

From: Garth Janke [e-mail redacted]
Sent: Friday, August 14, 2015 2:11 PM
To: 2014_interim_guidance
Subject: Question regarding eligibility of Example 25 claim 2

Greetings,

I have a question regarding the analysis provided for the eligibility of claim 2 of Example 25 (rubber manufacturing). Maybe it can be classified as a comment, but I would appreciate an answer if possible because I am truly confused.

The claim recites a non-transitory computer readable medium that contains instructions that, IF they were executed by a processor, and IF the output of the processor were used to control a rubber molding press, would result in performing a patent eligible method. I understand that.

My question is whether just the medium itself is patent eligible even if the IF conditions aren't satisfied.

The preamble states that the instructions are "executed on a processor," but that would ordinarily be considered a statement of intended use, not a claim requirement.

The analysis of the eligibility of the claim mentions that the instructions "are used to control a rubber molding press," but other than this statement in the preamble, there isn't anything in the claim that requires this.

Moreover, the discussion does not indicate that this is an important consideration in the analysis of patent eligibility.

So I'm wondering if it is an important consideration in the analysis, whether the instructions are actually used to control a rubber molding press or not. If it is an important consideration, I wonder why that isn't particularly pointed out in the analysis; and if it is not an important consideration, I wonder why it isn't because a sequence of 1's and 0's is just numbers and I don't believe the Supreme Court would say that numbers are patent eligible.

Thank you for any assistance you can give to me toward answering my question.

Regards,

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