

Recent Developments You Should Know About Patent Subject Matter Eligibility

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Today's Speakers



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Topics

- Key Takeaways and Evaluating the 2019 Revised Patent Subject Matter Eligibility Guidance
 - 101 and 112 Guidance
 - Understanding Steps 2A and 2B
- Prosecution Strategies for Obtaining Valuable Patents Under New Guidance
- Pharmaceutical and Personalized Medicine Perspectives

2019 USPTO Guidelines

2019 USPTO Guidelines

▪ 101 Guidance

- Creation of three “categories” of abstract claims.
 - 1) Mathematical Concepts
 - 2) Certain Methods of Organizing Human Activity
 - 3) Mental Processes
- Practical Application Exception

▪ 112 Guidance

- *Williamson v. Citrix* case
- 112(f) application of functional claiming

Brief Review: Alice/Mayo Test for Subject Matter Eligibility

Concepts identified as Abstract Ideas by Courts
(MPEP 2106.04(a)):

Fundamental economic practices

- agreements between people or performance of financial transactions
- mitigating risks

Certain methods of organizing human activity

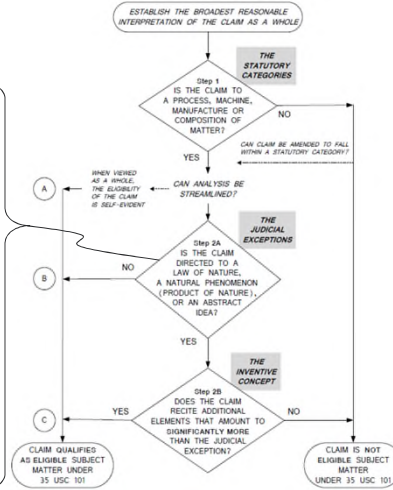
- managing relationships or transactions between people, or satisfying or avoiding a legal obligation
- advertising, marketing, and sales activities or behaviors
- managing human behavior
- tracking or organizing information

Mathematical relationships/formulas

- a mathematical relationship or formula
- performing mathematical calculations

An idea 'of itself'

- data comparisons that can be performed mentally or are analogous to human mental work
- organizing or analyzing information in a way that can be performed mentally or is analogous to human mental work
- ideas having no particular concrete or tangible form



101 Guidance

New 101 Guidelines: Revised Step 2A (Two Prongs)

Prong One – Subject Matter Considered an Abstract Idea:

Fundamental economic practices

- agreements between people or performance of financial transactions
- mitigating risks

Certain methods of organizing human activity

- Fundamental economic practices
- managing relationships or transactions between people, or satisfying or avoiding a legal obligation
- advertising, marketing, and sales activities or behaviors
- managing human behavior
- tracking or organizing information

Mathematical relationships/formulas/concepts

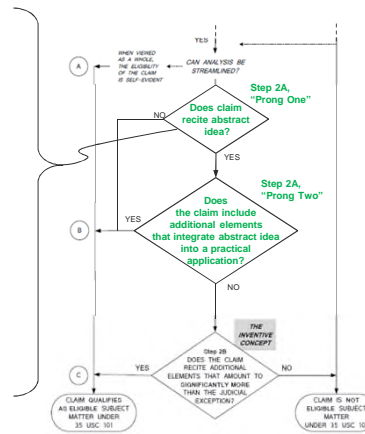
- a mathematical relationship or formula
- performing mathematical calculations

Mental Processes

- performed in the human mind (including an observation, evaluation, judgment, opinion)

An idea 'of itself'

- data comparisons that can be performed mentally or are analogous to human mental work
- ideas having no particular concrete or tangible form



101 Guidance – Three Categories (Step 2A, Prong One)

Category # 1 – Mathematical Concepts

- Mathematical relationships,
- Mathematical formulas or equations,
- Mathematical calculations.

Footnote examples:

- *Bilski v. Kappos* (“The concept of hedging ... reduced to mathematical formula.”)
- *SAP v. InvestPic* (“... series of mathematical formulas...”)
- *Diamond v. Diehr* (mathematical formula “as such”)
- *Gottschalk v. Benson* (converting binary to decimal)
- *Parker v. Flook* (updating alarm limits)
- *Digitech Image Techs v. Elecs. For Imaging* (organizing information through mathematical correlations)

Mathematical Concept Claim Examples

1. A method for calculating, analyzing and displaying investment data comprising the steps of:
(a) selecting a sample space, wherein the sample space includes at least one investment data sample;
(b) **generating a distribution function using a re-sampled statistical method and a bias parameter**, wherein the bias parameter determines a degree of randomness in a resampling process; and
(c) generating a plot of the distribution function.

