineligible under § 101 for being directed to an abstract idea.<sup>4</sup>

Stanford University’s ‘982 application is “directed to computerized statistical methods for determining haplotype phase.”<sup>5</sup> The PTAB rejected the application for being subject matter ineligible under § 101.<sup>6</sup> At *Alice* step 1, the PTAB found the representative claim was directed to the patent ineligible abstract ideas of mathematical concepts and abstract mental processes.<sup>7</sup> Furthermore, the PTAB noted the steps were merely implemented in generic computer hardware and that the claims did not include any steps to apply the computed information towards a purpose.<sup>8</sup> At *Alice* step 2, the PTAB identified no inventive conception which would make the claim directed towards abstract ideas patent eligible.<sup>9</sup> Stanford appealed.<sup>10</sup>

On appeal, the Federal Circuit affirmed the district court’s findings.<sup>11</sup> At *Alice* step 1, the court found the “the claims are directed to the use of mathematical calculations and statistical modeling” that “without more, are patent ineligible under § 101” and well-established precedent.<sup>12</sup> As with the district court, the Federal Circuit found claims contained no application and recited generic steps of implementing the steps with a computer.<sup>13</sup> The court also noted “[t]he different use of a mathematical calculation, even one that yields different or better results, does not render patent eligible subject matter.”<sup>14</sup> At

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<sup>4</sup> *In re Bd. of Trs. of the Leland Stanford Junior Univ.*, 991 F.3d 1245 (Fed. Cir. 2021).

<sup>5</sup> *Id.* at \*6

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at \*7

<sup>8</sup> *Id.* at \*8.

<sup>9</sup> *Id.* at \*9.

<sup>10</sup> *Id.* at \*10.

<sup>11</sup> *Id.* at \*14.

<sup>12</sup> *Id.* at \*10-11. (citing *Parker v. Flook*, 437 U.S. 584, 595, 98 S. Ct. 2522, 57 L. Ed. 2d 451 (1978)).

<sup>13</sup> *Id.* at \*12.

<sup>14</sup> *Id.* at \*14.

*Alice* step 2, the court also could not identify any inventive concept that saved the claims' subject matter eligibility.<sup>15</sup>

***Simio, LLC v. Flexsim Software Prods.*, 983 F.3d 1353 (Fed. Cir. Dec. 29, 2020)**

In this appeal from the District of Utah, the Federal Circuit affirmed an invention which used graphics rather than text for object-oriented simulation was patent ineligible under § 101 for being directed to an abstract idea.<sup>16</sup>

Simio's '468 patent discloses an invention "for making object-oriented simulation easier and more accessible by letting users build simulations with graphics instead of programming."<sup>17</sup> Simio filed suit against FlexSim for allegedly infringing its patent.<sup>18</sup> FlexSim argued the claimed invention as patent ineligible under § 101. Applying the *Alice* test, the district court concluded at step one that the claims were directed to the abstract idea of substituting text-based computer programming with graphics.<sup>19</sup> At step two, the district court found no inventive concept making the claims patent eligible.<sup>20</sup>

On appeal, the Federal Circuit agreed the patent claims were subject-matter ineligible under § 101.<sup>21</sup> At step one of the *Alice* test, the court identified the patent's asserted advance as "using graphics instead of programming to create object-oriented simulations."<sup>22</sup> The patent itself conceded the practice of using graphics to simplify simulation building had been common for decades.<sup>23</sup> The court held "simply applying the already-widespread practice of using graphics instead of programming to the environment of object-oriented simulations is no more than an abstract idea."<sup>24</sup> At step two of the *Alice* test, the court acknowledged claimed invention may present a new idea, but it ultimately lacked any meaningful application of that idea to warrant patent eligibility.<sup>25</sup>

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<sup>15</sup> *Id.* at \*14-15.

<sup>16</sup> *Simio, LLC v. Flexsim Software Prods.*, 983 F.3d 1353 (Fed. Cir. 2020).

<sup>17</sup> *Id.* at 1356 (citing U.S. Patent No. 8,156,468).

<sup>18</sup> *Id.* at 1357.

<sup>19</sup> *Id.* at 1358.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 1356.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 1360.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 1364.

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