



## ITC ALJ Holds That the Presumption of Validity Does Not Apply to Section 101 Challenges

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Owner's patents were directed to (1) a system for providing feedback for an individual's weight-loss goals, including a wearable sensor that has a processing unit for balancing the wearer's caloric intake and activity levels; and (2) a method and device for setting and modifying targets, such as health and activity targets. In holding that Owner's patents were directed to unpatentable abstract ideas, ALJ Lord applied the two-step test set forth in the Supreme Court's *Mayo* decision: (1) are the claims directed to an abstract idea, and, if so, (2) do the claims "transform that abstract idea into a patent-eligible application." For the first step, the ALJ found that Owner's patents were directed to the abstract idea of collecting and recording information related to weight loss and general health programs. For the second step, the ALJ found that the recited generic sensors and processors did not add sufficient meaningful limitations to the claims. Thus, the ALJ held that the claims are directed to ineligible subject matter.

ALJ Lord stated that, "[f]or the purposes of deciding whether the claims meet the demands of section 101, no presumption of eligibility applies." This is the first time that an ITC ALJ has held that there is no presumption of validity in a Section 101 challenge. Further, ALJ Lord cited to a district court case holding the same, which in turn cited Judge Mayer's concurrence in *Ultramercial*. Judge Mayer's concurrence stated: "Although the Supreme Court has taken up several Section 101 cases in recent years, it has never mentioned — much less applied — any presumption of eligibility. The reasonable inference, therefore, is that while a presumption of validity attaches in many contexts, no equivalent presumption of eligibility applies in the

section 101 calculus.” (Internal citations omitted). As a result of ALJ Lord’s holding, more respondents are likely to challenge patentability under Section 101 at the ITC.

*Certain Activity Tracking Devices, Systems, and Components Thereof*, Inv. No. 337-TA-963, Order No. 40 (March 3, 2016), Initial Determination Granting Respondents’ Motion for Summary Determination that the ‘546 and ‘257 Patents Are Directed to Ineligible Subject Matter (ALJ Lord).

## Categories

International Trade Commission

35 U.S.C. § 101

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