The Short Artificial Intelligence Comment on MPEP2018_Sect2106: NO IMPROVEMENT.

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In the FSTP-Project the above term "Artificial Intelligence, AI" does not have the usual free-style meaning, but stands for "Deterministic Mathematical Artificial Intelligence, AI"[1.a)]. This specific rigorous scientific approach to applying Substantive Patent Law ("SPL") is possible[e.g.415,440] and absolutely indispensable for guaranteeing consistency to the Supreme Court's framework over all claimed inventions (as shown by e.g.[e.g.415,423]). The MPEP2018_Sect2106 is not of this rigor and hence can't provide this consistency and scientificity of SPL-precedents, e.g. about all DNAtech-"ETCIs" ("Emerging Technology Claimed Inventions").

To guarantee this consistency, i.e. for achieving this rigor, this MPEP2018_Sect2106 would have had to remove the legal errors (comprised by its preceding versions of the "USPTO's guidance on subject matter eligibility") – and with them the so implied disastrous vagueness[e.g.415], especially of the ●BRI and USPTO's ●incomplete interpretation of the Supreme Court's PE-analysis – which it both does not do. All such legal errors are discussed in detail in several preceding FSTP-publications[e.g.415,423] (2 of which are just quoted, below b)).

It is important to note that the Supreme Court, when launching for the US-SPL by its "*MBA* framework"c) a paradigm refinement[335] for improving ETCIs' protection by SPL, explicitly invited improvements[d)] for it. Due to the well-known "paradigm paralysis"[335] this paradigm refinement is (as usual) only slowly and only partially and hence faultily accepted by this community. Yet, it nevertheless will soon come to its correct end – enforced by its practical&economical&cognitional incredible advantages for any patent-/innovation-business[9] – which most of Section2106 will not survive. History teaches this clearly: Through all paradigm refinements for achieving the scientification of the model/theory/practice/… based on this paradigm, here of the 'classical' SPL interpretation.

- The 'BRI' legal error. The BRI has always been a bone of contention between the patent community[e.g.37] and the USPTO (loving its sweeping interpretability, even comprising nonsense-interpretations[364]) – but is also supported by opinion makers therein – and contradicts the Supreme Court's *MBA*-framework[e)], which precisely defined it in *Biosig*. Scientifically the BRI is an indefinite alias indefinable notion[f)] (in spite of[56] itself being indefinite) – legally: a 'vague legal concept' [f)].
- The '*MBA* framework interpretation' legal error. According to the *MBA*-framework definition this interpretation comprises several evident (and mathematically provable) independent legal errors[g)/[415,423]], such as *'*transforms the nature …*' and *'*significantly more …*'. This interpretation fails to determine their precise meanings – as it is provided in[e.g.415,423], but unfortunately not grasped by the authors of this

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[1] .a – focused on an invention's "definiteness, DE", "patent-eligibility, PE", and "patentability, PA", hence inevitably comprising also the "claim interpretation" for this invention's claim construction –

.b NOTE: Any legal error in an ETCI's "Knowledge Representation, KR" is an inconsistency to the Supreme Court's *MBA* framework. A cohesive and didactical presentation will come with[182] before the end of the year, see also the IES prototype[e.g. 440].

.c The "*MBA*" abbreviates the "*KSR/Bilski/Mayo/Myriad/Biosig/Alice*" – using the initials of their most crucial Supreme Court decisions.

.d Justice Breyer[69]: "*Different judges can have different interpretations. All you're getting is mine, ok? I think it's easy to say that Archimedes can't just go to a boat builder and say, apply my idea [i.e. the natural phenomenon of a boats' water displacement] …. Everybody agrees with that. But now we try to take that word "apply" and give content to it. And what I suspect, in my opinion, Mayo did and Bilski and the other cases, is to sketch an outer shell [i.e. framework] of the content, hoping that the experts, you and the other lawyers and the CAFC, could fill in a little better than we had done the content of that shell…*" [highlights added]

.e Justice Ginsberg[81,127] (as to BRI[USPTO]'s untenability): "*It cannot be sufficient that a court can ascribe some meaning to a patent's claims ... post hoc",* and Constitution authorized "*…to inventors the exclusive right to their discoveries, ..*" [highlights added]

.f Chief Justice Roberts[279] (as to the coexistence of the BRI[USPTO] and the BRI[CAFC[56]]): "*…it's a very extraordinary animal in legal culture to have two different proceedings addressing the same question that lead to different results. …. I'm sorry. It just seems to me that's a bizarre way to decide a legal question.*".

