

Alice. Is it a Software Infringers' Wonderland? Or, Will Good Software Patents Somehow Survive?

Eastern District of Texas
2015 Bench Bar Conference

Thursday, October 22, 2015

Moderators:

Geoff Culbertson

Patton Tidwell & Culbertson

Max Ciccarelli

Thompson & Knight

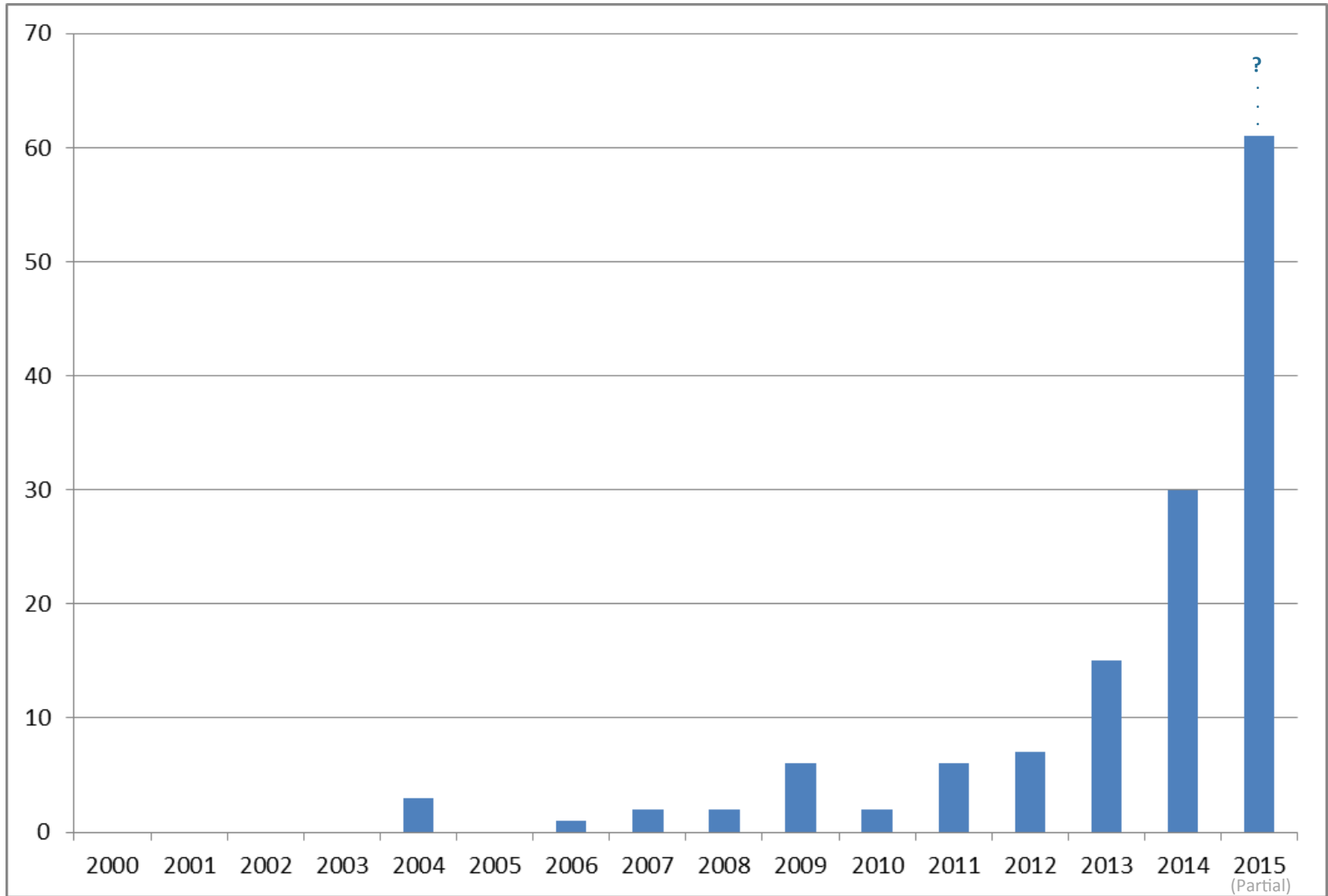
Panelists:

Professor Peter Menell

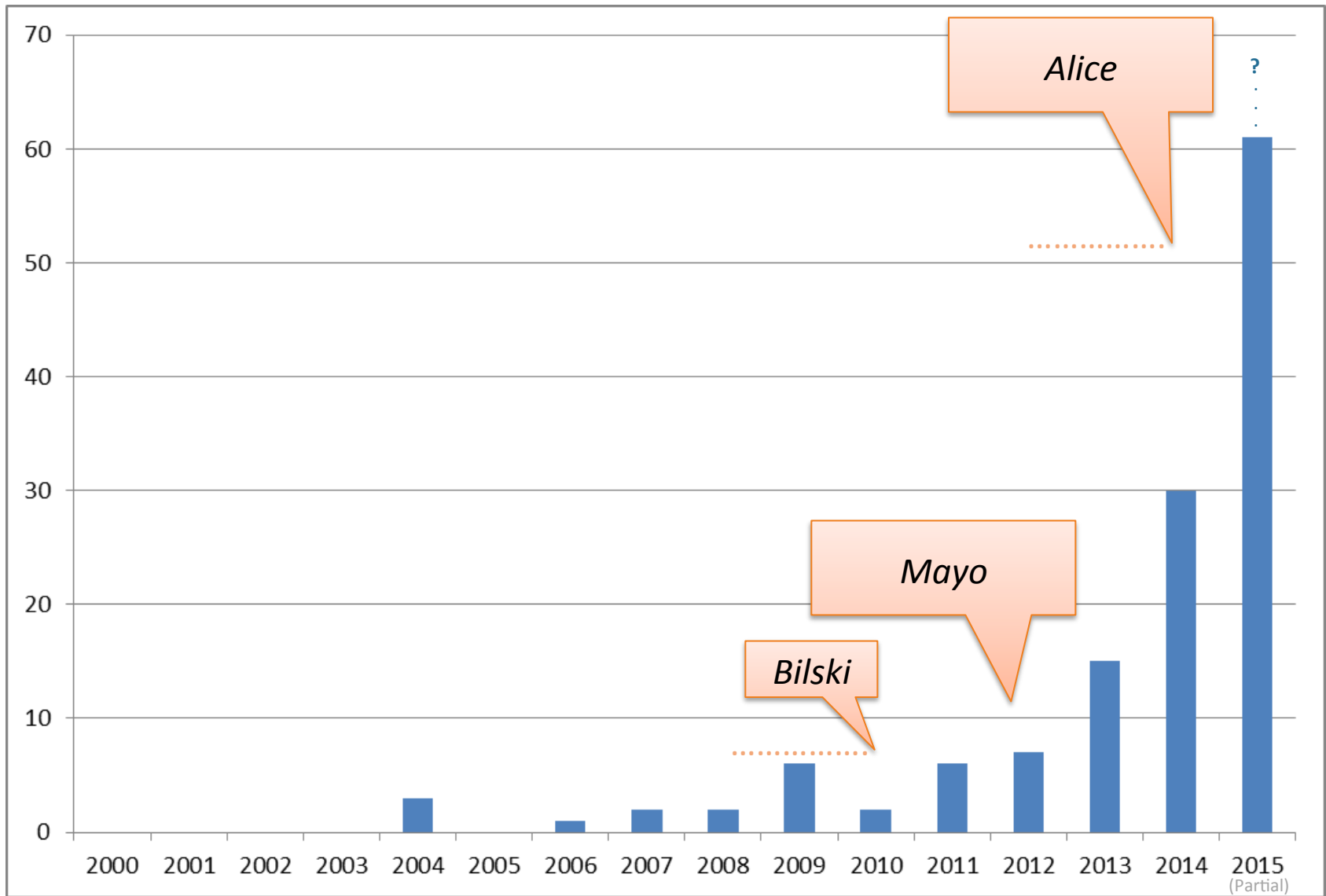
Retired Chief Judge Paul Michel

Judge Robert "Trey" Schroeder

Judge Roy Payne

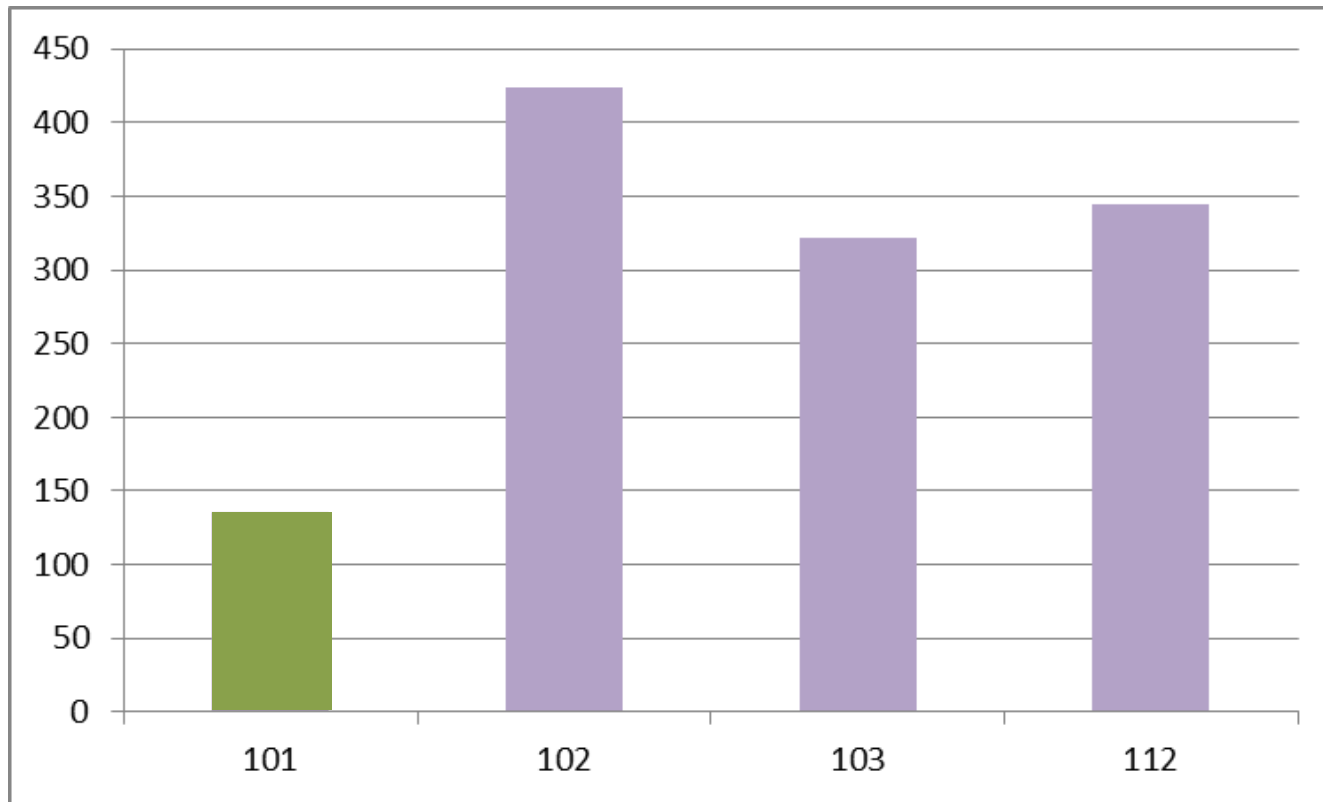


Nationwide



