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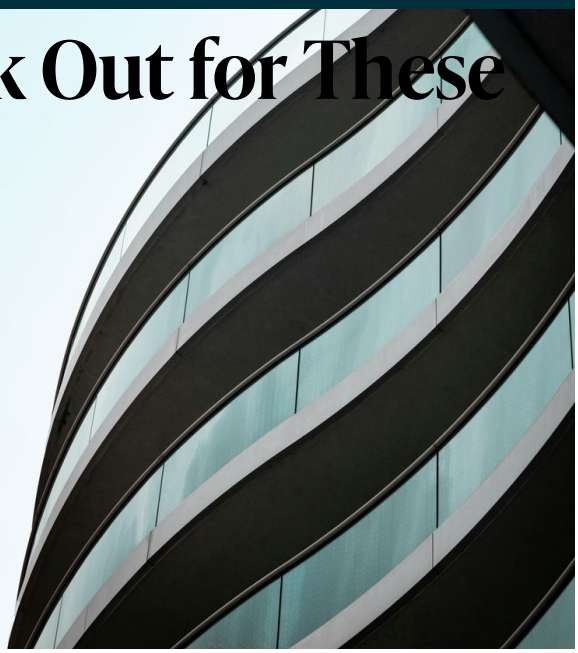
Gambling with Alice? Look Out for These Abstract Idea Indicators



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As further guidance on how to determine whether a patent claim is directed to an ineligible abstract idea under the *Alice* Two-Step Test, the Federal Circuit issued a precedential opinion, *Beteiro v. DraftKings*, No. 2022-2275 (Fed. Cir. June 21, 2024), identifying four "well-settled indicators of abstractness."

The patents-at-issue are directed to using computers and GPS devices to facilitate remote participation in live gambling/games. The Federal Circuit affirmed the district court's ruling that the asserted claims are patent ineligible under 35 U.S.C. § 101 because they are all directed to the abstract idea of "exchanging information concerning a bet and allowing or disallowing the bet on where the user is located." As part of its analysis, the Federal Circuit references four "well-settled indicators of abstractness":

1. The claims recite generic steps, such as "detecting information," "generating and transmitting a notification based on the information," "receiving a message," "determining ... and processing information," which are of a kind frequently held to be abstract.

2. The claims are drafted using largely (if not entirely) result-focused functional language, containing no specificity about how the purported invention achieves those results.

3. The claims are analogous to those deemed abstract in Federal Circuit precedents, specifically those involving methods of providing particularized information to individuals based on their locations.

4. The claims can be persuasively analogized to longstanding "real-world" ("brick and mortar") activities.

Notably, the examiner had expressly evaluated the eligibility of a subset of the asserted claims during prosecution and found them patent-eligible under § 101 based on the requirement in the claims of a particular machine or processor. On appeal, the Federal Circuit nonetheless emphasized that a patent examiner's § 101 consideration during prosecution "does not in any way shield the patent's claims from Article III for patent eligibility."

> **The Asserted Patents involve the mere use of computers as tools and do not claim any improvement in the computer related technology itself. As Appellees put it, "the issue of remote gambling being uncommon in 2002 was not a technical problem, nor do the Asserted Claims' invocation of technology developed by others constitute a solution." Content regulation and checking legal compliance are rooted in the abstract – they are legal problems, not technical problems – and the claims here do not provide "a specific improvement to the way computers operate."**
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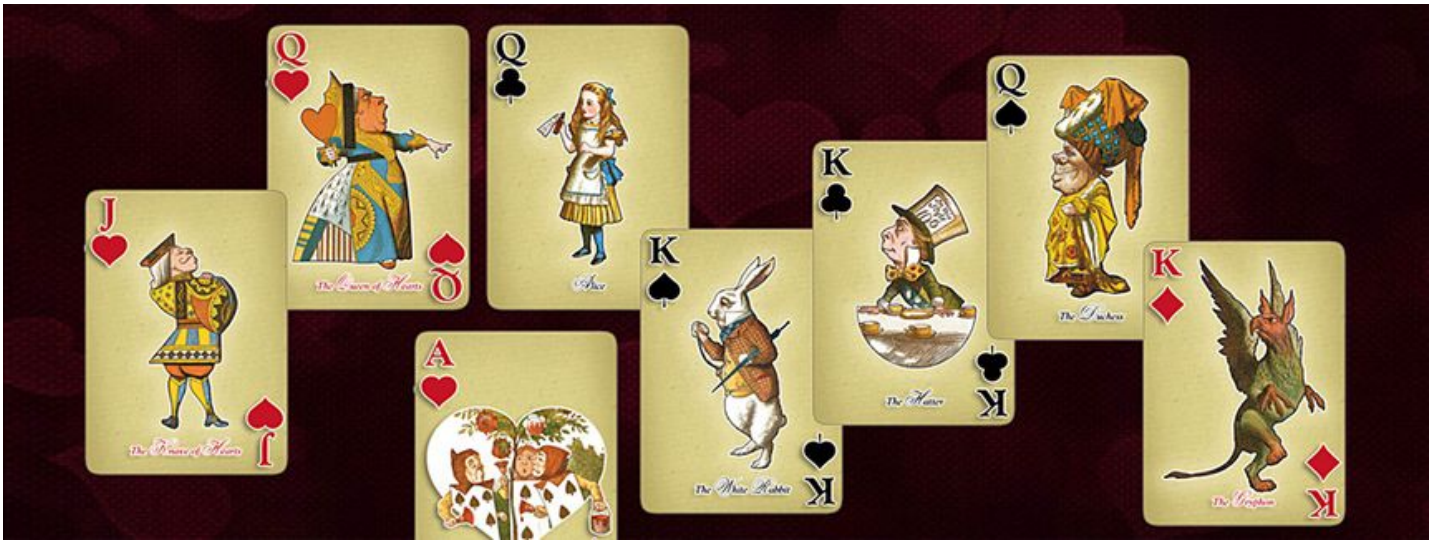

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