

# ALICE: America's Biggest Bitch IS GOOGLE'S Girlfriend

## *How Google Went To War Against Every Inventor In America*

Somehow, The Supreme Court made a law, now known as “ALICE”, which only helps the campaign financiers at Google while it destroys America, piece by piece.

Everyone has seen the news reports about how Google gave more money to the White House, than almost any other entity in America. Then, in exchange, Google got it's insiders put into more federal management positions than anybody else. It was like Google tried to take-over the U.S. Government.

Eric Schmidt got to hang out at the White House, and create more laws, than any member of Congress even did!

Did you know, though, that Google's senior staff run the U.S. Patent Office? Yep!

Google put their people in the patent office because they, and their investors own a huge number of companies that they just used their power, and ego, to steal technology for.

These hubris-ridden billionaires just stole the technology from others and refused to pay the inventors. When Google's venture capitalists realized they might have to pay up, they spent their billions lobbying to take out the U.S. patent office by making it impotent.

They set about making software patents, and any new patents ILLEGAL!, with their tricky ALICE maneuver.

You heard that right. Not only did the Silicon Valley Cartel create an innovation blockade system but they shut down almost all American innovation.

They killed one of the last thing's that America was known for, in the world: Inventing cool technology.

Now AMERICAN INVENTORS ARE PUNISHED FOR CREATING NEW IDEAS!

Thank you Google! Your ALICE scheme screwed everybody in America!

Google, and it's Silicon Valley Cartel, has killed off anything that anybody already has that the Google Monopoly wants to do and killed off any new technology that anybody in America wants to create.

The problem started at the US Supreme Court, and all 9 Supreme Court justices agreed with this decision after being lobbied by Google's whisperers. Everyone else in the system is just "following orders". The Obama Administration seems to have just handed a large part of the U.S. to Eric Schmidt.

This recent and epic systemic problem in the patent system is damaging a huge number of patents, startups and inventors. It will not be fixed until either the Supreme Court corrects itself, or Congress amends patent law. Both processes are slow. Pretty much every patent attorney, inventor and start-up CEO in the country is screaming about this.

Over the last year, the USPTO has been denying many software patent applications on the base of a rather vague 2014 decision by the US Supreme Court entitled Alice Corp v. CLS BANK ("Alice").

[https://en.wikipedia.org/wiki/Alice\\_Corp.\\_v.\\_CLS\\_Bank\\_Int%27](https://en.wikipedia.org/wiki/Alice_Corp._v._CLS_Bank_Int%27)

Although the original Alice decision was rather limited, **Google, and Eric Schmidt**, spent billions in illicit money lobbying against Software patents, and the current USPTO commissioner is a former top Google employee and Eric Schmidt shill. Judges have also been using the Alice decision as a way to clean up crowded court dockets by dismissing patents as being "Abstract". Because there is no definition of "Abstract", this is hard to argue with. What is happening on a practical level is that tens or hundreds of thousands of American patents are now being dismissed because they are "software patents". Google loves this!!!

For a cartoon on this issue, see this link, or below:

[http://www.wipo.int/wipo\\_magazine/en/2014/04/article\\_0004.html](http://www.wipo.int/wipo_magazine/en/2014/04/article_0004.html)

Under the "misery loves company" concept, this has put the entire software, and high-tech industry, in a bind as well. Unless something happens, high tech is going to suffer horrific damages thanks to the greed and power of Google.

<http://www.nationallawjournal.com/id=1202730283930/Its-a-Scary-PostAlice-World-for-Software-Patents?slreturn=20151103215135>

Innovation in America is now DEAD. Google is in control of Washington, DC. The U.S. has been relegated to a "Minor Business Power" in the world, now, because Google refuses to pay for what it steals.

## WIPO | MAGAZINE

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### **Alice v. CLS Bank: United States Supreme Court Establishes General Patentability Test**

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Every patent must satisfy the requirement for patentable subject-matter – or, as it is sometimes known, patent eligibility, or the requirement for “an invention”. In effect, the claimed invention must be the sort of thing that could lead to a patent.

Most countries define subject-matter negatively – things are patentable unless they are excluded by statute or case law. Once this requirement is satisfied, the assessment then turns to fact-specific criteria such as novelty, non-obviousness, industrial applicability, and sufficient description. If the subject-

matter requirement is not satisfied, then it's game-over for the patent.

Subject-matter is a negligible concern for the vast majority of patents. However, due to either express or implied exclusions, it can be a real sticking point in particular domains – most notably, software, biotechnology, and diagnostic and business methods. As an early ground for striking out patents, the subject-matter requirement may seem attractive to patent systems suffering intense backlogs and perceived misuse and abuse. This broader context may reflect why, in the last five years, the United States Supreme Court has issued four influential subject-matter rulings after a nearly 30-year hiatus: [Bilski v. Kappos](#), [Mayo v. Prometheus](#), [AMP v. Myriad](#) – all covered in previous editions of this magazine – and, most recently, the highly-anticipated case of *Alice v. CLS Bank* [PDF](#).