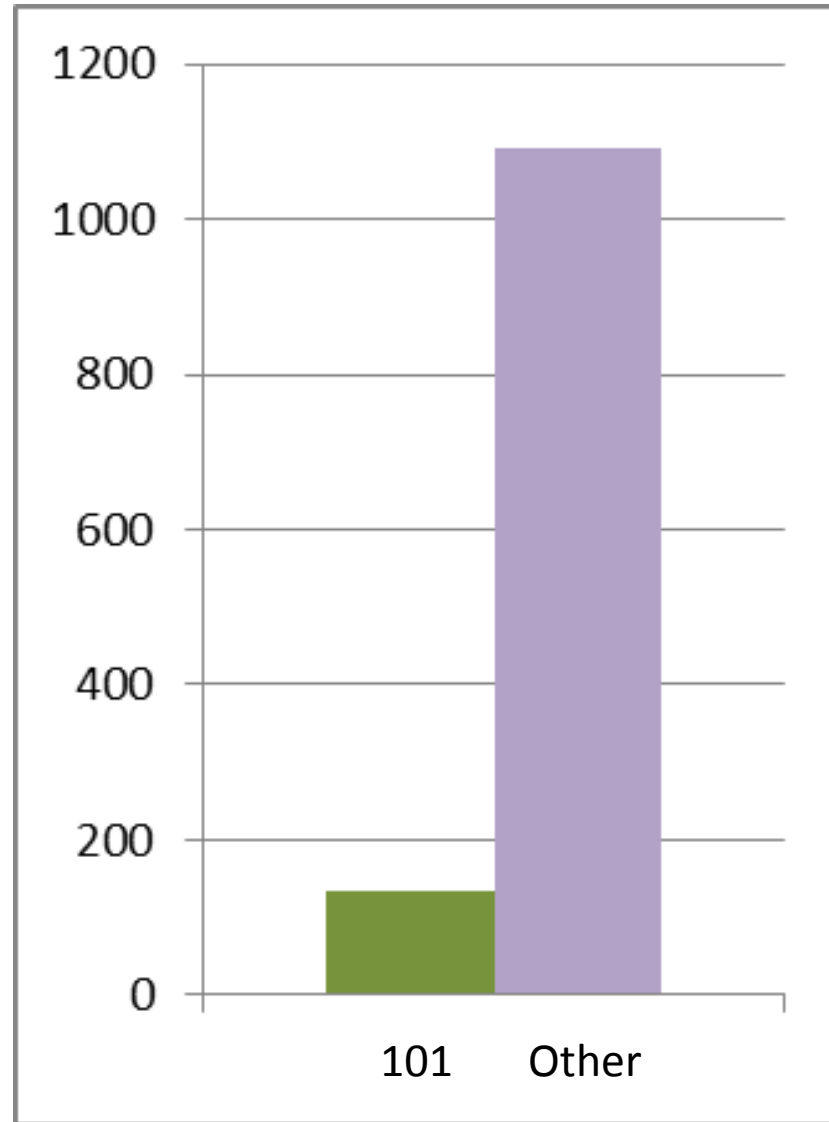
Nationwide

§ 101 vs. Other Invalidity Grounds



2000 through 2015 (partial)

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2000 through 2015 (partial)

Mayo Two-Part Test

Step 1:

