

Promoting Innovation, Investment & Job Growth

**TURNING GOLD TO LEAD:
HOW PATENT ELIGIBILITY DOCTRINE
IS UNDERMINING U.S. LEADERSHIP IN
INNOVATION**

Download: <https://ssrn.com/abstract=2943431>

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Patent Kill Rates under § 101 in Courts

Figure 1: Total 101 Invalidations (June 2014 to March 2017)

	Total Invalid		
	Total	Under §101	% Invalid
Fed. Ct. Decisions	473	317	67.0%
Federal Circuit	88	80	90.9%
District Courts	385	237	61.6%
Patents	837	502	60.0%
Claims	23597	15661	66.4%
Motions on Pleadings	248	154	62.1%

Source: Robert Sachs, *Bilski Blog*, #AliceStorm Updates

PTAB Kill Rate under § 101

Figure 3: PTAB CBM Invalidations (June 2014 – March 2017)

	Total Petitions	Petitions Granted	Percent Invalid
PTAB CBM Institution on § 101	152	129	84.9%
PTAB Final Decisions on § 101	89	87	97.8%

Source: Robert Sachs, *Bilski Blog*, #AliceStorm Updates

All Innovation is Taking a Hit

- ultrasound machine
- diagnosis of ovarian cancer
- diagnosis of prostate cancer
- treatment for breast cancer
- scanning thermometer
- process for operating an oil rig
- process for operating snow plows

The New Comparative Disadvantage

- **1400 Patent Applications**
- Same Invention!
- Fate of Patent Applications under § 101:
 - United States - **REJECTED**
 - China - **GRANTED**
 - European Union – **GRANTED**
- R&D, Venture Capital, Economic Development, and Job Growth at Stake

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