## ***Alice's* abstract ideas**

*Alice* attracted a great deal of interest largely because the patents in issue involved a business method implemented by a computer. Many pundits seized on the case as an opportunity for much-needed guidance on software patenting. However, it was clear from the facts and the hearing that this was unlikely to happen. When the Supreme Court issued its ruling on June 19, 2014, it opted for a narrow basis for its decision, closely tied to the facts at hand, and omitting broader guidance (or, indeed, any mention of the word “software”.)

The four patents in *Alice* concerned intermediated financial risk settlement (i.e. mitigating the risk that one party to an agreed transaction fails to pay or to satisfy other conditions). The Supreme Court distilled the claims as variants on: a method for exchanging financial obligations; a computer system configured to carry out the method; and a computer-readable medium containing program code for performing the method. The parties to the case were the patentee, Melbourne-based Alice Corp, which had no relevant trading activity in relation to the patents, and New York-based CLS Bank International, which engaged in \$US 5 trillion settlements daily employing the patented methods.

Under section 101 of the [US Patent Act](#), “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may be eligible for patent protection.” The US courts have developed three exclusions to this broad provision: laws of nature, natural phenomena, and abstract ideas. In the *Alice* decision, which concerned the “abstract ideas” exclusion, the Supreme Court stated that the principle undergirding these exclusions is “pre-emption”, which it related to the notion that the basic tools, or building blocks, of scientific and technological work must remain in the public domain.

The Court recognized, however, that at some level, “all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” Lest the exclusions “swallow all of patent law”, the Court sought to distinguish patents that claim the building blocks of human ingenuity from those that integrate those building blocks into “something more”.

## ***Bilski* reloaded, with dashings of *Mayo***

One of the primary reasons the Supreme Court heard the *Alice* case was that the Federal Circuit *en banc* decision [PDF](#), issued on May 10, 2013, had yielded a deeply fractured set of opinions, failing to agree the nuances of the appropriate test for patent eligibility. Among the causes were perceived inconsistencies in the Supreme Court's precedent. The Supreme Court in *Alice* therefore took the opportunity to articulate a single, uniform subject-matter test. That test, itself a generalization from the earlier case of *Mayo v. Prometheus*, involves two parts:

*First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts [i.e. law of nature, natural phenomena, or abstract idea].*

*If so, we then ask, “[w]hat else is there in the claims before us?” To answer that question, we consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. We have described step two of this analysis as a search for an “inventive concept”—i.e., an element or combination of elements that is “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.”*

Applying this two- step test led the nine justices of the Supreme Court to find unanimously that *Alice*'s patents were invalid for lack of patentable subject-matter. Unhelpfully for future guidance, the Court considered it need not “labor to delimit the precise contours of the “abstract ideas” category”. Within its reasons, however, it gave several examples of abstract ideas: fundamental economic practices; certain methods of organizing human activities; an idea in itself; and mathematical relationships/formulas. Turning to the second step, the Court concluded:

*We hold that the claims at issue are drawn to the abstract idea of intermediated settlement, and that merely requiring generic computer implementation [i.e. a data processing system, a communications controller, and a data storage unit] fails to transform that abstract idea into a patent-eligible invention.*

In the end, the *Alice* ruling is remarkably proximate to the factual findings in *Bilski v. Kappos* – where a risk-hedging business method was found to be an ineligible abstract idea – as well as to the legal findings in *Mayo*, where, in applying the two-step test, a diagnostic method was deemed an ineligible law of nature, applied with only conventional steps, and was therefore ineligible.

By contrast, *Alice* sits somewhat less comfortably with *AMP v. Myriad*, a decision subsequent to *Mayo* that notably omitted reference to the two-step test. Instead, *Myriad* was decided in accordance with older authorities that involved biological subject-matter – [Diamond v. Chakrabarty](#) and [Funk v. Kalo](#). In *Myriad*, the Court held that isolated genes were unpatentable natural phenomena. More problematic, particularly in light of the *Mayo/Alice* test, was its finding that lab-generated cDNA is patent eligible, despite the fact that it is produced from isolated genes (i.e. natural phenomena), with the addition of only conventional, routine steps.

## Implications for software patents

More meritorious computer-implemented inventions were not directly addressed in the *Alice* decision, except to the extent that the Court confirmed the uncontroversial proposition, established by cases in the 1970s and 80s, that inventions improving the functioning of a computer itself (i.e. for speed, efficiency, or security), or effecting an improvement in any other technology or technical field, are patentable.