Is the claim directed to abstract idea, law of nature, natural phenomenon?

Step 2:

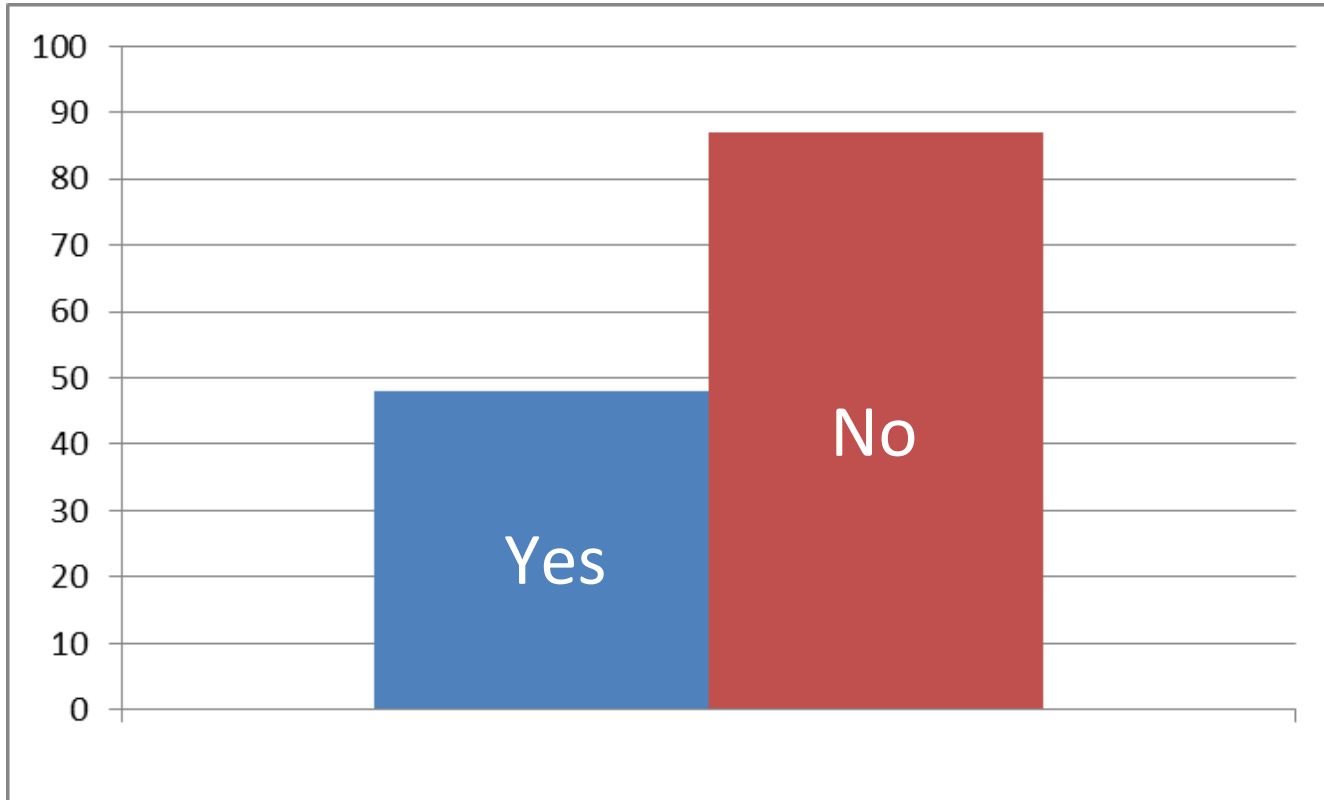
Is there “something more” that transforms the claim into a patent-eligible invention.

