

From: Lawrence Glaser
Sent: Tuesday, March 5, 2019 8:33 PM
To: Eligibility2019
Subject: The views of a small, independent inventor. re 101 We need help to restore the value in Patents. The little guy does matter.

Dear Director Lancu:

My name is Lawrence F. Glaser. In the USPTO data base you will find some 40+ inventions of mine, many have been Patented.

I have suffered many indignities along the way. I was billed \$ 600,000 in prosecution fees for essentially 1 application which resulted in US 8041604 being issued 13 years after it was filed. I then had to pay 25% brokerage fees and 25% + legal fees to get it sold, get my bill slightly reduced and paid off and never got to enjoy the time or right to shop the invention. Its only GOOGLES entire business plan in a single Patent. That's all.

I achieved the Patent known as 7462485, Enucleated Erythrocytes, only to have another agency of the Federal Government and some outside people relating to that agency, double patent the same concept long after I achieved my Patent for it. Many tens of millions have been spent developing the invention, and of course, that is due to it WORKING TO PERFECTION. Its only worth trillions of dollars. So its very logical that someone would steal it away. And they did.

I have another abandoned application only abandoned because, at some point, one runs out of capital. And in that application is the actual cure for AIDS. No joke. No stretch. It simply is. And no one else, in all this time, has stumbled on it, either in writing or in the lab. It is a method through which DNA and RNA is viewed, as it should be viewed, as a computer program which is both hardware and software all in the same single embodiment. eg each nucleotide or peptide. DNA and RNA pose a question. If one understands the question, the answer is the same, a DNA or RNA sequence which answers the question. HIV infection is easily and readily cured forever,

using the concept I started to patent and had to let go. I learned several valuable lessons from these events. I keep my best to myself.

I would like to thank you for your initiative to resolve the 101 mayhem. Your subject matter eligibility guidance will help with most of the 101 problems if interpreted and implemented properly by the examiners and PTAB judges. Therefore, the highest risk to your subject matter eligibility guidance is the interpretation and implementation by the examiners and PTAB judges. The following are suggestions on how to further improve the guidance and how to ensure its correct interpretation and implementation.

1. In the article <https://www.ipwatchdog.com/2019/01/28/director-iancu-training-101-guidance/id=105649/>, an “examiner wrongly thought that the new guidance created a new ‘practical application’ burden” This is contrary to the guidance actually identifying an alternative path to establishing that a claim is patentable under Section 101. This shows how easily confused some examiners can be. Hence, it is critically important to **include in the guidance or its training material, the purpose of the guidance**. For example: “In addition to predictability, **the purpose of the guidance is to provide alternative paths to patent eligibility**, thereby substantially reducing the number of 101 rejections”.

This high-level clarification right in the general purpose of the guidance will set a clear tone for the guidance and avoid confusion such as described in the referenced article.

2. The guidance states that a claim is patent eligible if it does not recite an abstract idea (i.e. mathematical concept, etc.) “on its own or per se”. For computer implemented inventions, it is a real possibility, and even likelihood, that some examiners will ignore the “on its own or per se” requirement and will interpret this as a claim being patent ineligible if it recites an element that uses a mathematical concept. All computer implemented inventions include elements that use mathematical concepts at some level. Therefore, some

examiners will wrongly continue issuing 101 rejections for computer implemented inventions, whereas, this is clearly not the intent of the guidance. It is critically important that the guidance or its training material **provides at least one example of a claim for a computer implemented invention that recites only a mathematical concept that is not patent eligible** (i.e. a method comprising adding A and B to result in C). It is further critically important that the guidance or its training material **provides at least one example of a claim for a computer implemented invention that recites elements that use mathematical concepts, but do not recite mathematical concepts “on their own or per se”, that is patent eligible** (i.e. a method comprising: receiving or generating a, b, and c using some process or analysis; generating data structure A including a, b, and c; accessing data structure B in a memory of a computer; evaluating data structure A and data structure B to determine at least partial match; causing the computer or a device controlled by the computer to perform some operation based on the determination).

3. The guidance mentions that:

“a judicial exception has not been integrated into a practical application: ... [if it] merely includes instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea”.

This language is clearly directed to fundamental business practices, organizing human activities, and other well-established human practices that use a computer merely as a tool (see the Supreme Court opinion in *Alice v. CLS Bank International*, 134 S. Ct. 2347 (2014)). This language is clearly not directed to computer implemented inventions (i.e. new forms of search algorithm which is superior to the prior art, artificial intelligence, robotics, autonomous vehicles and devices, image processing, databases, computer/video games, computer simulations, content processing, and many more) that arise out of or are inherently implemented on a computer. It is unimaginably irrational to attempt to make computer implemented inventions that arise out of or are inherently implemented on a computer patent ineligible simply because they are implemented on a computer. DNA and RNA is a

chemical computer, which can mark time, add, subtract, detect, react, replicate, err, detect errors and self correct for errors and as such, has been traditionally allowed as patent eligible under specific conditions.

