

Joseph Matal in Federal Circuit Law Journal: 'The Three Types of Abstract Ideas'

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PRACTICES Intellectual Property, Patents, Patent Litigation, Patent Office Trials

No field of patent jurisprudence is more vigorously criticized by a more distinguished group of authorities than is the current law of subject matter eligibility. A former Chief Judge of the Federal Circuit has described the state of the law as “unending chaos” and a “menagerie of inconsistency” in which judicial decisions are “unclear, inconsistent with one another and confusing” and in which he himself cannot “predict outcomes in individual cases with any confidence.”

Another former Chief Judge of the Federal Circuit has noted the “exist[ence] [of] widespread uncertainty and confusion regarding” standards for patent eligibility, which “is especially pronounced with respect to the exception for abstract ideas” – and “is allowing patent challengers to ... wield the exception[s] [to eligibility] like a sledgehammer.”

In a similar vein, recent former Directors of the Patent Office have stated that [our current patent eligibility law truly is a mess,” producing “decisions that are irreconcilable, incoherent, and against our national interest;” that the law is ambiguous and difficult to apply consistently;” and that “hope has faded” that courts and the Patent Office will be able to “interpret and clarify” the exceptions and eligibility. Academics and leading professional associates are just as pessimistic, describing the case law as “creat[ing] a tremendous amount of uncertainty for innovators” and “inject[ing] ambiguity and unpredictability into the eligibility determination.

This article takes a contrary view. The Federal Circuit has now issued over 100 precedential opinions applying the *Alice/Mayo* patent eligibility test.

Excerpted from the *Federal Circuit Bar Journal*. To see the full article, click on the PDF linked below.

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