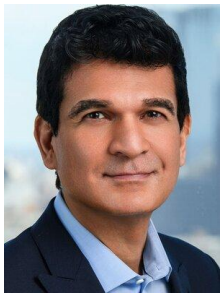
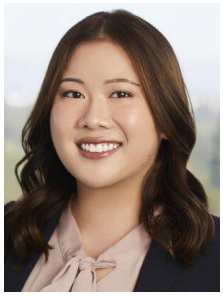
Patent Ambiguity Persists After Justices Nix Eligibility Appeal

By **Bijal Vakil and Ca-Zao Bui** (August 1, 2025)



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The U.S. Supreme Court, on June 6, declined the opportunity to revisit the contentious framework governing patent eligibility under Section 101, as established by its 2014 landmark decision in Alice Corp. v. CLS Bank International.

The two-part Alice test for patent eligibility first asks whether the patent claims are directed to a patent-ineligible concept, such as an abstract idea, law of nature or natural phenomenon. If so, the second part examines whether the claim elements, individually or as an ordered combination, add an "inventive concept" sufficient to transform the claim into a patent-eligible application.

On Jan. 27, Audio Evolution Diagnostics Inc., a medical diagnostics company, filed a petition for writ of certiorari in Audio Evolution Diagnostics v. U.S., urging the court to clarify the standards for patent eligibility for software patents.

While the court's silence maintains the status quo established by Alice, it also perpetuates the uncertainty and unpredictability that have come to define this area of law. For patent practitioners, litigants and innovators, the implications of this continued ambiguity suggest necessary recalibration of both patent application and litigation strategies.

Background of the Dispute

The case originated in the U.S. Court of Federal Claims, where Audio Evolution accused the U.S. of infringing patents covering a novel apparatus and system for collecting, processing and recording sounds associated with the physiologic activities of various human organs. Applying the two-step Alice test to determine patent eligibility, the court determined that the asserted patents were directed to the abstract idea of collecting, analyzing and displaying data.

The court found that the patents only described a system using standard hardware and software, without implementing any new ideas. Because of this, the court ruled that the patents do not meet the requirements for eligibility under Section 101. The U.S. Court of Appeals for the Federal Circuit affirmed the decision via a Rule 36 summary affirmance on May 14, 2024, prompting Audio Evolution to seek Supreme Court review.

Arguments for Certiorari

In its petition, Audio Evolution emphasized the vital importance of the Section 101 patent eligibility framework, asserting that the scope of patent eligibility is crucial to the innovation ecosystem. The company contended that, more than a decade after the Alice decision, both courts and stakeholders remain divided on the application of the two-step test. This ongoing division has resulted in inconsistent jurisprudence, thereby undermining the fundamental objective of patent law, which is to promote innovation.

Audio Evolution specifically argued that current interpretations of patent eligibility conflate Section 101 with other patentability criteria, such as novelty, obviousness and enablement under Sections 102, 103 and 112. It contended that this "twisting" of Section 101 "poses a substantial threat to the patent system's ability to accomplish its mission," noting that the Federal Circuit's rulings on patent eligibility have become so varied and unpredictable as to seriously affect the incentive to innovate across all fields of technology.

The petition also highlighted widespread frustration with the courts' treatment of Section 101, noting that the solicitor general, various district courts, Congress and even the U.S. Patent and Trademark Office have all expressed uncertainty about the application of the Alice test.

Amicus Support and Critique of the Alice Framework

Inventor and entrepreneur Harris Brumfield, in a Feb. 28 amicus brief supporting Audio Evolution, criticized the Section 101 framework and described the patented technology as a physical device combining sensors, converters, processors and displays to analyze physiologic sounds for medical diagnosis. He also noted the government's prior concession that such physical devices in technological fields are not abstract ideas under Section 101.

Brumfield further criticized the Alice framework, arguing that its two-step test is not grounded in the statutory text of Section 101. He asserted that the inquiry into whether claims are "directed to" an abstract idea is inherently subjective, and that the search for an "inventive concept" improperly merges eligibility with other patentability criteria.

Brumfield emphasized that courts should not create exceptions to the statutory language of Section 101.

Government's Opposition

On April 30, the U.S. submitted its brief opposing certiorari to the Supreme Court. The government argued that there was no compelling reason for the court to review the case, pointing out that it had repeatedly denied similar petitions, even in instances where the government itself recommended review.

While the government acknowledged that the ongoing uncertainty regarding Section 101 had led to negative consequences and that clarification from the Supreme Court would be beneficial, it stated that this case did not serve as a better opportunity to reexamine Section 101 than previous cases had.

The government's brief maintained that, under current Federal Circuit precedent, the claims were not patent-eligible because they were directed to the abstract idea of collecting, analyzing and displaying data using generic components. However, the government also acknowledged that, under its preferred approach to Section 101, such technological innovations should be patent-eligible, even if they rely on conventional components.

