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DATE: March 16, 2015

RE: Comment on 2014 Interim Guidance on Patent Subject Matter Eligibility

PDQ Enterprises, LLC provides automated trading systems for financial securities.

Our comments respond to the Patent Office's request for comments on the 2104 Interim Guidance on Patent Subject Matter Eligibility, 79 FR 74618.

The Supreme Court's *Alice Corp. v. CLS Bank Int'l* test for subject matter eligibility has two steps: determining whether the claims are directed to a patent-ineligible exception, and if so, determining whether the claims include an inventive concept. We suggest that the first step be narrowly interpreted.

Narrow interpretation is consistent with the Court's intention: to avoid patents that claim the "building blocks of human ingenuity" and disproportionately tie up use of the underlying idea.

The difficulty arises because step one begins by determining whether the claim is directed to an abstract idea, without the "tie up" concern. As the Court recognized, an abstract idea can be found in almost anything. For instance, a chair embodies the abstract idea of supporting a human posterior. Thus, step one should explicitly weigh whether "tie up" occurs.

Our first suggestion is that "abstract idea" must be defined simply, i.e., [(gerund)] (noun) [to (result)], with the material in square brackets being optional. This simple definition focuses on the building block at risk of being tied up. Example 1: (measuring) (metabolites in the bloodstream) to (calibrate the dosage of thiopurine drugs), *Mayo*, cited in *Alice*. Example 2: intermediated settlement, *Alice*.

Our second suggestion is that (a) if there is comparable prior art that provides the same abstract idea, and the claims do not read on that prior art, or (b) applicant can identify how the abstract idea can be implemented in a way that is outside the claims beyond performing manually instead of on a computer, then the outcome of step one is that the claims are "directed to patent eligible material". This is because the comparable prior art, or applicant's identified implementation, demonstrates that the claims do not tie up use of the underlying idea.

This narrow interpretation will pass only a few claims to step two: those that would pre-empt use of the "building blocks".