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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	5
Software and Business Method Cases	5
 Unpatentable.....	5
<i>In re Bd. of Trs. of the Leland Stanford Junior Univ.</i> , 991 F.3d 1245 (Fed. Cir. March 25, 2021).....	5
<i>Simio, LLC v. Flexsim Software Prods.</i> , 983 F.3d 1353 (Fed. Cir. Dec. 29, 2020)....	6
<i>Universal Secure Registry LLC v. Apple Inc.</i> , 10 F.4th 1342 (Fed. Cir. Aug 26, 2021)	7
<i>PersonalWeb Technologies LLC v. Google LLC</i> , 8 F.4th 1310 (Fed. Cir. Aug. 12, 2021)	8
<i>Yu v. Apple Inc</i> , 1 F.5th 1040 (Fed. Cir. June 11, 2021)	9
 Patentable	9
<i>CosmoKey Solutions GmbH & Co. K v. Duo Security LLC</i> , 2021 WL 4515270 (Fed. Cir. Oct 4, 2021)	9
Life Sciences Claims.....	11
 Patentable	11
<i>C R Bard Inc. v. Angiodynamics, Inc.</i> , 979 F.3d 1372 (Fed. Cir. Nov. 10, 2020) ..	11
<i>In re Huping Hu</i> , 2021 U.S. App. LEXIS 7776 (Fed. Cir. Mar. 17, 2021)	12
DISCLOSURE.....	13
 Definiteness	13
<i>Rain Computing, Inc. v. Samsung Elecs. Am., Inc.</i> , 989 F.3d 1002 (Fed. Cir. March 2, 2021).....	13
<i>Synchronoss Techs., Inc. v. Dropbox, Inc.</i> , 987 F.3d 1358 (Fed. Cir. Feb. 12, 2021)	14
<i>Horizon Pharma, Inc. v. Reddy's Labs. Inc.</i> , 839 F. App'x 500 (Fed. Cir. Jan. 6, 2021)	15
 Enablement.....	16

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<i>Bayer HealthCare LLC v. Baxalta Inc.</i> , 989 F.3d 964 (Fed. Cir. April 26, 2021) ...	16
<i>Amgen Inc. v. Sanofi</i> , 987 F.3d 1080 (Fed. Cir. Feb 11, 2021)	16
<i>Pacific Biosciences v. Oxford Nanopore</i> , 99 F.3d 1342 (Fed. Cir. May 11, 2021)...	18
Written Description.....	19
<i>Juno Therapeutics, Inc. v. Kite Pharma, Inc.</i> , 10 F.4th 1330 (Fed. Cir. Aug. 26, 2021)	19
NOVELTY.....	20
<i>M & K Holdings, Inc. v. Samsung Elecs. Co.</i> , 985 F.3d 1376 (Fed. Cir. Feb. 1, 2021)	20
OBVIOUSNESS	22
<i>Teva Pharmaceuticals International GmbH v. Eli Lilly and Company</i> , 8 F.4th 1349 (Fed. Cir. Aug. 16, 2021)	22
<i>Chemours Company FC, LLC v. Daikin Industries, Ltd.</i> , 4 F.4th 1370 (Fed Cir. July 22, 2021)	23
<i>Campbell Soup Company v. Gamon Plus, Inc.</i> , 10 F.4th 1268 (Fed. Cir. Aug. 19, 2021)	24
CLAIM CONSTRUCTION	25
<i>SIMO Holdings, Inc. v. H.K. uCloudlink Network Tech., Ltd.</i> , 983 F.3d 1367 (Fed. Cir. Jan. 5, 2021)	25
<i>Seabed Geosolutions (US) Inc. v. Magseis FF LLC</i> , 8 F. 4th 1285 (Fed. Cir. Aug 11, 2021)	26
<i>Commscope Technologies LLC v. Dali Wireless Inc.</i> , 10 F.4th 1289 (Fed. Cir. Aug 24, 2021)	26
INFRINGEMENT	28
Inducement.....	28
<i>GlaxoSmithKline LLC v. Teva Pharmaceuticals UA, Inc.</i> , 7 F.4th 1320 (Fed. Cir. Aug 5, 2021)	28
Doctrine of Equivalents	30
<i>Edgewell Pers. Care Brands, LLC v. Munchkin, Inc.</i> , 989 F.3d 1358 (Fed. Cir. March 9, 2021).....	30

DEFENSES.....	31
Assignor Estoppel	31
<i>Minerva Surgical, Inc. v. Hologic, __ S.Ct. __ (U.S. June 29, 2021)</i>	31
Prosecution Laches.....	33
<i>Hyatt v. Hirshfeld</i> , 998 F.3d 1347 (Fed. Cir. June 1, 2021)	33
Inequitable Conduct.....	34
<i>Belcher Pharmaceuticals, LLC v. Hospira, Inc.</i> , 11 F. 4th 1345 (Fed. Cir. Sept. 1, 2021)	34
REMEDIES	36
Damages.....	36
<i>MLC Intellectual Property, LLC v. Micron Technology, Inc.</i> , 10 F.4th 1358 (Fed. Cir. Aug. 26, 2021)	36
Attorneys' Fees	37
<i>Arunachalam v. IBM</i> , 989 F.3d 988 (Fed. Cir. March 1, 2021)	37
Willfulness and Enhanced Damages	38
<i>SRI International, Inc. v. Cisco Systems, Inc.</i> , 2021 WL 4434231 (Fed. Cir. Sept. 28, 2021)	38
PRACTICE AND PROCEDURE.....	41
Preservation of Evidence	41
<i>In re Ivantis, Inc.</i> , 835 F. App'x 560 (Fed. Cir. Nov. 3, 2020)	41
Standing.....	41
<i>Omni Medsci, Inc. v. Apple Inc.</i> , 7 F. 4th 1148 (Fed. Cir. Aug. 2, 2021)	41
Sufficiency of Pleading.....	43
<i>Bot M8 LLC v. Sony Corporation of America</i> , 4 F. 4th 1342 (Fed. Cir. July 13, 2021)	43
Limits on Number of Patents at Trial	44
<i>In re Midwest Athletics and Sports Alliance LLC</i> , 858 Fed.Appx. 363 (Mem) (Fed. Cir. Sept. 10, 2021)	44
Appellate Jurisdiction	45
<i>Chandler v. Phoenix Services LLC</i> , 1 F.4th 1013 (Fed. Cir. June 10, 2021)	45
Venue and Transfer	46

