**IN THE MEDIA**

# Nimalka Wickramasekera Discusses the Impact of SCOTUS' Alice Decision on Drug and Device Patents Involving AI

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Artificial Intelligence (AI) is an increasingly valuable tool for diagnostics and drug development and is being used to make medical devices more adaptive. However, the U.S. Supreme Court's 2014 decision in *Alice* has made it difficult to patent inventions involving AI, seeing as the court's derived test for Section 101 of the Patent Act prevents abstract ideas from being patented. Interestingly enough, the court's decision failed to define what an abstract idea is, resulting in Section 101 often being applied unevenly.

Nimalka Wickramasekera, an Intellectual Property litigator and Los Angeles partner, discusses in BioWorld's article "Supreme Court's Alice Decision Leaves Drug, Device Firms in AI Wonderland" that Section 101 proves to be a big hurdle for evolving technology, and AI specifically, "since people are still wrapping their heads around what they're claiming as the invention." She added that she "wouldn't be surprised if every patent application based on AI has had at least one rejection at the USPTO…To get around the court's prohibition on patents for abstract ideas, AI inventors must go beyond the algorithm and its application in computing devices."

Patent attorneys are also already raising questions regarding who the inventor of a product developed by AI would be, as well as a number of questions surrounding devices and products that will adapt with AI. The uncertainties abound present a likelihood of litigation around these issues, which Nimalka expects to see within two to three years in the health care sector, if not sooner in the high-tech field.

Read the full article on BioWorld article here. (subscription required).

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Nimalka Wickramasekera