.g – caused by ignoring its linguistic & legal implications[d)] (as not interpreting parts of its definition, e.g. in *Alice*[e.g.415], although this complete interpretation is evidently necessary for the meaningfulness of the Supreme Court's 'framework' definition[e.g.415]). Analytic Philosophy tells us that such absolutely indispensable cognitions are constitutive for correct thinking. Thereby this MPEP version's additional tiny progress towards grasping the *MBA* framework – nevertheless by now still not noticing all its notions!!! – is not an improvement.

Section2106, evidently not familiar with the AI[1.a)] applied here – without which the inacceptable vagueness of the USPTO's preceding PE guideline[415] documents is not really improved[1.g)].

This Sect2106 does not explain, why it completely ignores the simple and clean cut/defined scientific PE-criterion that the author determined/explained/published[415]. It hence will prevail, anyway – as any mathematically proven cognition.

In total: The MPEP2018/Sect2106 does not support by[1.d)] adjusting/refining the SPL-precedents about ETCIs to their needs for improving their patent protection – i.e. through the Supreme Court's SPL-reinterpretation yielding its *MBA*-framework. Its legal errors achieve the contrary by the sweeping vagueness that they inevitably imply[415,423].

The FSTP-Project's Reference List

FSTP = Facts Screening/Transforming/Presenting (Version of 26.02.2018*)
Most of the FSTP-Project papers below are written in preparation of the textbook[182] – i.e. are not fully self-explanatory independent of their predecessors.

[2] AIT: "Advanced Information Technology" alias "Artificial Intelligence Technology" denotes cutting edge IT areas, e.g. Knowledge Representation(KR)/ Description Logic (DL)/ Natural Language (NL)/ Semantics/ Semiotics/ System Design/… just as MAI & MKR: "Mathematical Artificial Intelligence & Mathematical Knowledge Representation", the resilient fundament of AIT and "Facts Screening/Transforming/Presenting, FSTP"-Technology, both developed here.— currently most of it still being in 'status nascendii'[182]

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[9] .a S. Schindler, "Patent Business – Before Shake-up", 2013*).
.b S. Schindler, "Patent Business – Before Shake-up", 2015*).
.c S. Schindler, "Patent Business – Before Shake-up", 2018, to be publ. soon.

[56] CAFC Decision Phillips v. AWH Corp., 12.07.2005

[64] B. Wegner, S. Schindler: "A Mathe. Structure Modeling Inventions", Coimbra, CICM-2014*).

[69] USSC, Transcript of the oral argument in *Alice* Corp. v. CLS Bank, 31.03.2014*).

[81] S. Schindler: "To Whom is Interested in the Supreme Court's Biosig Decision"*)

[113] S. Schindler: "The CAFC's Rebellion is Over – The USSC, by *Mayo/Biosig/Alice*, ..", publ.07.08.2014*).

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[157] USPTO: "2014 Int. Guidance on Pat. Subj. M. Eli. & Examples: Abs. Ideas"*).

[160] S. Schindler: "The USSC *Mayo*/*Myriad*/*Alice* Decisions, The PTO's Implementation by Its IEG, The CAFC's *DDR* & *Myriad* Recent Decisions"*), publ. 14.01.2015*), its short version*), and its PP presentation at USPTO, 21.01.2015*)..

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[351] B. Wegner: "FSTP – Math. Assess. of ETCIs' Quality", GIPC, New Delhi, 11.-13.01.2017*).

[352] D. Schoenberg: "The IES Prototype Qualif. Machine " GIPC, N.New Delhi, 11.-13.01.2017*)

[353] S. Schindler: "The Lesson to be Learned from the US PE Hype.", publ. 11.12.2016*).

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*) ***document and full list available at www.fstp-expert-system.com***