

# Fed. Circ. Denies Another Stanford Genetics Patent Over Alice

By [Dani Kass](#)

Law360 (March 26, 2021, 3:49 PM EDT) -- For the second time this month, the Federal Circuit said Stanford University shouldn't get a patent for its way of calculating which parent genes are inherited from, finding Tuesday that the claims can't pass the [U.S. Supreme Court's](#) Alice test.

Stanford's patent application claims "abstract mathematical calculations and statistical modeling," with no added inventive concept, making it ineligible for a patent under [Alice](#) , the three-judge panel concluded. The same panel had [rejected](#) a related patent application on March 11, after hearing both cases in a consolidated hearing.

The patent application in Thursday's precedential opinion is directed to a "computerized statistical model for determining haplotype phase." Haplotype phasing is a way to figure out which parent a gene is inherited from, the opinion states.

A [U.S. Patent and Trademark Office](#) examiner had rejected the 2012 application, and the Patent Trial and Appeal Board agreed it wasn't patent eligible under Alice.

With Alice, courts first decide if claims are directed to an abstract idea, and if so, whether there's an added invention that can make it patent eligible. Stanford's application failed both parts of this analysis, the Federal Circuit said.

"Courts have long held that mathematical algorithms for performing calculations, without more, are patent ineligible under §101," the opinion states.

Stanford had argued that its way of computing haplotype phase was more efficient than past versions, but the panel said the university waived that argument by not raising it with the PTAB.

The school then said its haplotype predictions were more accurate than what already exists. The Federal Circuit said that doesn't matter, since the claims are still limited to ineligible subject matter.

"The different use of a mathematical calculation, even one that yields different or better results, does not render patent eligible subject matter," the opinion states.

The panel then found that those abstract concepts are implemented using "well known, routine, and conventional steps" on a normal computer.

"Indeed, it is hard to imagine a patent claim that recites hardware limitations in more generic terms than the terms employed by claim 1," the Federal Circuit added.

The remaining claims of the patent likewise were not able to pass Alice's test, the opinion states.

A representative for the USPTO declined to comment. Counsel for Stanford didn't immediately respond to a request for comment Thursday.

Circuit Judges Sharon Prost, Alan D. Lourie and Jimmie V. Reyna sat on the panel for the Federal Circuit.

Stanford is represented by Joel Kauth, David Bailey, Christian Hans and Mark Yeh of [KPPB LLP](#).

The USPTO is represented in-house by Maureen Donovan Queler, Thomas W. Krause, Frances Lynch and Amy J. Nelson.

The case is In re: The Board of Trustees of the Leland Stanford Junior University, case number [20-1288](#), in the [U.S. Court of Appeals for the Federal Circuit](#).

--Editing by Andrew Cohen.