On the Pleadings vs. Summary Judgment



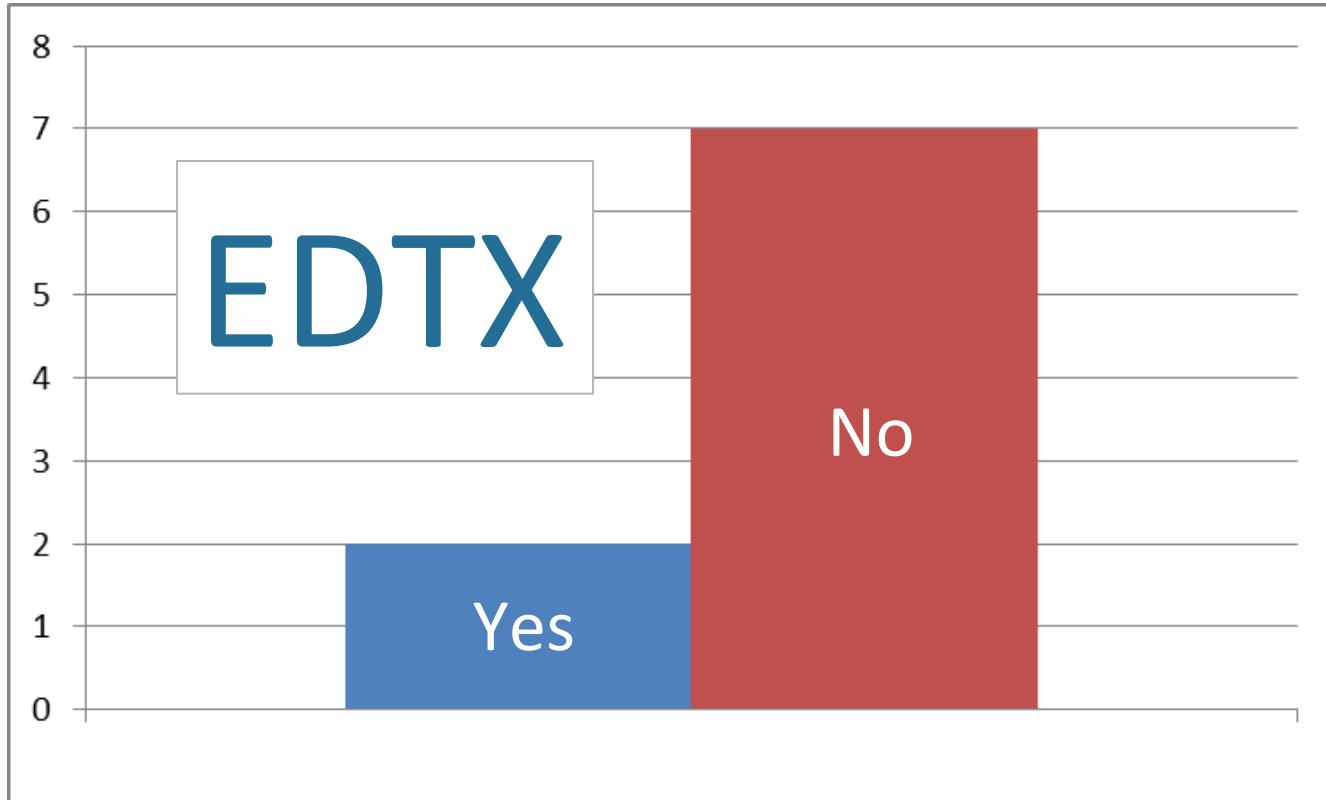
2000 through 2015 (partial)

Claim Construction?



