

From: Ranjeev Singh
Sent: Tuesday, March 5, 2019 3:35 PM
To: Eligibility2019
Cc: Ranjeev Singh
Subject: In support of the 2019 Revised Subject Matter Eligibility Guidance

I appreciate the US PTO's efforts to provide clear and detailed guidance to the patent examiners for evaluating subject matter eligibility under 35 USC 101.

Almost all of the public comments that oppose this new guidance regurgitate Electronic Freedom Frontier's canned email.

EFF opposes the new guidance based on the specter of increased litigation costs and harm to the public interest. EFF ties this specter to the return of the "bad old days, when [the US PTO] freely handed out abstract software patents." (see <https://act.eff.org/action/save-alice-tell-the-patent-office-to-apply-supreme-court-law>). In doing so, EFF ignores other massive changes in patent law that have reduced patent litigation involving software patents. These changes include the passage of the America Invents Act, which led to the creation of the Patent Trial and Appeal Board to "correct errors" by canceling previously granted claims. In addition, EFF ignores the effects of the Rule 12(b)(6) dispositions of patent cases at the pleadings stage. Without evaluating the effects of these changes, EFF implores the public to oppose this new guidance. This type of fear mongering does not advance justice and harms the public interest.

As an administrative agency with the expertise in examining, granting, and revoking patents, the US PTO is required to provide detailed guidance to the patent examiners. While the Supreme Court has the power of judicial review, the US PTO's role is to implement regulations and provide guidance consistent with the laws handed out by Congress. 35 USC 101, which governs patent subject matter eligibility, states: "**Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.** (emphasis added). While the US Supreme Court has the power to interpret this statute, it does not have the power to modify or otherwise change the scope of this statutory provision. The US PTO, being the expert administrative agency, has both the delegated power and the obligation to interpret this statute and provide guidance to the patent examiners. As part of this authority, the US PTO has the right to interpret the judicial exceptions created by the US Supreme Court and provide appropriate guidance to the patent examiners.

While one may quibble with the US PTO's interpretation of the Supreme Court's holdings, I support the new guidance from the US PTO because it provides more detailed guidance to the patent examiners such that they can determine subject matter eligibility in a more consistent fashion. This new guidance also helps inventors and patent attorneys/agents in better understanding the manner in which the patent claims will be examined to determine whether they are subject matter eligible under 35 USC 101. Consistency and clarity in determining patent subject matter eligibility advances justice and serves the public interest. Therefore, I support the new guidance.

Best regards,

Ranjeev Singh

Disclaimer: These comments do not represent the views of Singh Law, PLLC. My personal views are subject to change based on better, or new, evidence of harm to the public interest or any roadblocks to justice.