



Alice: Adventures in Wonderland

"It would be so nice if something would make sense for a change..."

Kevin Meek

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Alice: Adventures in Wonderland

- Introduction to *Alice v. CLS Bank*
- Should companies change strategy in light of Alice?
 - Patent Acquisition and Valuation
 - Filing Targets and Budgets
 - Portfolio Reevaluation and Reorganization
- Litigation Statistics Post-Alice
- Upcoming Course Correction at the Federal Circuit?



Introduction to *Alice v. CLS Bank*

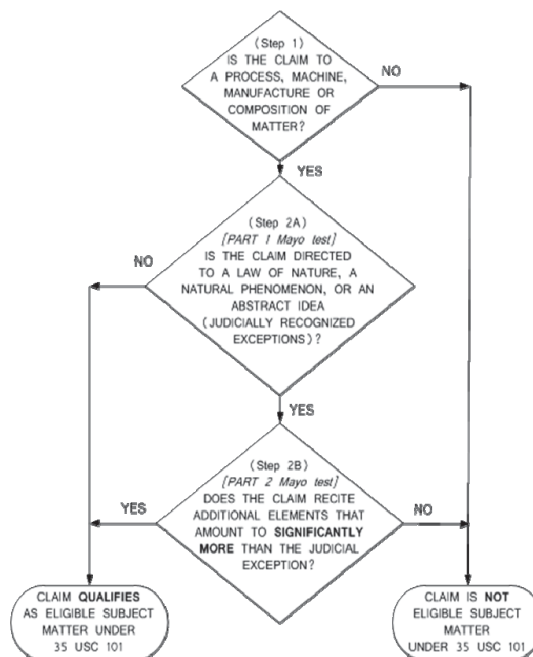
- The Supreme Court announced the test for patent eligible subject matter in *Alice v. CLS Bank* on June 14, 2014.
- The two-step test in *Mayo* test governs all eligibility questions:
 - Step One: Is the claim directed to a law of nature, natural phenomena, or an **abstract idea**?
 - Step Two: If so, is any element, or combination of elements, in the claim sufficient to ensure that the claim as a whole amounts to **significantly more** than the judicial exception?
 - elements should be considered both individually and as an ordered combination
 - use of a general computer is not enough



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Patent Acquisition and Valuation



- How does your company "use" its patent assets?
 - Marketing "exclusivity"
 - Attract capital/meet VC requirements
 - Prompt voluntary design-arounds by competitors
 - Provide leverage during negotiation/counterclaims
 - Assert against competitors
- The way a company plans to "use" its patent assets can affect how they are valued
- Be wary of patents that might be vulnerable to a Section 101 challenge

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Filing Targets and Budgets

Section 101 Rejection Rates per Month									
Tech Center	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15
1600	13.1%	14.0%	10.9%	12.4%	11.9%	18.6%	13.0%	13.3%	13.0%
1700	1.7%	2.1%	2.6%	2.0%	2.0%	7.8%	1.5%	1.5%	1.7%
2100	16.7%	15.8%	10.7%	17.0%	12.4%	21.2%	14.9%	14.3%	13.9%
2400	13.1%	10.5%	9.1%	12.1%	11.0%	19.7%	15.1%	15.2%	13.7%
2600	8.9%	7.8%	2.7%	7.8%	6.5%	14.8%	9.7%	9.3%	9.3%
2800	3.3%	2.9%	2.4%	3.2%	3.4%	9.0%	3.0%	2.6%	2.7%
3600	28.7%	42.4%	28.6%	32.6%	31.4%	37.7%	29.4%	27.5%	27.9%
3700	8.0%	8.1%	6.2%	6.7%	5.8%	13.2%	8.2%	7.3%	7.5%

1600	Biotech and Organic Chemistry
1700	Chemical and Materials Eng.
2100	Computer Architecture, Software, and Information Security
2400	Computer Networks, Multiplex Comm., Video Distribution, Security
2600	Communications
2800	Semiconductors, Electrical and Optical Systems and Components
3600	E-commerce
3700	Mechanical Engineering, Manufacturing, Products

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Title search: Alice: Adventures in Wonderland

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29th Annual Technology Law Conference session

"Protecting Your Technology Post-*Alice*?"