

5 KEY TAKEAWAYS

Alice at 10: A Section 101 Update

It's been 10 years since *Alice* was decided. Kilpatrick's [Steve Borgman](#) and [Andrew Saul](#) recently presented at the [29th Annual Advanced Patent Law Institute](#) in Austin, Texas, on recent cases and trends in the courts and the USPTO involving Section 101, as well as some of the highlights (or lowlights) in the 10 years since *Alice*. In addition, tips for litigation and prosecution were provided.

Steve and Andrew provide these 5 key takeaways from their presentation:

1

Appellants seeking review at the Federal Circuit of district court findings of Section 101 invalidity continue to face poor success rates. Among the 19 *Alice*-related decisions year-to-date from the Federal Circuit, just one reversed a finding of Section 101 invalidity by the district court. See *Contour IP Holdings v. GoPro, Inc.*, No. 22-1654 (Nov. 9, 2024).

2

The Supreme Court continues to deny petitions for *certiorari* which seek clarity concerning the analytical framework for patent subject matter eligibility, denying five petitions since May 2023.

3

The Patent Trial and Appeal Board affirms Examiner rejections based on Section 101 in about 90% of appeals.

4

In July 2024, the USPTO issued a Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence. This latest update builds on (and does not replace) previous guidance. The new guidance discusses how the USPTO and applicants should evaluate subject matter eligibility of claims in patent applications and patents involving inventions related to AI. The guidance update also includes new examples of regarding the application of Section 101 to a range of technologies.

5

The Patent Eligibility Restoration Act has now been introduced in both the Senate and the House (as of September 2024). Senator Tillis has described the bill as "bipartisan legislation that will restore patent eligibility to important inventions across many fields, while also resolving legitimate concerns over the patenting of mere ideas, the mere discovery of what already exists in nature, and social and cultural content that everyone agrees is beyond the scope of the patent system." The bill remains pending as of this writing.