

Russ Emerson in Law360: 7 Ways To Survive An Alice Patent Challenge

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While the U.S. Supreme Court's Alice decision has led to a wave of software related patents being invalidated by district courts, there are still opportunities for obtaining protection for such inventions from the patent office and keeping them intact in an infringement fight.

The Supreme Court in June 2014 struck down Alice Corp.'s patents on computerized trading methods, holding that abstract ideas implemented with a computer cannot be patented under Section 101 of the Patent Act. As a result, the courts and U.S. Patent and Trademark Office examiners are taking a tougher stance against these patents.

"The major challenge companies face in light of Alice is the challenge of uncertainty," said [John Russell Emerson](#), a partner at Haynes Boone LLP. "As the Alice court itself admitted, almost any invention can be described in abstract terms. Thus, the [test] often collapses into a search for an inventive concept, which is a necessarily subjective test for which we have no meaningful guidance."

But attorneys say that prosecuting and asserting software related patents isn't a lost cause. Rather, the process of securing and litigating these IP rights involves a more calculated approach.

Excerpted from *Law360*. To read the full article, [please click here](#) (subscription required).