



## 2021 Section 101 Year-in-Review

Steve R. Borgman (Kilpatrick Townsend), Michael Piper (Conley Rose),  
Gina Shishima (Norton Rose Fulbright), Janice L. Ta (Perkins Coie)

## Overview

- *Introduction*
- *Securing Eligibility (Cosmokey)*
- *Insecure about Security (Universal)*
- *Abstracting the Device (Yu)*
- *Abstracting the Method (Ecoservices)*
- *How Deep is Your Level? (Gree)*
- *Printed Matter? (Bard)*
- *How Low can You Go (Atty Fee Awards)? (Mortgage Application Technologies)*
- *Back to the Supremes? (American Axle)*
- *Chief Judge Moore on Section 101*
- *Conclusion*
- *Appendices*
  - *Appendix A: Judges Scorecard*

## Alice Corp. v. CLS Bank Int'l (June 19, 2014)

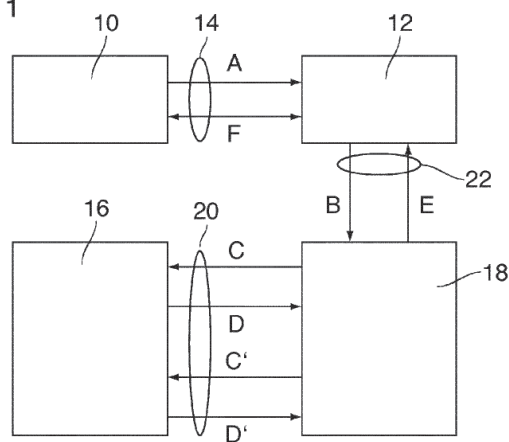
- **U.S. Patent No. 5,970,479:** Computerized trading platform for reducing settlement risk by having third party ensure exchanges are completed by both or neither party.
- **Holding:** “[T]he claims at issue are drawn to the abstract idea of intermediated settlement . . . . [M]erely requiring generic computer implementation fails to transform that abstract idea into a patent-eligible invention.”
- **Step One** – Are the claims “directed to” one of the patent-ineligible “concepts” like “laws of nature, natural phenomena, and abstract ideas.”
- **Step Two** – “Simply appending conventional steps, specified at a high level of generality” is not “enough” to supply an inventive concept. “[C]laims in *Diehr* were patent eligible because they improved an existing technological process, not because they were implemented on a computer.”

3

## Cosmokey Solutions v. Duo Security (Oct. 4, 2021)

- **US patent 9,246,903:** “Authentication Method”
- District Court entered judgment on the pleadings that claim was invalid under Section 101

Fig. 1



## *Cosmokey Solutions v. Duo Security (Oct. 4, 2021)*

The majority repeatedly refers to the specification's description of the advantages of the invention:

- Less complexity and greater security for the authentication method
- Authentication function is normally inactive, but is activated by a user for a transaction
- Authentication device checks to see if authentication function is active

## *Cosmokey Solutions v. Duo Security (Oct. 4, 2021)*

Claim 1:

A method of authenticating a user to a transaction at a terminal, comprising the steps of:

- transmitting a user identification from the terminal to a transaction partner via a first communication channel,
- providing an authentication step in which an authentication device uses a second communication channel for a second authentication function that is implemented in a mobile device of the user,
- as a criterion for determining whether the authentication to the transaction shall be granted or denied, having the authentication device check whether a predetermined time relation exists between the transmission of the user identification and a response from the second communication channel,
- ensuring that the authentication function is normally inactive and is activated by the user only preliminarily for the transaction,
- ensuring that said response from the second communication channel includes information that the authentication function is active, and
- thereafter ensuring that the authentication function is automatically deactivated.

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 \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: 2021 Section 101 Year-in-Review

Also available as part of the eCourse

[2021 Advanced Patent Law \(Austin\) eConference](#)

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

"Section 101 Update and Practice Tips"