

A is for Alice, and 2A is for AI: Request for Comments on the New Guidance Update on Subject Matter Eligibility From the USPTO

A photograph of a modern building with a curved glass facade, showing multiple floors and windows, set against a light blue sky.

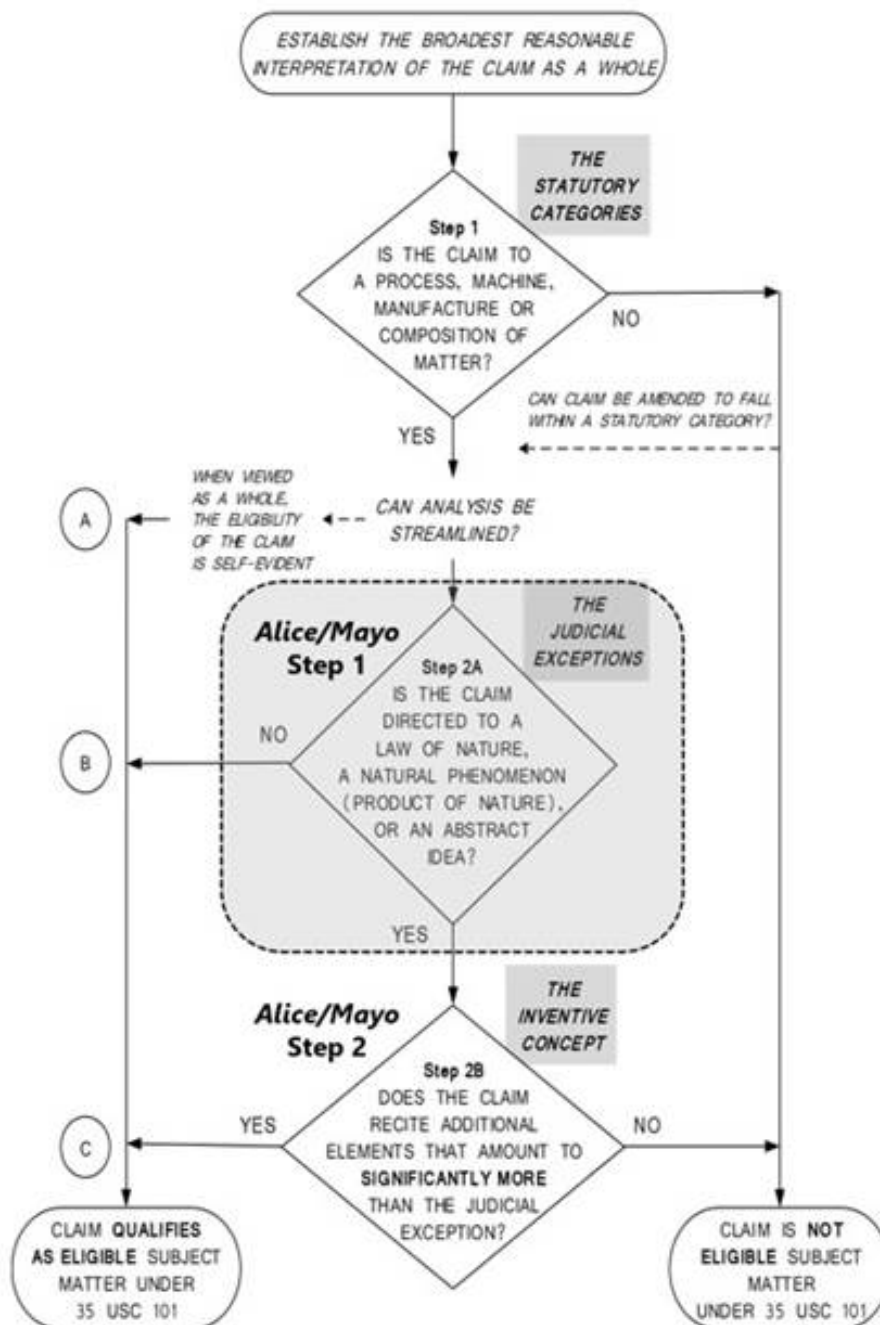
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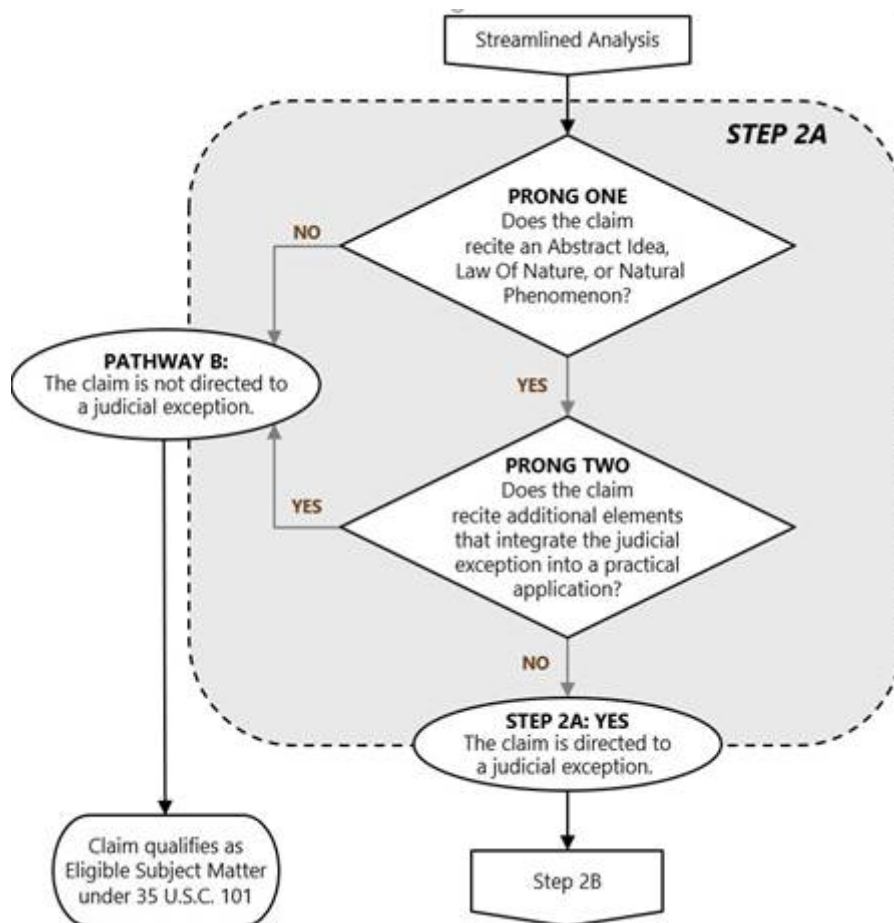
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The 2024 Guidance Update on patent subject matter eligibility applicable to AI inventions, which will be incorporated into the MPEP “in due course,” is scheduled to be published in the Federal Register on July 17, 2024. Comments (which will be available for public inspection) may be submitted during the period of 60 days after the date of publication through www.regulations.gov, Docket No. PTO-P-2024-0026.

