

From: Jeff Hardin
Sent: Friday, March 8, 2019 11:52 PM
To: Eligibility2019
Subject: Additional Comments for Section 101 Guidance

Director Iancu:

The USPTO should be aware that the Electronic Frontier Foundation (EFF) is encouraging anyone on the Internet to object to the patent eligibility guidance and encouraging them to copy/paste scripted boilerplate text and send to the USPTO as legitimate comments. (I have provided the full text of the EFF below.)

It is unfortunate, however, that THE ARGUMENTS MADE BY EFF in their scripted text INCORRECTLY interpret Alice and the intent of the guidance. EFF'S arguments states that

- a) rather than the USPTO adopt the guidance, "the USPTO should provide guidance that ensures examiners apply the Supreme Court's Alice v. CLS Bank decision correctly",
- b) "[the guidance] distorts the law and will encourage examiners to grant invalid, abstract patents", and
- c) "the USPTO's role is not to narrow Supreme Court holdings, it is to apply them."

With respect to a), what the EFF does not recognize is what the issued guidance does: the Supreme Court's explicit instructions and warning in applying Alice. The Supreme Court said, and as the guidance clearly states, "[a]t some level, all inventions embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas," and thus the Supreme Court cautioned "to tread carefully in construing this exclusionary principle lest it swallow all of patent law." Accordingly, a study of the guidance does indeed show that the guidance provides the correct application.

With respect to b), the guidance does not distort law as the EFF claims, but instead uses the law and its interpretations in a precise way that brings improved consistency and predictability to patent eligibility.

With respect to c), the USPTO is not narrowing the Supreme Court holdings. One could just as easily argue that the EFF seeks to broaden the Supreme Court holding in Alice, when the Supreme Court explicitly warns against doing so, lest all of patent law be swallowed. Rather, the USPTO's role is to support and defend the Constitution, which includes executing the law, particularly the law as expressed by Congress.

I emphasize my disapproval of the EFF's scripted boilerplate language and any comments you receive containing such, and I clearly state my agreement with the guidance.

Very truly yours,

Jeff Hardin
Pro Se Inventor & Business Owner
Inventor Rights Coalition, board member

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The EFF's verbatim boilerplate language is as follows:

"I urge the USPTO not to adopt the guidance on subject matter eligibility set forth in the Request for Comments, Docket No. PTO-P-2018-0053. Instead, the USPTO should provide guidance that ensures examiners apply the Supreme Court's *Alice v. CLS Bank* decision correctly.

The new guidance expands upon a small number of decisions finding patent claims eligible and ignores the far more numerous decisions in which courts have rejected claims as ineligible for patent protection. It distorts the law and will encourage examiners to grant invalid, abstract patents. Such patents wrongly claim basic ideas, increase litigation costs to no benefit, and harm the public interest.

The USPTO's role is not to narrow Supreme Court holdings, it is to apply them. Please abandon revisions to the Patent Subject Matter Eligibility Guidance."

Link: <https://act.eff.org/action/save-alice-tell-the-patent-office-to-apply-supreme-court-law>