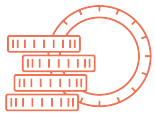


# SECTION 101 IS WORKING FOR STARTUPS.

In patent law, Section 101 is the threshold that prevents people from obtaining patents on abstract ideas. This framework for subject matter eligibility promotes innovation and works for startups. **Courts and patent examiners are in the best position to interpret claims on a case-by-case basis, applying Section 101 of the Patent Act and over 150 years of opinions like the Supreme Court's decision in *Alice v. CLS Bank*,<sup>1</sup> to identify what deserves patent protection.** Overhauling, or even tweaking, this framework would create confusion for innovators and restrict the flexibility needed to accommodate future innovation.

## How Section 101 Saved These Startups

Startups put Section 101 to work — curbing or avoiding frivolous litigation over vague, broad, low-quality patents — so they can focus on the innovative work that defines them. Without Section 101 and *Alice*, these and many other success stories would not be possible.



**Playsaurus avoided litigation threatened by GPX Corp.** In a game Playsaurus developed, users collect rubies and gold for their accomplishments. On that basis, GPX sought \$35,000 over a patent directed to “the acquisition and utilization of electronic tokens.”<sup>2</sup> Before GPX even filed suit, Playsaurus wrote a series of letters explaining that, “after *Alice*, buying and using tokens for transactions (like a kid would do at Chuck E. Cheese’s), cannot be patented by simply reciting computers and the Internet.”



**In 2015, AlphaCap Ventures sued Gust—a company that connects other startups with investors.** AlphaCap claimed to have invented the concept of online equity funding. Gust challenged AlphaCap’s claim, arguing the abstract idea of crowdfunding was not patentable because it was being done on the Internet. A district court agreed, ruling the patent ineligible under *Alice* and forcing AlphaCap to reimburse Gust’s legal fees.<sup>3</sup>



**Nutritionix is a startup that offers a nutrition calculator and database to restaurants so that they can offer their guests more accurate nutrition information.** DietGoal sued Nutritionix for infringement of a patent directed to using menus on a computer. In 2014, days after *Alice* was decided, a district court threw out DietGoal’s patent, explaining that it did not add anything that transformed the abstract idea into a patent-eligible invention.<sup>4</sup>



**In 2017, Blackbird sued Cloudflare, a company that offers a cloud network platform and provides web optimization and security services.** Blackbird accused Cloudflare of infringing a broad patent targeted to monitoring and modifying data streams. By early 2018, Cloudflare succeeded in having the case dismissed through a district court decision that relied on several recent Section 101 cases finding similar claims ineligible.<sup>5</sup>

1. *Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347 (2014).

2. “No Hero Souls for Patent Trolls,” Engine Blog. <https://medium.com/@EngineOrg/no-hero-souls-for-patent-trolls-7c5bca30168e>.

3. *Gust, Inc. v. AlphaCap Ventures, LLC*, 226 F. Supp. 3d 232 (S.D.N.Y. 2016).

4. “A Startups Runs in to a Patent on Picture Menus.” EFF Blog Saved by *Alice* Series. <https://www.eff.org/alice/startup-runs-patent-picture-menus>.

5. “Less Litigation Means More Innovation - Cloudflare,” Engine. <https://innovatewithoutfear.engine.is>; “Winning the Blackbird Battle,” Cloudflare Blog. <https://blog.cloudflare.com/winning-the-blackbird-battle/>.