

Can Juries Decide Patent Eligibility Under 35 U.S.C. § 101?

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An article by Partner Greg Lantier and former Senior Associate Richard Crudo, published by the *Federal Circuit Bar Journal*, Vol. 27, No. 1. This article first outlines the substantive law surrounding § 101 and addresses procedural issues that are relevant for determining whether juries ought to hear § 101 challenges, next engages in a historical analysis and examines whether a Seventh Amendment jury trial right attaches to § 101 challenges, and finally addresses policy considerations that bear on the issue.

Excerpt: No provision of the Patent Act has been more frequently litigated over the last several years than 35 U.S.C. § 101. After not having decided a § 101 case in nearly a decade, the Supreme Court issued four § 101 decisions in as many years, most recently articulating a test for determining whether computer system claims are patent eligible in its 2014 *Alice Corp. Pty. v. CLS Bank International* decision. Since then, the Federal Circuit has decided more than fifty cases involving § 101, many of which were appeals from district court actions where parties raised § 101 as a defense to infringement. [Read the article.](#)

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