

## **Summary of 337 Investigations Where 35 U.S.C. 101 Has Been Raised as Defense**

Post-Alice (*i.e.*, after June 2014), Alice/Mayo-related 35 U.S.C. 101 issues were first raised and/or addressed in approximately 18 Section 337 ITC investigations at the following stages:

- In 10 motions for summary determination of invalidity (925, 944, 963 (2 separate motions for different patents), 972, 973, 1004, 1047, 1088, 1131)
  - 5 granted (963 (2 separate motions for different patents), 972, 973, 1088)
    - 2 affirmed by the Commission (963 earlier motion for SD under 101, 1088); 1 reviewed and vacated in part by Commission (Commission did not review as to 1 patent but did vacate and remand to ALJ as to 2 patents to continue investigation) (973)
    - 2 not reviewed by Commission (963 later motion for SD under 101, 972)
  - 3 denied on the merits (1004, 1047, 1131)
    - 1 affirmed by Commission (1047)
    - 1 not reviewed by Commission (1004)
    - 1 still pending (issue not yet reviewed by Commission; investigation as to 2 patents terminated) (1131)
  - 2 denied because claim construction required (925, 944)
    - 1 revisited in ALJ's ID (1 patent challenged in prior denied motion for SD, along with 2 additional patents, were addressed in the ID under 101) and determined to be not invalid; affirmed by the Commission (944)
    - 1 investigation subsequently terminated based on settlement (925)
- In 7 additional initial determinations (945, 947, 968, 1001, 1016, 1058, 1063)
  - 1 invalid under 101 at ID; subsequently reviewed by Commission but vacated with no position taken on 101 issue (1016)
  - 6 not invalid under 101 (945, 947, 968, 1001, 1058, 1063)
    - 101 issue not reviewed by Commission (947, 968, 1001, 1058, 1063)
- In 2 "100-day" Early Disposition Programs (994, 1150)
  - 1 request for entry into program denied as to the 101 grounds because Commission determined that it was not clear if the issue was likely to be dispositive with respect to all of the asserted claims of the asserted patents; investigation subsequently terminated (1150)

- 1 request for entry into program granted, and followed by 100-day Final Initial Determination which found the patent at issue invalid; FID not reviewed by the Commission (994)

Overall, 11 out of 36 patents challenged under 35 USC 101 Alice/Mayo-related issue(s) after June 2014 were determined to be invalid. In particular:

- 9 out of 19 patents first challenged in a motion for SD were determined to be invalid under 35 USC 101, whether at the SD stage or at a later stage (e.g., initial determination or review by Commission)
- 1 out of 13 patents first addressed initial determinations were determined to be invalid under 35 USC 101, whether at the ID stage or upon review by the Commission
- 1 out of 4 patents challenged in a 100-day program were determined to be invalid, either at the request stage or at a later stage (e.g., initial determination or review by Commission)