

## 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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