

Jan 5<sup>th</sup>, 2019

To: Director Iancu

From: Stakeholder

As a follow up to my letter from yesterday (Jan 4<sup>th</sup>), two more important questions regarding the *2019 Revised Patent Subject Matter Eligibility Guidance* come to mind.

Again; specifically regarding (p.7):

*“Rejections will continue to be based upon the substantive law, and it is those rejections that are appealable to the Patent Trial and Appeal Board (PTAB) and the courts. All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance. Failure of USPTO personnel to follow the guidance, however, is not, in itself, a proper basis for either an appeal or a petition.”*

6. If the APJs *are not* subject to the new guidance, doesn't this also mean that the Board has free reign to issue their own brand new -- and/or different --101 rejections . . . which may or may not follow this new guidance . . . with the applicant / patent owner having no recourse to traverse such rejections at the Board; or to appeal to the CAFC?

7. And when the guidance states: "*Failure of USPTO personnel to follow the guidance, however, is not, in itself, a proper basis for either an appeal or a petition.*" ; does, "in itself" mean "by itself" ; such that an appeal or petition *cannot* be taken if non-compliance by non-APJs (e.g. Examiners) is *the only* basis for the appeal or petition . . . but *can be* taken if there is one or more *other* basis' for the appeal?

Thank you,  
Stakeholder