

WG10 Framework for Analysis: Mapping the Contours of the Federal Circuit's Eligibility  
Jurisprudence. Project Charter (May 2022 ver.)

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# *I. Introduction*

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In the five-year period between 2010 and 2014, the United States Supreme Court issued four decisions interpreting the patent eligibility requirements of 35 U.S.C. § 101: *Bilski v. Kappos*, 561 U.S. 593 (2010), *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012), *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013), and *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014).

Each of these Supreme Court decisions reversed a Federal Circuit decision that had upheld claims as patent eligible, and each of these decisions shrank the field of patent eligible subject matter. Collectively, these decisions are now characterized as creating the *Alice/Mayo* test: they hold that § 101 contains an implicit exception for “laws of nature, natural phenomena, and abstract ideas.” *Mayo*, 566 U.S. at 70. The Supreme Court has also held that ineligible “abstract ideas” include “fundamental economic practices” and other “methods of organizing human activity, though it has eschewed any attempt to “delimit the precise contours of the ‘abstract idea’ category.” *Alice*, 573 U.S. at 220.

The Supreme Court’s recent eligibility decisions have been the subject of extensive commentary and counterproposals. In 2019, the U.S. Senate Judiciary Committee’s Intellectual Property Subcommittee held an extraordinary three days of hearings on the recent eligibility jurisprudence, taking testimony from 45 witnesses representing virtually every constituency in the patent community. An ongoing series of Senate-sponsored roundtables have since sought to develop legislative amendments to § 101. And in the courts, over 50 petitions for certiorari to the Supreme Court have asked that tribunal to modify or clarify its patent eligibility jurisprudence.

The present project avoids these larger policy debates and focuses on a more modest inquiry. Since the Supreme Court’s recent decisions, the Federal Circuit has issued over 150 decisions applying the new jurisprudence. This project asks, what are the contours of that Federal Circuit jurisprudence? What has the Federal Circuit identified as “methods of organizing human activity” or other types of “abstract ideas?” And how has it defined when a claimed invention is “directed to” a natural phenomenon or law of nature?

Many of the Federal Circuit decisions provide only limited guidance in isolation and some of the court’s precedents are challenging to apply consistently. This project aims to look at these decisions as a whole and discern broader trends and patterns. Often, for example, the Federal Circuit will identify the focus of an invention and simply declare that “this is an abstract idea.” By looking at the cases collectively, this project seeks to identify *why* the court deems particular concepts to be abstract ideas. Similarly, the project aims to elucidate how much science is “too much” when a patent claims the application of a natural phenomenon or a law of nature.

The ultimate goal is to provide useful guidance to those struggling to apply § 101 in the real world—to identify principles and effective rules, and ultimately to help parties make decisions that will be sustained in the Federal Circuit.

## ***II. Methods of Organizing Human Activity***

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- Key issue: What has the Federal Circuit identified as “methods of organizing human activity?”

**[Proposed] Principle No. 1 –**

### ***III. Other Abstract Ideas***

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- Key issue: What else has the Federal Circuit identified as an “abstract idea?”

**[Proposed] Principle No. 2 –**

## ***IV. Laws of Nature and Natural Phenomena***

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- Key issue: to what extent can an invention rely on scientific knowledge before it is deemed to be “directed to” a law of nature or natural phenomenon?