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Comments Submitted by Anonymous #7 - Patent Attorney

Posted by the **Patent and Trademark Office** on Sep 7, 2021

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Thank you for providing a forum for discussion on this important topic. As a registered USPTO attorney working in fields such as diagnostics and therapeutics, I feel a need to comment. The 35 U.S.C. 101 wording is very clear, and the recent decisions and USPTO guidance have created confusion that in my opinion has had a negative impact on innovation. For example, the ILLUMINA, INC., SEQUENOM, INC. decision had a chilling effect on development and patenting in my field. I encourage Congress and the USPTO to address this. The application of laws of nature with a tangible result should be patentable, and the boundaries of that should be clear. Ideally, I prefer consistency from one Examiner to the next. Further, I want to make sure that 101 is not conflated with 103, which appears to happen in some cases. I am attaching one article, as just an example of many, showing that there are concerns. This article includes the following text, showing how prevalent patent invalidation has become, which is disconcerting. Thank you for the opportunity to express my concerns.

"Mayo and the related section 101 decisions have had a profound effect on patents and the practice of patent law. In the 14 months following the Alice decision, the courts invalidated more patents under section 101 than they had in the five years preceding Alice. Between June 2014 and March 2017, district courts invalidated more than 60% of the patents challenged on section 101 grounds. On appeal, the Federal Circuit invalidated more than 90% of the patents challenged under section 101, including new methods of detecting an increased risk of cardiovascular disease and methods of diagnosing fetal genetic defects using maternal blood samples that had previously been discarded as medical waste."

Attachments 1

Richards_Article_2019

Download (https://downloads.regulations.gov/PTO-P-2021-0032-0034/attachment_1.pdf)

Comment ID

PTO-P-2021-0032-0034

Tracking Number

ksa-i2rq-h92a

Comment Details | **Submitter Info**

Document Subtype

Comment(s)

Received Date

Aug 12, 2021

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