

From: [e-mail redacted]
Sent: Wednesday, March 25, 2015 1:39 PM
To: 2014_interim_guidance
Subject: Comments on 2014 Interim Guidance on Patent Subject Matter Eligibility

Michelle K. Lee
United States Patent and Trademark Office

Re: Comments on 2014 Interim Guidance on Patent Subject Matter Eligibility

Dear Director Lee:

I am writing to comment on a specific confusion with the “2014 Interim Guidance on Patent Subject Matter Eligibility” as evidenced by the Office and Examiner pool. This is the distinction between a “product of nature” [not patent eligible subject matter] and a “natural product” [patent eligible subject matter].

A review of the pertinent court opinions shows that the term “natural product” is never used by the court. However, Examiners believe these two terms are interchangeable, and reject claims to natural products as being not patent eligible subject matter. This problem is most evident in claims to mixtures or combination compositions.

A few examples will illustrate this point.

Claims to:

Olive oil (alone) - not patent eligible subject matter [product of nature] Vinegar (alone) - not patent eligible subject matter [product of nature] Dried herbs (alone) - not patent eligible subject matter [product of nature]

Composition of a mixture of Olive Oil, Vinegar and Dried Herbs (salad dressing) - patent eligible subject matter [natural product – shows the “hand of man”]

Or;

Flour (alone) - not patent eligible subject matter [product of nature] Salt (alone) - not patent eligible subject matter [product of nature] Sugar (alone) - not patent eligible subject matter [product of nature] Yeast (alone) - not patent eligible subject matter [product of nature]

Combination of flour, salt, sugar and yeast (bread dough) - patent eligible subject matter [natural product – shows the “hand of man”]

The guidance confuses the ruling in Funk Brothers that a mixture of organisms (bacteria) is not patent eligible subject matter with a mixture of natural ingredients; which has always been patent eligible subject matter.

No court has ever ruled that a mixture or combination of ingredients (whether “product of nature” or not) is not patent eligible subject matter.

The guidance should make it clear to the examiners and public that any claimed composition not found “as claimed” in nature is patent eligible subject matter.