*Alice* emphasized very strongly that merely stating an abstract idea, while adding the words “apply it” with a generic computer and generic computer functions, is not sufficient. This emphasis, while it holds instinctive appeal, creates difficulties if applied to other types of non-computer-based inventions. It also fails to accommodate the way in which computer-implementation may allow an idea to be realized at a scale and speed impossible through other means, with considerable programming skill required in order to achieve such an outcome.

Incongruously, it is plausible under the *Mayo/Alice* test that a sophisticated idea, implemented using generic code and computing platforms, might not be patentable; while a generic idea, implemented using unusual platforms, may be.

An interesting aspect of the *Alice* ruling is the way that the Court characterized *Diamond v. Diehr*. This is an important Supreme Court authority from 1981, concerning a computer-implemented method for calculating temperature within a rubber mould during a step-wise rubber curing process that was found to be patentable. Adopting a reading of *Diehr* that appears to be novel within US Supreme Court precedent – even if it chimes with international authorities – the Court in *Alice* described the invention in *Diehr* as patentable because it used an otherwise unpatentable equation to “solve a technological problem” and “improve an existing technological process”. This reflects an interesting shift in the US jurisprudence, and a possible gravitation towards the approach of Europe and other jurisdictions.

A decision of the Federal Circuit shortly after *Alice* gave an indication of how it may be applied more broadly. In [Digitech v. Electronics for Imaging](#), the Federal Circuit rejected a patent that claimed a method for manipulating data in a digital image processing system. The reasoning was that the patent claim:

*recites an ineligible abstract process of gathering and combining data that does not require input from a physical device... Without additional limitations, a process that employs mathematical algorithms to manipulate existing information to generate additional information is not patent eligible.*

The bounds of expressions used in the *Alice* decision, such as “generic”, “technological”, “inventive concept” – and the magical quality of “transformation” into “something more” – will doubtless be picked over in cases to come.

## The merits of a subject-matter requirement

One question not explored in *Alice*, but worthy of broader reflection, is whether the requirement for

patentable subject-matter is even useful to the patent system at all. The problem with the requirement is that it is a coarse filter and encourages satellite debate of the nature described above. It involves potentially eliminating patents based on limited information and deprives the patent system of its best qualities – namely, taking a set of claims at a particular point in time and comparing them against hard evidence to determine whether they objectively satisfy novelty, non-obviousness, industrial applicability, and sufficient description. Instead, subject-matter is an impressionistic, somewhat unpredictable assessment, and overlaps dangerously with novelty and inventive step. This is seen in the *Alice* case itself, where the Court was clearly influenced by the fact that intermediated settlement was a long-occurring practice.

The utility and application of the subject-matter criterion differs between jurisdictions. In Europe, it has led to a considerable standoff between the UK courts and the European Patent Office. The UK courts take the view that subject-matter should be a real threshold and have devised complicated tests for its assessment, while the EPO has a considerably lower bar for subject-matter, but it then considers exclusions on software, business methods, and other express exclusions “as such” at the novelty and non-obviousness stages, finding this a more practically workable solution.

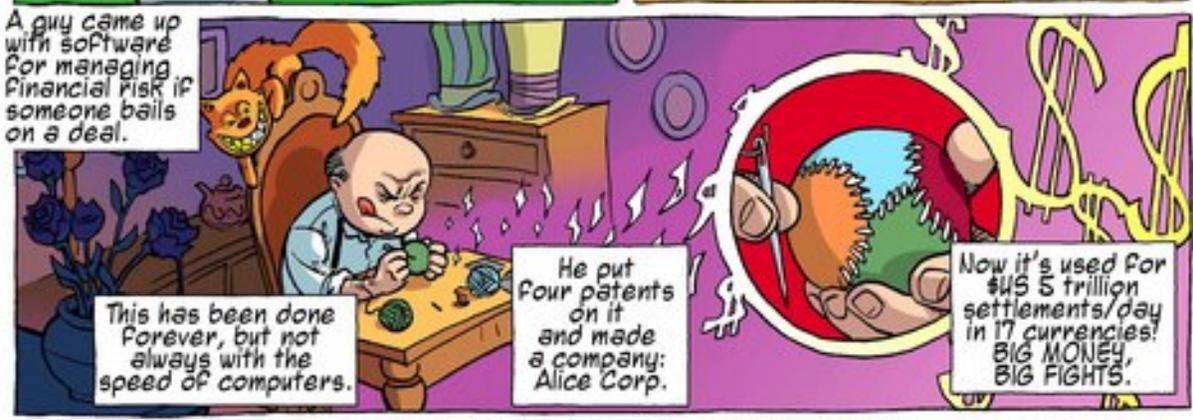
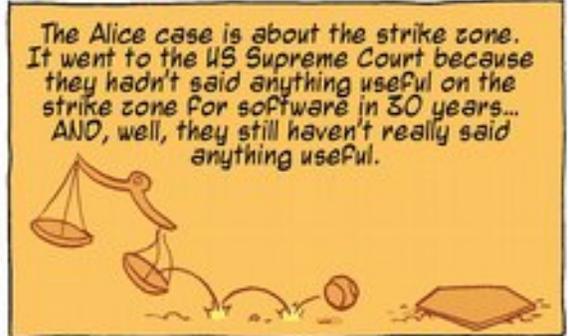
One of the principal lures of the subject-matter criterion is that it stops weak patents from clogging the system. The problem is that it is rather an inefficient and ineffective tool for doing so. Tests such as that expounded in *Alice* and analogues in jurisdictions such as the UK might appear simple, but they turn on tortuous analyses of undefined and unspecific, yet familiar, terms. Particularly in the case of expressions such as “technological”, “technical” and “inventive concept”, there are further issues when these expressions are used in other parts of patent law in very different ways. This all confuses, rather than assists, understanding, and can mask what are in the end very subjective decisions.