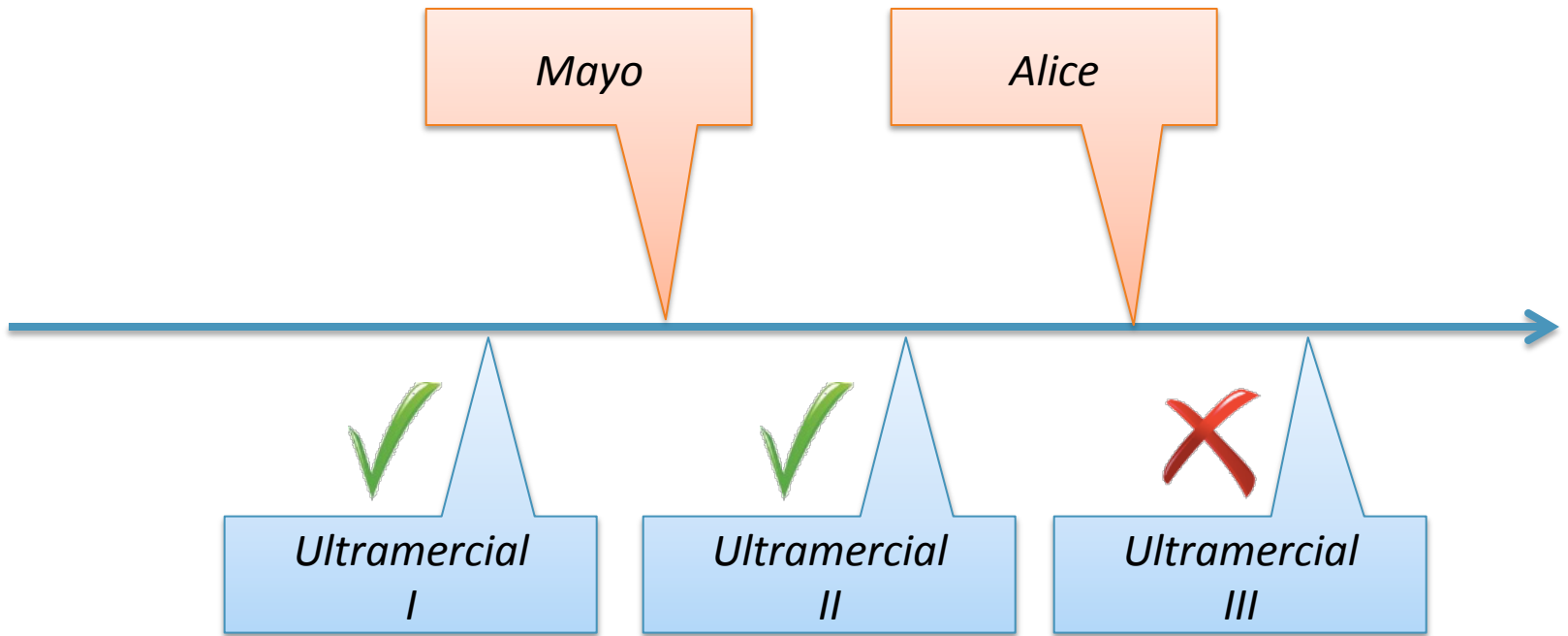
2000 through 2015 (partial)

