



## Strong Intellectual Property Rights Are Needed To Encourage Investment In New Innovations

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Supreme Court precedent has caused considerable uncertainty as to what types of inventions should be eligible to receive patent protection and has weakened an important system that mainstream companies rely on to protect their investments in new technologies.

### Issue: Patent-Eligibility Under 35 U.S.C. § 101

Intellectual property provides an avenue for innovators to protect their ideas. In exchange for sharing those unique ideas with the world, the inventor is granted a limited right to protect against others from making, using, selling or offering to sell the patented invention. For years, this quid pro quo was governed by consistent rules that allowed small inventors to build companies, and gave companies of all sizes a reassurance that their research and development was worth the investment. Those once consistent rules are now clouded by Supreme Court case law, *Alice Corp. v. CLS Bank International*, that calls to question what types of innovations should be provided protections under the patent laws.

The laws have historically recognized that patentable inventions should exclude those things that were not products of human ingenuity, but merely abstract ideas, laws of nature, or natural phenomenon. For decades these exclusions to patent-eligibility acted as a coarse filter that allowed the courts and U.S. Patent Office to focus on inventions covering new, useful, and non-obvious ideas. The *Alice Corp. v. CLS Bank International* case changed that coarse filter into a vague uncertainty when the Supreme Court said it “need not labor to limit the precise contours of the ‘abstract ideas’ category.” This has led the courts and U.S. Patent Office to question what it means to be an abstract idea and at what point can an abstract idea be transformed into a patent-eligible invention. Without meaningful guidance, courts remain unsure of what inventions should remain valid and the U.S. Patent Office has become quiet when faced with questions as to the patent-eligibility of software and business method innovations.

Cboe has historically invested in innovation and has taken steps to protect those innovations under the patent laws. Cboe was sued by a competitor for patent infringement in what the court found to be an objectively baseless lawsuit. During the course of that lawsuit, Cboe asserted technical patents against its competitor only to have those patents challenged under Covered Business Method Review (CBM) and Inter Partes Review (IPR) proceedings. Cboe's patents were found valid as new and non-obvious in the IPR proceedings, but like a vast number of patents challenged under CBM, invalid as abstract following the uncertainty from the *Alice Corp. v. CLS Bank International* case. While the laws remain unclear, good patents are being invalidated.



### **Impact: New, Useful, and Non-Obvious Ideas Are Not Being Protected**

Without clarity, companies must determine what ideas to disclose as building blocks to future innovations, and what ideas are now left undisclosed or undeveloped. This decision is made harder in regulated areas, such as finance, where trade secret protections may not be possible due to regulatory transparency requirements and leave an entire industry without traditional avenues to protect intellectual property.

The impact extends beyond the ability to obtain a patent and directly impacts the value of patents that have already issued. Numerous patents are being invalidated, not because the inventions are not new, useful, and non-obvious, but because the law is uncertain. It is this uncertainty that is causing businesses to reassess investments in innovation. This includes financial innovations that could help solve problems for investors -- something Cboe is passionate about.

### **Solution: We Need a Solution That Clarifies What Innovations are Protectable Under the Patent Laws**

Intellectual property is a key economic driver and the protections afforded thereunder provide companies with security to invest in future innovations. Cboe stands ready to work with interested parties on a meaningful solution, which may include:

- Meaningful clarifications and guidelines that allow the courts and U.S. Patent Office to shift focus from patent-eligibility back to whether an invention is new, useful, and non-obvious.
- Legislation that clarifies what types of inventions are eligible for patent protection.

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