The government indicated that, should the court grant review, it would argue for a broader interpretation of Section 101 eligibility. This divergence between the government's position and prevailing Federal Circuit precedent only amplifies the uncertainty for innovators and practitioners, making the lack of Supreme Court guidance all the more problematic for the stability and predictability of the patent system.

Reply and Decision

Audio Evolution's reply brief asserted that the government's concession on patent validity provided a compelling basis for Supreme Court review, noting that the court had granted certiorari in similar cases in which the government had admitted error.

Audio Evolution further contended that the "exception has swallowed the rule," as lower courts fail to apply the plain statutory language of Section 101, which includes "machine" in its definition of patent-eligible inventions, and had instead expanded the definition of "abstract idea" to encompass inventions already found to be patent-eligible by statute.

Audio Evolution also challenged the government's assertion that this case did not warrant review, arguing that the straightforward technology, limited record, and the fact that the patents claim an apparatus rather than a method make this case particularly worthy for review. The company emphasized that the passage of 11 years since Alice and the government's interest in clarifying the law for agencies and the public compelled the grant of certiorari.

The Supreme Court considered Audio Evolution's petition at its conference on June 5. Although a grant of certiorari could have significantly influenced the future of patent eligibility under Section 101, the Supreme Court denied review.

Recommendations for Practitioners and Litigants

The Supreme Court's decision to leave Section 101 law unsettled is a signal to practitioners and litigants that the current unpredictable regime will persist.

In this uncertain environment, practitioners and stakeholders must approach claim drafting with even greater caution. The Alice framework's broad interpretation of "abstract ideas" means that even patents for physical devices can be vulnerable if the claims are perceived as too generic or reliant on conventional components.

To withstand these eligibility challenges, practitioners should prioritize drafting claims that emphasize concrete technical improvements and specific, nongeneric components.

They should also be wary of highlighting language that could be construed as merely implementing an abstract idea on a computer or through software; instead, focusing on tangible apparatuses or systems rather than methods would likely bolster the eligibility of their claims. It may be prudent to avoid software-centric language altogether, but if such language is necessary, practitioners should supplement such claims with an emphasis on hardware-based technologies beyond mere automation.

For patent plaintiffs, the expectation must be that Section 101 motions will be filed as a matter of course in nearly every software or diagnostic patent case. The prevailing ambiguity in the law makes these motions a low-risk, potentially case-dispositive tactic for defendants.

Plaintiffs must therefore prepare for early eligibility challenges and factor them into their overall case strategy. They must be ready to present to the court robust arguments and evidentiary support for the technical merits and inventive concepts of their claims, anticipating that courts may be receptive to Section 101 arguments at the outset of litigation.

For defendants, the lack of clear standards creates an incentive to seek early resolution.

Defendants should proactively request that courts allow Section 101 motions to be heard at the earliest possible stage of litigation, potentially even before discovery or claim construction, to conserve judicial resources and reduce litigation costs. Defendants can benefit from the current uncertainty by framing their motions to highlight any perceived abstractness or conventionality of the asserted claims.

Impacts on Innovation and Investment

The continued unpredictability of Section 101 jurisprudence has broader implications for innovation and investment, particularly in fields like software and diagnostics where eligibility is most hotly contested. The risk that even patents for physical devices can be invalidated as abstract ideas may discourage investment in these sectors and undermine the incentive to innovate.

Practitioners should counsel clients on these risks and consider alternative strategies, such as trade secret protection or focusing on international patent portfolios where eligibility standards may be more favorable.

Congressional Action

The current state of patent eligibility law derives from judge-made doctrine, not the clear text of the Patent Act, and this has led to widespread inconsistency and unpredictability in its application by courts.

Congress has the constitutional authority and responsibility to clarify the law, and the introduction of the Patent Eligibility Restoration Act of 2023 provides a clear, statutory framework that would restore predictability and fairness to the patent system. By explicitly defining what is and is not patent-eligible subject matter, Congress can act to end the era of judge-made exceptions and ensure that eligibility determinations are rooted in the text of the law, not in shifting judicial standards.

Conclusion

The Supreme Court's decision to leave Section 101 law unsettled ensures that patent eligibility will remain a central — and contentious — issue in both prosecution and litigation. For practitioners, the mandate is clear: Claims must be drafted with an eye toward technical specificity and inventive contribution, and litigation strategies must anticipate early and aggressive eligibility challenges. For clients, the message is one of caution and adaptability: Navigating the patent system will require not only technical innovation but also legal creativity and strategic foresight.

Until the Supreme Court or Congress provides definitive guidance, the patent community must operate in a landscape where the rules are uncertain and the risks are high.

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