



2021 Section 101 Year-in-Review

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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)

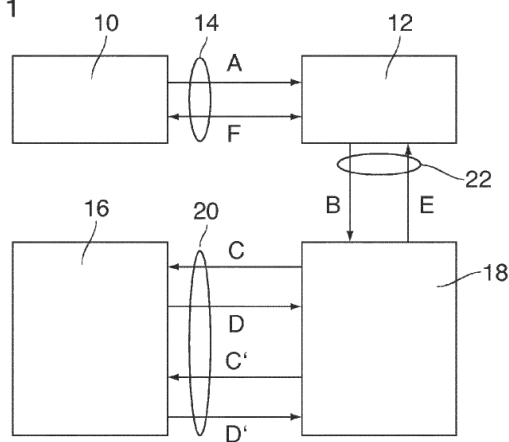
- **U.S. Patent No. 5,970,479:** Computerized trading platform for reducing settlement risk by having third party ensure exchanges are completed by both or neither party.
- **Holding:** “[T]he claims at issue are drawn to the abstract idea of intermediated settlement [M]erely requiring generic computer 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.”

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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 two-factor 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.

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26th Annual Advanced Patent Law Institute session

"Section 101 Update and Practice Tips"