

March 6, 2019

VIA E-MAIL: Eligibility2019@uspto.gov

United States Patent and Trademark Office
600 Dulany Street
P.O. Box 1450
Alexandria, VA 22313

**RE: 2019 Revised Patent Subject Matter Eligibility Guidance,
Docket No. PTO-P-2018-0053**

To whom it may concern:

Eagle Forum Education & Legal Defense Fund (Eagle Forum ELDF), a nonprofit organization founded by Phyllis Schlafly¹ in 1981, fully supports the 2019 Revised Patent Subject Matter Eligibility Guidance, Docket No. PTO-P-2018-0053. The guidance, particularly in its revised form, clearly and beneficially makes sense of the confusion created by recent conflicted judicial rulings regarding unpatentable abstract ideas and patentable subject matter.

The guidance will provide clear, consistent, and predictable patent examination and post-grant review by officials at the U.S. Patent & Trademark Office (PTO). This is because of how the guidance categorizes exceptional “abstract ideas” and logically organizes and applies current jurisprudence in the area of patentable inventions (35 U.S.C. § 101).

With this revised guidance, PTO faithfully and accurately brings order to *Alice*,² *Mayo*,³ related 101 cases, and their conflicting, contradictory progeny. Eagle Forum ELDF wholeheartedly agrees that “[t]he growing body of precedent has become increasingly more difficult for examiners to apply in a predictable manner, and [we agree with] concerns [that] have been raised that different examiners within and between technology centers may reach inconsistent results.”⁴ No longer does comparing patent claims to those previously ruled as “be[ing] directed” to abstract ideas remain practical. Rather, the straightforward approach offered in the revised guidelines, based upon groupings of abstract ideas (mathematical concepts, methods of organizing human activity, and mental processes), promotes uniform, and thus consistent, analysis and decisionmaking.

¹ Phyllis Schlafly was an outspoken advocate of the rights of inventors, emphasizing the importance of those traditional rights to our national prosperity and security. She wrote often about this topic. A compilation of her writings on this topic is *Phyllis Schlafly Speaks, Vol. 4, Patents & Inventions*. Skellig America, 2018 (Ed Martin, Editor).

² *Alice Corp. v. CLS Bank Int'l*, 134 S.Ct. 2347 (2014).

³ *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S.Ct. 1289 (2012).

⁴ <https://www.federalregister.gov/documents/2019/01/07/2018-28282/2019-revised-patent-subject-matter-eligibility-guidance> (viewed 3/6/19).

We commend the PTO for deriving order and practical applicability out of the chaos of judicial rulings on patentable subject matter. This achievement is vitally important. The U.S. Chamber of Commerce Global Innovation Policy Center’s 2019 ranking of the United States patent system specifies “[c]ontinued uncertainty over patentability for high-tech sectors” as a key area of weakness in the U.S. patent system.⁵

The stakes of achieving clear, consistent, predictable determinations of what is and is not patentable are extremely high. The list of competition areas with China, other East Asian countries, and European Union nations is long — and growing. It includes nanotechnology, biotechnology, drug development and delivery mechanisms, 5G telecommunication, genetic medicine and diagnostics, solar power, quantum computing, and the like. These patent-heavy arts and sciences involve subject matter that U.S. courts are capriciously rendering unpatentable, while our foreign competitors continue to construe inventions in these areas as patentable. The United States is in a technology race, if not a war. Without a strong patent system and first-to-market process, the United States will lose that race — with profound implications for our standard of living, industrial competitiveness, and national security.

Therefore, Eagle Forum Education & Legal Defense Fund strongly supports this revised guidance as a positive, practical, and prudent measure. We deeply appreciate that this guidance seeks certainty and predictability in patentable subject matter decisions, insofar as it is possible under the flawed rulings of courts which have the luxury of abstractly divining “abstract ideas” in cutting-edge technologies as though the consequences of their rulings did not matter or cost investors billions of dollars or cost American society dearly.

Respectfully submitted,

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⁵ Global Innovation Policy Center, “Inspiring Tomorrow: U.S. Chamber International IP Index,” p. 106 (7th ed. February 2019).