

3 TOP TAKEAWAYS

Appeals of Post-Alice Eligibility Rejections Face Tough Prospects

Nearly all eligibility rejections challenged in post-Alice appeals in computer related technologies are **affirmed** in whole by the Patent Trial and Appeal Board (PTAB). Most of those appeals originate from business-method art units, where almost a quarter of the appeals involve only eligibility rejections. The Patent Trial and Appeal Board has a substantial burden disposing of appeals from business-method art units resulting from a high volume of appeal filings and eligibility based appeals. Thus, though many applicants appear to believe that changing the decision-maker (from the examiner to the PTAB) may ease the stringency of applying the *Alice* eligibility standards, the data suggests that this is generally not an effective strategy.

Kilpatrick Townsend's **Kate Gaudry** and **Sam Hayim** offer these takeaways from a recent presentation:

1

Nearly all post-Alice eligibility rejections are affirmed in whole by the PTAB

- 83% of eligibility rejections in computer related areas are affirmed.
- For appeals filed in the last year, 93% of eligibility rejections are affirmed.

The volume of appeals with eligibility rejections vary across Technology Centers (TCs)

- 85% of post-Alice business-method appeals dealt with eligibility rejections. By contrast, roughly 8% of appeals from other computer related TCs dealt with eligibility rejections.
- The portion of business-method appeals involving eligibility rejections is increasing.

2

3

Eligibility rejections are creating a substantial processing burden at the PTAB

- There are more appeals from business-methods than any other TC.
- The PTAB disposes of more business-methods appeals than appeals from other TCs. Yet, there are almost four times as many pending business-method appeals than appeals from other computer related TCs.

For more information, please contact **Kate Gaudry** at kgaudry@kilpatricktownsend.com
or **Sam Hayim** at shayim@kilpatricktownsend.com