Insights: Alerts

Top Takeaways: Best Ways to Address Section 101 Patent Eligibility

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Kilpatrick Townsend partners **Megan Chung** and **Thomas Franklin** recently participated in a panel at the **2016 National Asian Pacific American Bar Association** Convention in San Diego. Panelists, which included Jay Choi from Uber and Jason Chang from AT&T, addressed the best strategies concerning Section 101 patent eligibility. The discussion focused on practical solutions for procuring patent applications for technology susceptible to 101 rejections and the enforcement implications of the heightened eligibility standards.

Top takeaways from Kilpatrick Townsend's representatives on the panel include:

- Megan Chung's review of the case law evolution that brought us to the Supreme Court's Alice decision and the more recent case law interpreting patent eligibility. Administrative challenges to patents through post grant procedures have risen in popularity due to their success in invalidating ineligible and overbroad claims without the expense of traditional litigation. Courts have also used 101 to dispose of litigation very early in the process before legal costs eclipse settlement values. Megan emphasized the changed landscape and how much of the patent litigation has become manageable where broad, abstract and vague claims are asserted because of the more affordable eligibility challenges.
- Tom Franklin's focus on the pursuit of patent rights with an emphasis on reformulating procurement toward technology less susceptible to eligibility challenges. Certain technologies, for example, Fin Tech, Health Tech, and Ed Tech, are stopped in their tracks when assigned to the Business Methods Technology Center part of the patent office. Allowance rates have plummeted to around 5% for these technologies which is far less than the typical two-thirds rate of issuance. Tom noted that patent procurement can be redirected to those technology areas that are less abstract and avoid eligibility scrutiny through complex processes so that all companies can obtain patents for their technology.