

**FROM TELEGRAPHS TO CONTENT PROTECTION: THE
EVOLUTION OF SIGNALS AS PATENTABLE SUBJECT MATTER
UNDER 35 U.S.C. § 101**

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The patentability of communication signals under 35 U.S.C. § 101 first came before the Supreme Court in relation to Samuel Morse's telegraph. Contrary to the Court's ruling in O'Reilly v. Morse, however, the Federal Circuit recently held in In re Nuijten that useful, man-made signals are unpatentable because they do not fit within any of § 101's enumerated invention categories. As this Comment argues, the holding in Nuijten is based on artificial, overly narrow, and self-contradictory distinctions that are inconsistent with the expansive interpretation of § 101 mandated by the Court in Diamond v. Chakrabarty and Diamond v. Diehr. The holding in Nuijten also conflicts with the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), and is likely to impact substantive rights of inventors and frustrate important goals of patent reform, a current priority of both Congress and the executive branch.

I. INTRODUCTION

Samuel B. Morse, a Yale-educated portrait painter, built his first telegraph machine in 1835 in his spare time from his position

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