

Supreme Court Ruling in Alice: Protecting American Businesses from Invalid Patents

In 2014, in *Alice Corp. v. CLS Bank*, a unanimous Supreme Court restated what had long been the law: abstract ideas like business methods cannot be patented. As the courts apply Alice to knock out bad patents, they have thrown a lifeline to businesses of all types and sizes that are often the target of patent litigation brought by nonpracticing entities (NPEs, sometimes called patent trolls).

Alice has restored balance to the patent system and supported innovation in the software industry by protecting advances in technology while preventing patents from blocking use of abstract ideas. Calls for legislation to overturn Alice are unnecessary and misguided. Instead, Congress should focus on efforts that improve patent quality, fight patent abuse and promote innovation.

Purpose of Section 101

The goal of the patent system set out by the Constitution is to “promote the progress of science and the useful arts.” Consistent with that goal, Section 101 of the Patent Act defines patent-eligible subject matter as “any new and useful process, machine, manufacture, or composition of matter.” Over 150 years of Supreme Court case law has held that Section 101 blocks patents on abstract ideas and laws of nature because they should be free for all to use as “the building blocks” of innovation.

In 2018, small and medium-sized enterprises (SMEs) made up 42% of all NPE suit defendants

Alice only restated what was clear from the Supreme Court’s earlier cases. Inventions, including software, that solve a technological problem or improve a technological process are eligible for patenting, but Section 101’s prohibition on patenting abstract ideas cannot be overcome by reciting the idea performed using routine, generic computer operations. In other words, adding “do it on a computer” to a business method does not, and should not, qualify for a patent. Such patents don’t “promote the progress of science and the useful arts.”

Alice Promotes Patent Quality

Many of the patents invalidated under Alice covered simple, non-technical ideas performed using the routine functions of a computer or the Internet, like upselling to customers in an online store, buying an airline ticket online, or sending emails with package tracking. These patents did not make any inventive, technical contributions to the public that merited a government-granted exclusive right.

Alice Helps Fight NPEs

These broad, non-technical patents have long fueled NPE lawsuits, which have drained many billions of dollars from the U.S. economy. They are often asserted against a wide range of companies doing business online, making small and medium businesses frequent targets. When faced with an infringement suit, businesses have to choose between paying to settle or mounting a very expensive defense in court. Many companies – in particular startups and small businesses – must pay to settle even a meritless case based on an invalid patent

From 2009 to 2017, NPE Shipping & Transit sued more than 500 mostly small companies, often for sending shipment notification emails. It collected \$15 million in settlements before a court ruled its patent failed under Alice.

The median cost of going to trial in a patent case is \$1.7 million.

to avoid the high cost of litigation. Startups developing and patenting their own technology have been forced to cut jobs or shut down when targeted by NPEs.

Alice helped. The lower courts can apply the Alice decision early in a case to strike down patents that, on their face, are nothing more than a business method run with generic computer functions. By deciding the issue early, before burdensome and expensive discovery, the courts made it possible for companies to defend themselves.

Alice took away the power of broad e-commerce patents and made the NPE business model less profitable. NPE suits have dropped in recent years, but there is no doubt that they will rise again if Alice is overruled.

Capstone, a small photography business that was sued by an NPE for selling event photographs online fought back and won. The owner explains, "without the Alice decision, it is unlikely that I could have afforded the long fight necessary to invalidate the patent on other grounds."

Alice Supports Software Patents and Innovation

Advances in software technology remain patentable under Alice, and innovation in the software industry has flourished since the Court's decision. As the courts have explained in many cases, software is patentable when a patent fulfills the intended purpose of protecting innovation by claiming an advance that improves the functioning of a computer or solves a technological problem. A wide variety of patents have satisfied this test in the courts and at the Patent Office, including patents covering software for a specific way of storing data in a database, automatically animating speech, sending Internet users to a hybrid web page, filtering Internet content, and establishing a network architecture that reduces data congestion.

VC funding for software startups was 40% higher in 2018 than it was in 2014, the year that Alice was decided.

R&D spending in the software and Internet industry has doubled since 2014, outpacing R&D spending over all industries

