

101 Method Eligibility Quick Reference Sheet

The factors below should be considered when analyzing the claim **as a whole** to evaluate whether a method claim is directed to an abstract idea. However, not every factor will be relevant to every claim and, as such, need not be considered in every analysis. When it is determined that the claim is patent-eligible, the analysis may be concluded. In those instances where patent-eligibility cannot easily be identified, every relevant factor should be carefully weighed before making a conclusion. Additionally, no factor is conclusive by itself, and the weight accorded each factor will vary based upon the facts of the application. These factors are not intended to be exclusive or exhaustive as there may be more pertinent factors depending on the particular technology of the claim. For assistance in applying these factors, please consult the accompanying “Interim Guidance” memo and TC management.

Factors Weighing Toward Eligibility:

- Recitation of a machine or transformation (either express or inherent).
 - Machine or transformation is particular.
 - Machine or transformation meaningfully limits the execution of the steps.
 - Machine implements the claimed steps.
 - The article being transformed is particular.
 - The article undergoes a change in state or thing (e.g., objectively different function or use).
 - The article being transformed is an object or substance.
- The claim is directed toward applying a law of nature.
 - Law of nature is practically applied.
 - The application of the law of nature meaningfully limits the execution of the steps.
- The claim is more than a mere statement of a concept.
 - The claim describes a particular solution to a problem to be solved.
 - The claim implements a concept in some tangible way.
 - The performance of the steps is observable and verifiable.

Factors Weighing Against Eligibility:

- **No recitation of a machine or transformation (either express or inherent).**
- Insufficient recitation of a machine or transformation.
 - Involvement of machine, or transformation, with the steps is merely nominally, insignificantly, or tangentially related to the performance of the steps, e.g., data gathering, or merely recites a field in which the method is intended to be applied.
 - Machine is generically recited such that it covers any machine capable of performing the claimed step(s).
 - Machine is merely an object on which the method operates.
 - Transformation involves only a change in position or location of article.
 - “Article” is merely a general concept (see notes below).
- The claim is not directed to an application of a law of nature.
 - The claim would monopolize a natural force or patent a scientific fact; e.g., by claiming every mode of producing an effect of that law of nature.
 - Law of nature is applied in a merely subjective determination.
 - Law of nature is merely nominally, insignificantly, or tangentially related to the performance of the steps.
- The claim is a mere statement of a general concept (see notes below for examples).
 - Use of the concept, as expressed in the method, would effectively grant a monopoly over the concept.
 - Both known and unknown uses of the concept are covered, and can be performed through any existing or future-devised machinery, or even without any apparatus.
 - The claim only states a problem to be solved.
 - The general concept is disembodied.
 - The mechanism(s) by which the steps are implemented is subjective or imperceptible.

NOTES:

1) Examples of general concepts include, but are not limited, to:

- Basic economic practices or theories (e.g., hedging, insurance, financial transactions, marketing);
- Basic legal theories (e.g., contracts, dispute resolution, rules of law);
- Mathematical concepts (e.g., algorithms, spatial relationships, geometry);
- Mental activity (e.g., forming a judgment, observation, evaluation, or opinion);
- Interpersonal interactions or relationships (e.g., conversing, dating);
- Teaching concepts (e.g., memorization, repetition);
- Human behavior (e.g., exercising, wearing clothing, following rules or instructions);
- Instructing “how business should be conducted.”

2) For a detailed explanation of the terms machine, transformation, article, particular, extrasolution activity, and field-of-use, please refer to the Interim Patent Subject Matter Eligibility Examination Instructions of August 24, 2009.

3) When making a subject matter eligibility determination, the relevant factors should be weighed with respect to the claim **as a whole** to evaluate whether the claim is patent-eligible or whether the abstract idea exception renders the claim ineligible. When it is determined that the claim is patent-eligible, the analysis may be concluded. In those instances where patent-eligibility cannot be easily identified, every relevant factor should be carefully weighed before making a conclusion. Not every factor will be relevant to every claim. While no factor is conclusive by itself, the weight accorded each factor will vary based upon the facts of the application. These factors are not intended to be exclusive or exhaustive as there may be more pertinent factors depending on the particular technology of the claim.

4) Sample Form Paragraphs:

a. Based upon consideration of all of the relevant factors with respect to the claim as a whole, claim(s) [1] held to claim an abstract idea, and is therefore rejected as ineligible subject matter under 35 U.S.C. § 101. The rationale for this finding is explained below: [2]

1. In bracket 2, identify the decisive factors weighing against patent-eligibility, and explain the manner in which these factors support a conclusion of ineligibility. The explanation needs to be sufficient to establish a *prima facie* case of ineligibility under 35 U.S.C. § 101.

b. Dependent claim(s) [1] when analyzed as a whole are held to be ineligible subject matter and are rejected under 35 U.S.C. § 101 because the additional recited limitation(s) fail(s) to establish that the claim is not directed to an abstract idea, as detailed below: [2]

1. In bracket 2, provide an explanation as to why the claim is directed to an abstract idea; for instance, that the additional limitations are no more than a field of use or merely involve insignificant extrasolution activity; e.g., data gathering. The explanation needs to be sufficient to establish a *prima facie* case of ineligibility under 35 U.S.C. § 101.