

Title: Analysis of section 101 rejections post-Alice Corp. decision

Proposal for the study: Is there a correlation between an applicant's likelihood of receiving a section 101 rejection and their ability to ultimately overcome the rejection and the art unit that receives the patent application?

Explanation: Based on my experience as a patent practitioner, the issuance of section 101 rejections in response to the *Alice Corp. v. CLS Bank* 2014 decision varies greatly among different art units. Further, the ability for an applicant to overcome a section 101 rejection also varies greatly by art units. This type of varied response tends to suggest that an applicant's ability to receive a patent may depend, at least in part, on chance rather than the merits of their inventions.

The USPTO should study:

- 1) the issuance rate of section 101 rejections per art unit. In other words, how often does each art unit issue an Alice related section 101 rejection?
- 2) the rate which a section 101 rejection is ultimately overcome per art unit. In other words, how often is an applicant able to overcome an Alice related section 101 rejection?

A better understanding of how individual art units are approaching and treating section 101 rejections could lead to a more consistent implementation for applying these types of rejections. Future training and guidelines may benefit from a mutual understanding among the art units about when a section 101 rejection is appropriate and what are the requirements for overcoming a rejection. A more consistent implementation for issuing section 101 rejections should also realign the applicant's ability to receive a patent to the merits of their invention rather than based on the art unit that happens to receive their application. The results of this study would also improve the overall efficiency and effectiveness of patent prosecution.

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