SAP America v. InvestPic

1. A device profile for describing properties of a device in a digital image reproduction system to capture, transform or render an image, said device profile comprising:
first data for describing a device dependent **transformation** of color information content of the image to a device independent color space; and
second data for describing a device dependent **transformation** of spatial information content of the image in said device independent color space.

Digitech Image Tech. v. Elecs. For Imaging

1. A method for managing the consumption risk costs of a commodity sold by a commodity provider at a fixed price comprising the steps of:
(a) initiating a series of **transactions** between said commodity provider and consumers of said commodity wherein said consumers purchase said commodity **at a fixed rate** based upon historical averages, said fixed rate corresponding to a risk position of said consumer;
(b) identifying market participants for said commodity having a counter-risk position to said consumers; and
(c) initiating a series of **transactions** between said commodity provider and said market participants at a **second fixed rate** such that said series of market participant transactions balances the risk position of said series of consumer transactions.

Bilski v. Kappos

101 Guidance – Three Categories (Step 2A, Prong One)

- **Category # 2 – Certain methods of organizing human activity.**
 - Fundamental economic principles or practices (including hedging, insurance, mitigating risk) (*Bilski v. Kappos*, *Alice v. CLS Bank*, *Bancorp v. Sun Life*, etc.)
 - Commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations) (*buySAFE v. Google*, *Ultramercial v. Hulu*, etc.); and
 - Managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions) (*Voter Verified v. Election Systems*, *In re Smith*, etc.)

Organizing Human Activities Claim Examples

1. A method of processing a payment for a purchase of goods, comprising the steps of:
receiving at a point-of-sale system a code relating to a purchase of goods;
determining if said code relates to a local order or to a remote order from a remote seller;
if said code relates to a remote order, then determining a price for said remote order,
generating data to indicate a payment has been received by a third party for said remote order, and
transmitting said data to said remote seller.

Inventor Holdings v. Bed Bath & Beyond

Court characterized as "a method for distributing copyrighted media products over the Internet where the consumer receives a copyrighted media product at no cost in exchange for viewing an advertisement, and the advertiser pays for the copyrighted content."

Ultramercial v. Hulu

1. A method for distribution of products over the Internet via a facilitator, said method comprising the steps of:
a first step of receiving, from a content provider, media products that are covered by intellectual-property rights protection and are available for purchase, wherein each said media product being comprised of at least one of text data, music data, and video data;
a second step of selecting a sponsor message to be associated with the media product, said sponsor message being selected from a plurality of sponsor messages, said second step including accessing an activity log to verify that the total number of times which the sponsor message has been previously presented is less than the number of transaction cycles contracted by the sponsor of the sponsor message;
a third step of providing the media product for sale at an Internet website;
a fourth step of restricting general public access to said media product;
a fifth step of offering to a consumer access to the media product without charge to the consumer on the precondition that the consumer views the sponsor message;
a sixth step of receiving from the consumer a request to view the sponsor message, wherein the consumer submits said request in response to being offered access to the media product;
a seventh step of, in response to receiving the request from the consumer, facilitating the display of a sponsor message to the consumer;
an eighth step of, if the sponsor message is not an interactive message, allowing said consumer access to said media product after said step of facilitating the display of said sponsor message;
a ninth step of, if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query;
a tenth step of recording the transaction event to the activity log, said tenth step including updating the total number of times the sponsor message has been presented; and
an eleventh step of receiving payment from the sponsor of the sponsor message displayed.

101 Guidance – Three Categories (Step 2A, Prong One)

▪ Category # 3 – Mental Processes.

- Concepts performed in the human mind (including an observation, evaluation, judgment, opinion).
- Footnote examples:
 - *Intellectual Ventures I LLC v. Symantec Corp.*, (Fed. Cir. 2016) (“[W]ith the exception of generic computer-implemented steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper.”)
 - *Mayo v. Prometheus* (observing drug interactions and determining new dosages)
 - *Synopsys v. Mentor Graphics* (translating a functional description of a logic circuit into a hardware component description)
 - *Mortgage Grader v. First Choice Loan Services* (anonymous loan shopping)
 - *In re Brown* (identifying head shape and applying hair designs)

Mental Processes Claim Examples

1. A file content classification system comprising:
a plurality of agents, each agent including a file content ID generator creating file content IDs using a mathematical algorithm, at least one agent provided on one of a plurality of clients;
an ID appearance database, provided on a server, coupled to receive file content IDs from the agents; and
a characteristic comparison routine on the server, identifying a characteristic of the file content based on the appearance of the file content ID in the appearance database and transmitting the characteristic to the client agents.

Intellectual Ventures I v. Symantec

Court characterized as “anonymous loan shopping.”

Mortgage Grader v. First Choice Loan Servs.