<i>In re Tracfone Wireless, Inc.</i> , No. 2021-136, 2021 U.S. App. LEXIS 11388 (Fed. Cir. Apr. 20, 2021)	46
<i>In re ADTRAN, Inc.</i> , 840 F. App'x 516 (Fed. Cir. March 19, 2021)	47
<i>In re Tracfone Wireless, Inc.</i> , No. 2021-118, 2021 U.S. App. LEXIS 6689 (Fed. Cir. Mar. 8, 2021)	48
<i>In re SK Hynix Inc.</i> , No. 2021-114, 2021 U.S. App. LEXIS 5674 (Fed. Cir. Feb. 25, 2021)	49
<i>In re: Samsung Electronics Co.</i> , 2 F.4th 1371 (Fed. Cir. June 30, 2021).....	50
<i>In re: Dish Network LLC</i> , 856 Fed.Appx. 310 (Mem) (Fed Cir. Aug. 13, 2021)..	51
<i>In re: Apple Inc.</i> , 855 Fed.Appx. 766 (Mem) (Fed. Cir. Aug. 4, 2021)	51
<i>In re: Google LLC</i> , 855 Fed.Appx. 767 (Mem) (Fed. Cir. Aug. 4, 2021).....	52
<i>In re: Hulu LLC</i> , 2021 WL 3278194 (Fed. Cir. Aug. 2, 2021)	52
<i>In re: Bose Corp.</i> , 848 Fed.Appx. 426 (Mem) (Fed. Cir. May 25, 2021)	53
<i>In re: Western Digital Technologies, Inc.</i> , 846 Fed.Appx. 925 (Mem) (Fed. Cir. May 10, 2021)	53
<i>Andra Group, LP v. Victoria's Secret Stores, LLC</i> , 6 F.4th 1283 (Fed. Cir. Aug 3, 2021)	54
<i>In re: Juniper Networks, Inc.</i> , 2021 WL 4343309 (Fed. Cir. Sept. 24, 2021)	55
<i>In re: Google LLC</i> , 2021 WL 4592280 (Fed. Cir. Oct. 6, 2021)	56
PATENT TRIAL AND APPEAL BOARD	58
Inter Partes Review Procedure	58
<i>Uniloc 2017 LLC v. Facebook Inc.</i> , 989 F.3d 1018 (Fed. Cir. March 9, 2021)	58
<i>Qualcomm Incorporated v. Intel Corporation</i> , 6 F. 4th 1256 (Fed. Cir. July 27, 2021)	59
<i>In re: Vivint, Inc.</i> , 2021 WL 4448620 (Fed. Cir. Sept. 29, 2021)	60
PTAB and Choice of Forum	62
<i>Kannuu Pty Ltd. v. Samsung Electronics Co., Ltd.</i> , 2021 WL 46717967 (Fed. Cir. Oct. 7, 2021)	62
Constitutionality and Jurisdiction.....	63
<i>United States v. Arthrex</i> , 141 S.Ct. 1970 (2021).....	63

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.⁴

Stanford University’s ‘982 application is “directed to computerized statistical methods for determining haplotype phase.”⁵ The PTAB rejected the application for being subject matter ineligible under § 101.⁶ 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.⁷ 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.⁸ At *Alice* step 2, the PTAB identified no inventive conception which would make the claim directed towards abstract ideas patent eligible.⁹ Stanford appealed.¹⁰

On appeal, the Federal Circuit affirmed the district court’s findings.¹¹ 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.¹² As with the district court, the Federal Circuit found claims contained no application and recited generic steps of implementing the steps with a computer.¹³ 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.”¹⁴ At

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

⁵ *Id.* at *6

⁶ *Id.*

⁷ *Id.* at *7

⁸ *Id.* at *8.

⁹ *Id.* at *9.

¹⁰ *Id.* at *10.

¹¹ *Id.* at *14.

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

¹³ *Id.* at *12.

¹⁴ *Id.* at *14.

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

***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.¹⁶

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."¹⁷ Simio filed suit against FlexSim for allegedly infringing its patent.¹⁸ 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.¹⁹ At step two, the district court found no inventive concept making the claims patent eligible.²⁰

On appeal, the Federal Circuit agreed the patent claims were subject-matter ineligible under § 101.²¹ 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."²² The patent itself conceded the practice of using graphics to simplify simulation building had been common for decades.²³ 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."²⁴ 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.²⁵

¹⁵ *Id.* at *14-15.

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

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

¹⁸ *Id.* at 1357.

¹⁹ *Id.* at 1358.

²⁰ *Id.*

²¹ *Id.* at 1356.

²² *Id.*

²³ *Id.* at 1360.

²⁴ *Id.*

²⁵ *Id.* at 1364.

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