

“It’s like déjà vu all over again...”

Section 101 Year In Review

Steve R. Borgman & Andrew N. Saul (Kilpatrick Townsend)

1

Overview

- § 101 Case Report
 - SCOTUS declines to address § 101
 - Eight § 101 Federal Circuit cases in 2023
- § 101 Statistics
- Legislation
 - Patent Eligibility Restoration Act of 2023
- Practical Tips
- Judge’s Scorecard

2

2

“I never said most of the things I said.”

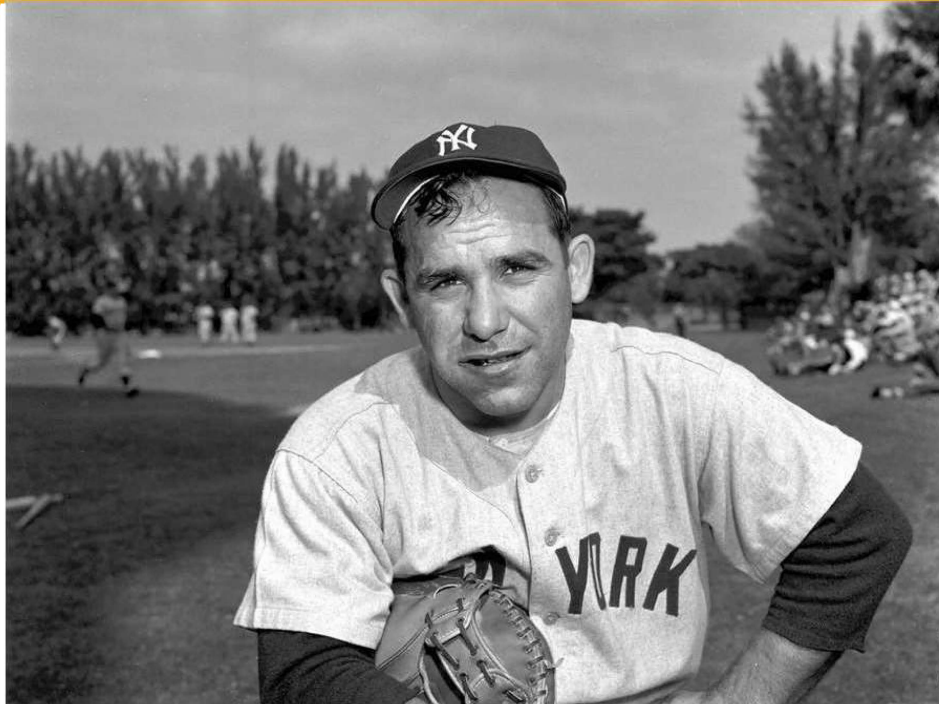
- SCOTUS throws some curve balls:
 - After requesting the SG’s views on *American Axle v. Neapco*, SCOTUS dismisses the petition for cert. in June 2022.
 - In October 2022, SCOTUS requested the SG’s views again in *Interactive Wearables v. Polar Electro*, and in *Tropp v. Travel Sentry*.
 - The SG filed briefs asking the Court to take both cases in April 2023.
 - SCOTUS denied the petitions in both cases in May 2023.

3

3

§ 101 Federal Circuit Case Report

“I wish I had an answer to that because I’m tired of answering that question.”



4

4

U.S. Patent No. 9,798,967

“Systems, Methods, and Devices for Commissioning Wireless Sensors”

1. An RFID transponder comprising:
a substrate;
an antenna structure formed on the substrate; and
an RFID integrated circuit chip which is electrically coupled to the antenna structure,
wherein the RFID integrated circuit chip is encoded with a unique object number, the unique object number comprising an object class information space and a unique serial number space,
wherein the unique serial number space is encoded with one serial number instance from an allocated block of serial numbers, the allocated block being assigned a limited number of most significant bits, and
wherein the unique serial number space comprises the limited number of most significant bits corresponding to the allocated block and remaining bits of lesser significance that together comprise the one serial number instance.

5

5

ADASA v. Avery Dennison (cont'd)

- District court held claim 1 was not directed to an abstract idea.
- Federal Circuit affirmed (reaching only step one):

“[Claim 1] is directed to a specific, hardware-based RFID serial number **data structure** designed to enable technological improvements to the commissioning process.”

“Setting aside the conventional RFID hardware components, claim 1 as a whole **focuses on the data structure** of the serial number space.”

6

6

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: Section 101 Year in Review

Also available as part of the eCourse

[2023 Advanced Patent Law \(Austin\) eConference](#)

First appeared as part of the conference materials for the
28th Annual Advanced Patent Law Institute session

"Recent Developments and Trends in 101"