USPTO,

Please do a case study of a) the grounds of rejection logic and b) the consistency across art units, of §101 "abstract idea" rejections under *Alice*.

Examiners are having difficulty describing an "abstract idea" in such a manner that it can be shown as being "recited" in the claims. As the Supreme Court noted in *Alice*,

> At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. *Mayo*, 566 U. S., at ___ (slip op., at 2). At some level, "all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." Id., at ___ (slip op., at 2). Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. See *Diamond v. Diehr*, 450 U. S. 175, 187 (1981). "[A]pplication[s]" of such concepts "'to a new and useful end,'" we have said, remain eligible for patent protection. *Gottschalk v. Benson*, 409 U. S. 63, 67 (1972).

Instead of identifying what is actually recited in the claims, the "abstract idea" is often stated as a subject matter involved in the application. Since the stated "abstract idea" is not actually recited in the claims, **the examiner may assert one level of abstraction or another, within a wide range, without a reasoned basis for arguing that one level as opposed to another, within this wide range, is actually "recited" in the claim**. Consequently, the grounds of rejection becomes arbitrary and indeterminate.

The observed inconsistency across art units may flow from this problem.

Clyde R Christofferson
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