

From: Calogero.Stephen
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To: Eligibility2019
Subject: IGT Comments to Eligibility Guidance

IGT reviewed the 2019 Revised Patent Subject Matter Eligibility Guidance (“Revised Guidance”) that was published in the Federal Register on January 7, 2019. IGT thanks Director Iancu and the PTO for their efforts in this critically important area. IGT supports the Revised Guidance as a reasoned approach to the current issues associated with statutory subject matter eligibility that will increase the clarity and consistency in how Section 101 is currently applied. More importantly, the Revised Guidance is consistent with decisions from the Supreme Court and the Federal Circuit.

IGT would like to emphasize what the PTO itself recognized on page 52, note 11 - “[i]n other words, the finding that the subject matter claimed in a prior patent was ‘abstract’ as claimed may not determine whether similar subject matter in another application, claimed somewhat differently or supported by a different disclosure, is directed to an abstract idea and therefore patent ineligible.” IGT hopes the Examining Corps and PTAB will read this as a warning to perform the examination steps outlined in the Revised Guidance for each and every claim as a whole, without a mindset that has been influenced by prior Federal Circuit cases where similar subject matter was found to be directed towards an abstract idea.

IGT is particularly encouraged by Prong Two as described on page 54, which states that “If the recited exception is integrated into a practical application of the exception, then the claim is eligible at Prong Two of revised Step 2A. This concludes the eligibility analysis.” By adding the practical application language, IGT believes that there is more clarity and certainty related to a practical exception when compared with the previous subjective evaluation as to whether an additional element is well-understood, routine, or conventional.

Best regards,

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