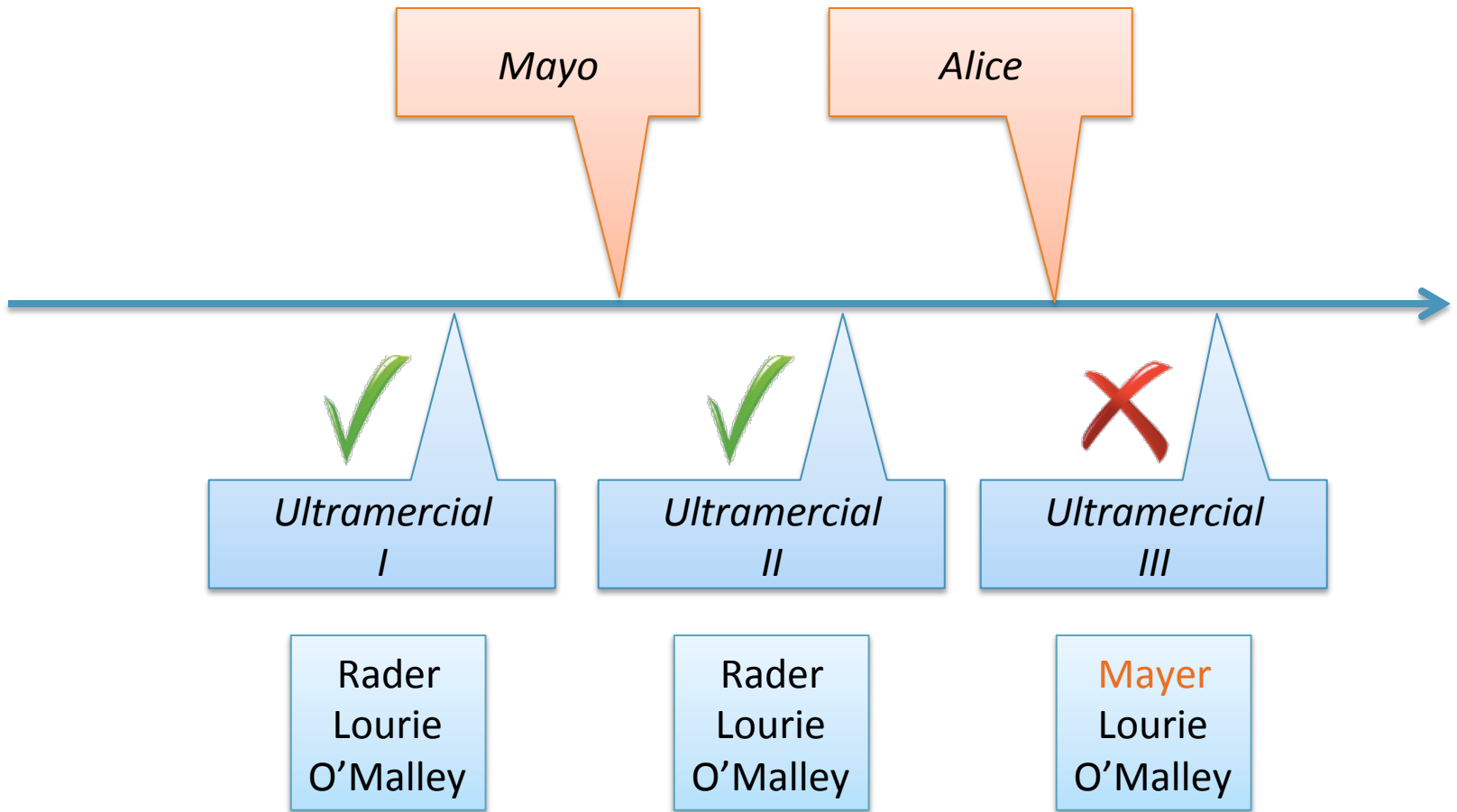
Claim Construction?



2000 through 2015 (partial)

Case	AI, LoN, NP	“Something Else”	Enough?
<i>Benson</i>	Algorithm for converting binary coded decimal into pure binary number	General purpose computer	No
<i>Flook</i>	Mathematical formula to adjust alarm limits	Conventional computer implementation	No
<i>Diehr</i>	Mathematical equation to control curing of rubber	Thermocouple inside the mold	Yes
<i>Bilski</i>	Abstract idea (and mathematical formula) for hedging against financial risk	Limiting field of use, and well known statistical approaches	No
<i>Mayo</i>	Abstract idea of calibrating drug dosage	Measuring metabolite levels	No
<i>Alice</i>	Abstract idea of intermediated settlement	Computer implementation	No





Ultramercial



A method for distribution of products over the Internet ... comprising:

receiving ... media products that ... are available for purchase ...;

selecting a sponsor message ...; ...

offering ... access to the media product without charge ... on the precondition that the consumer views the sponsor message; ...

allowing said consumer access to said media product after ... the display of said sponsor message; ...

receiving payment from the sponsor of the sponsor message displayed.

DDR Holdings



An e-commerce outsourcing system comprising:

a) a data store including a look and feel description associated with a host web page ...; and

b) a computer processor coupled to the data store and ... programmed ... to serve a composite web page to the visitor computer wit[h] a look and feel based on the look and feel description in the data store....

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