



Today Is Tomorrow: Section 101 Year In Review

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

1

Overview

- § 101 Federal Circuit Case Report
 - *CardioNet* Redux
 - *Cooperative vs Kollektive*
 - *Mentone*
 - *CalTech* (just because it is eligible)
- § 101 Statistics
 - Litigation Statistics
 - PTO Statistics
- “What if There Is No Tomorrow? There Wasn’t One Today”
 - *Killian* (“Burn it Down”)
 - Patent Eligibility Restoration Act (S.4734)
 - American Axle Solicitor’s Brief and Cert Denial
- Practical Tips
- Judge’s Scorecard

2

2

§ 101 Federal Circuit Case Report

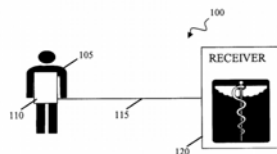


3

CardioNet v. InfoBionic (Apr. 17, 2020) (Dyk^{DIP-CIP}, Plager, Stoll*)

U.S. Patent No. 7,941,207: "Cardiac Monitoring"

- Permits doctor to distinguish atrial fibrillation and atrial flutter from other cardiac arrhythmias.
- "[A]nalyz[es] the beat-to-beat *timing* for atrial fibrillation or atrial flutter while also taking into account the *variability in the beat-to-beat timing* caused by premature ventricular beats."
- As a consequence, can detect atrial fibrillation and flutter with "sensitivity to in excess of 90% and a positive predictivity in excess of 96%."



4

CardioNet v. InfoBionic (Apr. 17, 2020) (rationale for eligibility)

U.S. Patent No. 7,941,207: “Cardiac Monitoring”

- Passes *Alice* step one: claims focus on a specific means or method that improves cardiac technology
- The ‘207 patent’s written description identifies a number of advantages gained by the elements:
- “[N]o suggestion in the written description that doctors were ‘previously employing’ the techniques performed on the claimed device.”
- The written description “confirms that the asserted claims are directed to a specific technological improvement –an improved medical device that achieves speedier, more accurate, and clinically significant detection of two specific medical conditions out of a host of possible heart conditions.”

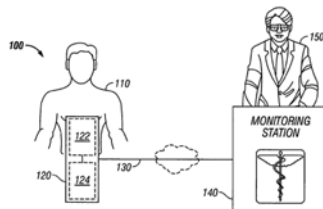
5

5

CardioNet v. InfoBionic (Oct. 29, 2021) (O’Malley, Dyk, Lourie*)

U.S. Patent No. 7,099,715: “Distributed Cardiac Activity Monitoring with Selective Filtering”

- Permits doctor to measure a person’s heart rate using an electrocardiogram, where the heart’s electrical signals are plotted by the ECG as different waveforms on a graph; there are P, R, and T waves and the invention employed a T wave filter to address errors in patients who have abnormally high T waves.
- The ECG data is sent to monitoring station and a human operator decides whether to employ the T wave filter.



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: Today is Tomorrow: Section 101 Year in Review

Also available as part of the eCourse

[2022 Advanced Patent Law \(Austin\) eConference](#)

First appeared as part of the conference materials for the
27th Annual Advanced Patent Law Institute session

"Section 101 Update"