1. A computer-implemented system for enabling borrowers to anonymously shop for loan packages offered by a plurality of lenders, the system comprising:

a database that stores loan package data specifying loan packages for home loans offered by the lenders, the loan package data specifying, for each of the loan packages, at least a loan type, an interest rate, and a required borrower credit grading; and

a computer system that provides:

a first interface that allows the lenders to securely upload at least some of the loan package data for their respective loan packages to the database over a computer network; and

a second interface that prompts a borrower to enter personal loan evaluation information, and invokes, on a computer, a borrower grading module which uses at least the entered personal loan evaluation information to calculate a credit grading for the borrower, said credit grading being distinct from a credit score of the borrower, and being based on underwriting criteria used by at least some of said lenders;

wherein the second interface provides functionality for the borrower to search the database to identify a set of loan packages for which the borrower qualifies based on the credit grading, and to compare the loan packages within the set, including loan type and interest rate, while remaining anonymous to each of the lenders and without having to post a request to any of the lenders, said second interface configured to display to the borrower an indication of a total cost of each loan package in the set, said total cost including costs of closing services not provided by corresponding lenders;

and wherein the computer-implemented system further enables the borrower to selectively expose at least the personal loan evaluation information to a lender corresponding to a selected loan package.

101 Guidance – Three Categories (Step 2A, Prong One)

What about “an idea ‘of itself’”?

- If the Examiner believes that the claims are directed to a non-enumerated abstract idea, to maintain the rejection they must:
 - evaluate whether the claim integrates the abstract idea into a practical application (step 2A, prong two);
 - determine whether the additional elements of the claim provide an inventive concept (step 2B); and
 - bring the application to the Technology Center Director.
- Any rejection **must be approved in writing by the TC Director**, and include a justification for why the claim limitation is being treated as reciting an abstract idea (e.g. “an explanation of why the element contains subject matter that, *per se*, invokes eligibility concerns similar to those expressed by the Supreme Court with regard to the judicial exceptions.”)

101 Guidance – Practical Application (Step 2A, Prong Two)

- Is the Abstract Idea **Integrated into a Practical Application**?
 - (a) identify any elements recited in the claim beyond the judicial exception
 - This applies to all elements, even if well-understood, routine, and conventional
 - (b) do those elements, individually or in combination, integrate the exception into a practical application?
- “A claim that integrates a judicial exception into a **practical application** will apply, rely on, or use the judicial exception in a manner that imposes a **meaningful limit** on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.”

101 Guidance – Practical Application (step 2A, prong two)

- Indications of a Practical Application:
 - an additional element reflects an **improvement in the functioning of a computer**, or an improvement to other technology or technical field;
 - an additional element implements a judicial exception with, or uses a judicial exception in conjunction with, a **particular machine or manufacture that is integral to the claim**;
 - an additional element effects a **transformation** or reduction of a particular article to a different state or thing;

101 Guidance – Practical Application (Step 2A, Prong Two)

Examples:

- Applying a natural relationship between biological entities by immunizing patients (*Classen, Vanda*)
- Implementing the abstract idea with a particular machine (*Eibel Process*)
- Effecting a transformation or reduction of a particular article to a different state or thing (*Diehr*)
- Applying the abstract in some other meaningful way (*Diehr, Finjan, Core Wireless*)

Counter-Examples:

- Limitation indicating that a function such as creating and maintaining electronic records is performed by a computer, without specifying how (*Alice*)
- Limitations of obtaining information about credit card transactions so that they can be analyzed (*CyberSource*)
- Limitations restricting use to commodities or petrochemical industries (*Bilski, Flook*)

Is This a Change?

- Three Categories are new, but same pieces already existed.
- No more “Idea of itself” unless approved by Technical Director.
- Practical Application is a new short cut to eligibility.
 - Attempts to address courts’ preemption concerns.

101 Guidance – Suggestions for Drafting

Focus on the technical aspects of the invention: not *what* result is achieved, but *how* the result is achieved

- An inventive result that is an abstract idea may still be eligible, if the claim includes even conventional elements that recite a specific implementation to achieve the result
- A claim that *only* recites the inventive abstract idea, without implementation steps, will likely be ineligible

Compare:

USPTO Guidance Example 35 (ineligible)

A method of conducting a secure automated teller transaction...:
obtaining customer-specific information from a bank card,
comparing, by a processor, the obtained customer-specific information with customer information from the financial institution to verify the customer's identity, and
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.
determining whether the transaction should proceed when a match from the comparison verifies the authenticity of the customer's identity.

USPTO Guidance Example 35 (eligible)

A method of conducting a secure automated teller transaction...:
obtaining customer-specific information from a bank card,
comparing, by a processor, the obtained customer-specific information with customer information from the financial institution to verify the customer's identity, by
generating a random code and transmitting it to a mobile communication device...
reading... an image from the customer's mobile communication device that is generated in response to receipt of the random code, wherein the image includes encrypted code data,
decrypting the code data from the read image, and
analyzing the decrypted code data from the read image and the generated code to determine if the decrypted code data from the read image matches the generated code data, and
determining whether the transaction should proceed when a match from the comparison verifies the authenticity of the customer's identity.