Overall, *Alice*'s enduring significance comes from establishing *Mayo*'s two-step test as a general test for US patentable subject-matter. It will be fascinating to see if this produces any significant changes in software, biotechnology, and diagnostic and business method patenting, both in the US and internationally.

# LAW COMICS:

## ALICE IN PATENTLAND (U.S.C. 2014)

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The ONLY issue in the Alice case was whether the inventions were in the strike zone. In US law, this includes everything except abstract ideas (the problem here), laws of nature, or natural phenomena.





To untie the Gordian knot, it's Judges to the rescue! Only...

... meet the Federal Circuit: 135 pages. 10 judges. 6 opinions. But wait! 2 sentences of agreement (this patent is dead)!



Enter the Supreme Court: Wise, majestic, omnipotent...

Amateurs...

and, yes, this patent IS dead.

... aaand COMPLETELY IGNORING the software train wreck issue. Meaning: interpret with all the biases of the team you support.



EXACTLY like baseball.

'GLORIOUS DAY FOR SOFTWARE PATENTS!'

'DOOM! SOFTWARE PATENTS AT RISK FROM NONSENSICAL TESTS!'



Here's how the court saw it:

We need not labor to delimit the precise contours of the "abstract ideas" category.

Know what I'm sayin'? We DON'T NEED to define the strike zone.

...UMMM, YES YOU DO...!



-BUT, even for an abstract idea, an extra inventive concept might save you. Y' know what that is, right? Well, neither do we but it doesn't matter as long as you find one! -

...so, listen up! we'll try the Mayo play! 2 step test. 1) Is the claim directed to an abstract idea or law of nature...? 2) Is there an "inventive concept" that makes it into something MORE?

...I have a bad feeling about this... I see dead patents...

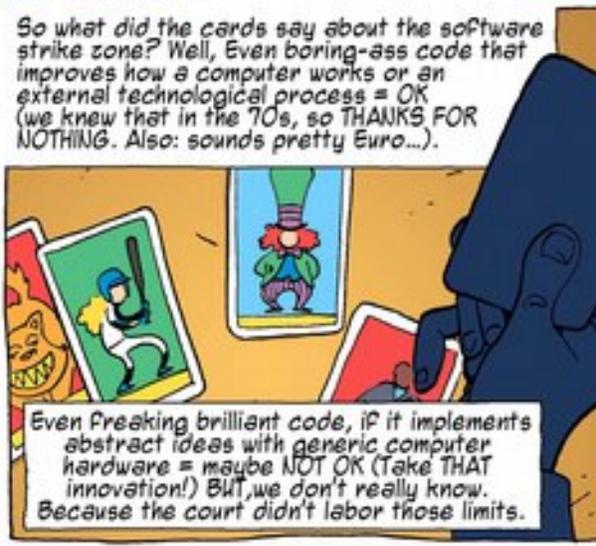
Oww, that's MAD! I LOVE it!

\*Aaah, the Famous post-Flook, Mayo magic trick: the goop of patentability and unpatentability...



No, Fool! We've called on this! We don't deal with abstract ideas! This patent is as abstract as our precedent where we never defined abstract! SIMPLE!

Intermediary settlement in Alice, said the court, is like the idea of risk hedging in Bilski. Both are "fundamental economic practices" - abstract ideas. Both exiled From Patentland.



So what did the cards say about the software strike zone? Well, Even boring-ass code that improves how a computer works or an external technological process = OK (we knew that in the 70s, so THANKS FOR NOTHING. Also: sounds pretty Euro...).

Even Freaking brilliant code, if it implements abstract ideas with generic computer hardware = maybe NOT OK (Take THAT innovation!) BUT, we don't really know. Because the court didn't labor those limits.



...and that, kids, was the tale of how you can take a beautiful game... and shove it down a not-particularly-wonderful hole in the ground.

And they all litigated happily ever after.

Massive thanks to Fotis Vergis for flair and flourish.

