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IP File

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Ultramercial Finally Strikes Out at the Federal Circuit

By: Rex Hwang

In its most recent decision in *Ultramercial, Inc. v. Hulu*, the Federal Circuit finally concluded that the claims-at-issue do not cover patent-eligible subject matter under 35 U.S.C. § 101. This comes after two prior decisions by the Federal Circuit reaching the opposite conclusion, and two orders from the U.S. Supreme Court instructing the Federal Circuit to reconsider those two decisions.

TAGS: Alice, Federal Circuit, Litigation, Patent Litigation, patent litigation, patent-eligible, section 101, Ultramercial, Write of Certiorari; Supreme Court

IP File

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A Sea Change after Alice: Recent Court Decisions Show Patents Are Vulnerable under Section 101 Attack

By: Dan Liu

Since 2010, the Supreme Court has issued four decisions on patent-eligible subject matter under 35 U.S.C. § 101. In the most recent decision, *Alice Corp. v. CLS Bank*, the Court continued the restrictive approach set forth in its own precedents in *Gottschalk v. Benson*,^[1] *Parker v. Flook*,^[2] and *Diamond v. Diehr*,^[3] and invalidated patents directed to computerized methods for mitigating settlement risk by using a third-party intermediary. The most significant passage in the *Alice* decision is that the Court expressly adopted the two-step test it elaborated in *Mayo Collaborative Services v. Prometheus Laboratories*^[4] for all types of patent subject matter issues, including laws of nature, natural phenomena, and abstract ideas.^[5]

TAGS: Alice, *Alice Corp. v. CLS Bank*, Patent Litigation, patent litigation, patent-eligible, patent-ineligible, patents, section 101, Supreme Court