The current subject matter eligibility guidance in MPEP §§ 2103-2106.07(c) is shown in this flowchart:



Step 2A of the USPTO's subject matter eligibility analysis, illustrated in the next flowchart, is a two-prong inquiry evaluating (1) whether a claim recites an abstract idea (mathematical concepts, methods of organizing human activity, mental processes) or other judicial exception (law of nature, natural phenomenon), see MPEP § 2107.04(a)-(c); and (2) if so, whether the claim as a whole integrates the recited judicial exception into a practical application of the exception, in which case the claim is patent-eligible, or whether the claim is directed to the judicial exception, in which case the claim requires further analysis pursuant to MPEP § 2106.05(a)-(h).



Although AI-assisted inventions are not categorically unpatentable, the Guidance Update notes that it is common for claims to AI inventions to involve abstract ideas. The Guidance Update states that claims to AI inventions would be patent-eligible if they reflect improvements to the functioning of a computer or to another technology or technical field, but an improvement in the judicial exception itself is not an improvement in the technology. According to the Guidance Update, an important consideration in determining whether a claim improves technology is the extent to which the claim covers a particular solution to a problem or a particular way to achieve a desired outcome, as opposed to merely claiming the idea of a solution or outcome. AI inventions may provide a particular way to achieve a desired outcome when they claim a specific application of AI to a particular solution to a problem.

Section V of the Guidance Update provides a new set of examples to assist USPTO personnel in applying the USPTO's subject matter eligibility guidance to AI inventions during patent examination, appeal, and post-grant proceedings:

- Example 47: claims that recite limitations specific to AI, such as using an artificial neural network to identify or detect anomalies.
- Example 48: claims that recite AI-based methods of analyzing speech signals and separating desired speech from extraneous or background speech.
- Example 49: method claims reciting an AI model designated to assist in personalizing medical treatment to the individual characteristics of a particular patient.

The Guidance Update lists the following non-limiting hypothetical examples of claims that do not recite an abstract idea:

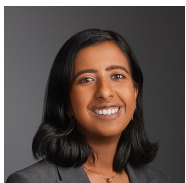
- Example 43: A treatment method comprising administering rapamycin to a patient identified as having Nephritic Autoimmune Syndrome Type 3
- Example 46: A system for monitoring health and activity in a herd of dairy livestock animals comprising a memory; a processor coupled to the memory programmed with executable instructions, including a livestock interface for obtaining animal-specific information for a plurality of animals in the herd, comprising animal identification data and at least one of body position data, body temperature data, feeding behavior data, and movement pattern data; and a herd monitor including (1) an RF reader for collecting the animal-specific information from a plurality of animal sensors attached to the animals in the herd when the animal sensors are within proximity to the RF reader, each animal sensor having an RF transponder, and (2) a transmitter for transmitting the collected animal-specific information to the livestock interface.
- Example 47: An ASIC for an artificial neural network comprising a plurality of neurons organized in an array wherein each neuron comprises a register, a processing element, and at least one input, and a plurality of synaptic circuits, each including a memory for storing a synaptic weight, wherein each neuron is connected to at least one neuron via one of the plurality of synaptic circuits.

An updated index of examples, including examples issued prior to this Guidance Update, is available at www.uspto.gov/PatentEligibility.

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