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**Section 101 and Drafting Implications: Lifesciences**

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# Section 101 and Drafting Implications: Lifesciences

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## Overview of §101

- Four Main Sections of 35 USC That Block Patentability
  - §101: Patentable subject matter
  - §102: Novelty
  - §103: Non-obviousness
  - §112: Written description, enablement, indefiniteness
- §101 is A Broad Filter
  - Sometimes decided early in litigation, thereby ending litigation quickly
  - Sometimes used by defendant to challenge patent used in litigation

## Overview of §101

### 35 U.S.C. §101

*Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.*

Supreme Court's Judicial Exceptions: Laws of Nature, Natural Phenomena, & *Abstract Ideas*

- Policy Rationale: Avoid Pre-emption
  - DO NOT Preempt use of the "basic tools of scientific & technological work"

## Alice Corp. v. CLS Bank U.S. Supreme Court

- **Issue:** Is a computer-implemented scheme for mitigating settlement risk (patent eligible subject matter)
- **Unanimous Decision** (June 19, 2014): NO!
- **Holding:** An intermediated settlement is an **abstract idea**, and merely requiring generic computer implementation fails to transform the claims to eligible subject matter.

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