



## 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)

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## 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
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## § 101 Federal Circuit Case Report

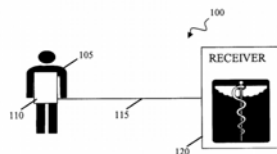


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## *CardioNet v. InfoBionic* (Apr. 17, 2020) (Dyk<sup>DIP-CIP</sup>, Plager, Stoll\*)

### 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%."



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## 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.”

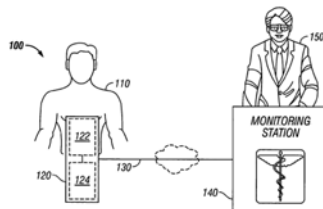
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## CardioNet v. InfoBionic (Oct. 29, 2021) (O’Malley, Dyk, Lourie\*)

### 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.



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First appeared as part of the conference materials for the

27<sup>th</sup> Annual Advanced Patent Law Institute session

"Section 101 Update"