It is critically important to include in the new guidance or its training material an explanation that the language stating that “a judicial exception has not been integrated into a practical application: ... [if it] merely includes instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea” **applies only to fundamental business practices, organizing human activities, and other well-established human practices that use a computer merely as a tool and that computer implemented inventions** (i.e. artificial intelligence, robotics, autonomous vehicles and devices, image processing, databases, computer/video games, computer simulations, content processing, and many more) that arise out of or are inherently implemented on a computer are patent eligible as the patent law explicitly states.

4. It has been a long trend that many examiners routinely label all non-hardware elements of a computer implemented invention as abstract ideas with no, marginal, or incomplete analysis and label all hardware elements as “additional elements”. The examiners then merely state that the “additional elements” are well-known and do not add anything to the abstract ideas. This initial miss-classification of abstract ideas and “additional elements” then prevents examiners from ever analyzing whether non-hardware elements are well understood, routine, or conventional as required in step 2B of the *Alice/Mayo* framework, since the analysis of whether an element is well understood, routine, or conventional applies only to the “additional elements”. This is an irresponsible practice and examiners who practice this should be identified and educated to correct their practice. It is critically important to clearly **state in the guidance or its training material that only non-hardware elements that recite an abstract idea “on its own or per se” are “abstract ideas” and all other non-hardware elements are “additional elements”**.

5. It is often the case in computer implemented inventions that a data structure, combination of data structures, element including a data structure, process that operates on a data structure, process that uses a data structure, or other element related to a data structure provides crucial novelty and enables a novel system. It has been a long trend that many examiners routinely label data structures or anything related to data structures as abstract ideas with no, marginal, or with incomplete analysis.

Since many computer implemented inventions use data structures, these inventions were unjustly doomed to patent ineligibility right from the start. In the guidance's groupings of abstract ideas, the only one that has any relation to data structures is "Mathematical concepts—mathematical relationships, mathematical formulas or equations, mathematical calculations". Since a data structure IS an arrangement—often very complex —of data stored in memory, a data structure IS NOT a mathematical relationship, mathematical formula or equation, or mathematical calculation. Hence, a data structure is not an abstract idea. Further, many data structures – especially complex ones such as trees, graphs, neural networks, variously linked nodes, variously linked data structures, etc.—are embodiments of a practical application **described under prong 2 of the guidance as patent eligible**. Therefore, it is critically important to clearly **state in the guidance or its training material that data structures are not abstract ideas and that inventions reciting data structures are patent eligible**.

6. It has been a recent trend to issue blanket 101 rejections with no, marginal, or incomplete analysis in art units dealing with artificial intelligence inventions. This is an irresponsible practice and examiners who practice this should be identified and educated to correct their practice. It is beyond belief that the United States would cripple itself by limiting innovation in a crucial field such as AI, especially in view of the heated global race for dominance in this field. It is critically important to **clearly state in the guidance or its training material that artificial intelligence inventions are patent eligible. Provision of guidance as to how to arrive at a fair, "China-like" analysis should take place, lest we fall so far behind China runs the planet with their**

machines...given say 20-30-40 years. AI will exceed human intelligence and may do so right now. Consider high frequency trading on wall street as but one example. Speed does win in such a setting and if you magnify this to trading of cyber currency, global currency, in exchange of intangible assets or even tangible commodities, falling behind in AI could doom our society in the not too distant future.

In closing, you see how the little guy has to feel at the end of the road. No great invention is allowed in that its just taken away if its too good.

All the middle stuff, its just PTAB-ED out of existence. And the small ideas, not worth bothering in the mind of the aggressor. You have to put yourself in unclean settings and see or think how all the rules and regulations can be abused. I would equate this to FINRA, who allows its membership to accept high paying jobs from large brokerages and banks, right after finding for that brokerage or bank in an arbitration proceeding.

Our Nation is sick and as we devour ourselves, others pass by us like we are going backwards, because we are.

Another step that would help>> Pass a law, for those who would buy a patent and develop it here, use US labor, US parts, use the US patent made by a US citizen, let them take as much as 10 times the cost of the patent as a tax break. You can make this dependent upon enough profits to offset, so they have to make money with the idea.... so then, why not? Coming out of the gate when the 10 - fold write off is used up, what happens to our IRS' tax base? It explodes and so too, do EXPORTS. Everyone wins.

Sincerely,

Larry Glaser
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