101 Guidance – Suggestions for Drafting

Insignificant extra-solution activity, or a practical application of the idea?

- Data gathering steps are probably not enough; the claim must recite what you *do* with the data

Compare:

Mayo v. Prometheus (ineligible)

A method of optimizing therapeutic efficacy for treatment of an immune-mediated gastrointestinal disorder, comprising:
(a) administering a drug providing 6-thioguanine to a subject having said immune-mediated gastrointestinal disorder; and
(b) determining the level of 6-thioguanine in said subject having said immune-mediated gastrointestinal disorder,
wherein the level of 6-thioguanine less than about 230 pmol per 8×10^8 red blood cells indicates a need to increase the amount of said drug subsequently administered to said subject and
wherein the level of 6-thioguanine greater than about 400 pmol per 8×10^8 red blood cells indicates a need to decrease the amount of said drug subsequently administered to said subject.

Vanda Pharmaceuticals (eligible)

A method for treating a patient with iloperidone, wherein the patient is suffering from schizophrenia, the method comprising the steps of:
determining whether the patient is a CYP2D6 poor metabolizer by:
obtaining or having obtained a biological sample from the patient; and
performing or having performed a genotyping assay on the biological sample to determine if the patient has a CYP2D6 poor metabolizer genotype; and
if the patient has a CYP2D6 poor metabolizer genotype, then internally administering iloperidone to the patient in an amount of 12 mg/day or less, and
if the patient does not have a CYP2D6 poor metabolizer genotype, then internally administering iloperidone to the patient in an amount that is greater than 12 mg/day, up to 24 mg/day,
wherein a risk of QTc prolongation for a patient having a CYP2D6 poor metabolizer genotype is lower following the internal administration of 12 mg/day or less than it would be if the iloperidone were administered in an amount of greater than 12 mg/day, up to 24 mg/day.

101 Guidance – Suggestions for Drafting

Insignificant extra-solution activity, or a practical application of the idea?

- Pre-solution activity is going to be problematic; it's not an application of the abstract idea, because it occurs prior to the abstract idea
 - Data gathering, selecting a type of data to be manipulated, etc.
- Post-solution activity may go either way

Parker v. Flook (ineligible)

A method for updating the value of at least one alarm limit on at least one process variable involved in a process comprising the catalytic chemical conversion of hydrocarbons wherein said alarm limit has a current value of

$$B_0 + K$$

wherein B_0 is the current alarm base and K is a predetermined alarm offset which comprises:

- (1) Determining the present value of said process variable, said present value being defined as PVL;
- (2) Determining a new alarm base B_1 , using the following equation:

$$B_1 = B_0(1.0 - F) + PVL(F)$$

where F is a predetermined number greater than zero and less than 1.0;

- (3) Determining an updated alarm limit which is defined as $B_1 + K$; and thereafter
- (4) **Adjusting said alarm limit to said updated alarm limit value.**

Classen (eligible)

A method of immunizing a mammalian subject which comprises:

- (I) screening a plurality of immunization schedules, by
 - (a) identifying a first group of mammals and at least a second group of mammals..., each group of mammals having been immunized according to a different immunization schedule, and
 - (b) comparing the effectiveness of said first and second screened immunization schedules in protecting against or inducing a chronic immune-mediated disorder...
- (II) **immunizing said subject according to a subject immunization schedule**, according to which at least one of said infectious disease causing organism-associated immunogens of said lower risk schedule is administered in accordance with said lower risk screened immunization schedule, which administration is associated with a lower risk of development of said chronic immune-mediated disorder(s) than when said immunogen was administered according to said higher risk screened immunization schedule...

101 Guidance – Suggestions for Drafting

USPTO Subject Matter Eligibility, Example 37

Ineligible

A method of ranking icons of a computer system, the method comprising:
 determining, by a processor, the amount of use of each icon over a predetermined period of time; and
 ranking the icons, by the processor, based on the determined amount of use.

Judicial Exception – the determination and ranking steps can be performed in the mind, but for the recitation of the processor

Not Integrated – no application of the ranking

Eligible

A method... comprising:
 receiving, via the GUI, a user selection to organize each icon based on a specific criteria, wherein the specific criteria is an amount of use of each icon;
 determining, by a processor, the amount of use of each icon over a predetermined period of time; and
automatically moving the most used icons to a position on the GUI closest to the start icon of the computer system based on the determined amount of use.

Eligible

A method... comprising:
 receiving, via the GUI, a user selection to organize each icon based on a specific criteria, wherein the specific criteria is an amount of use of each icon;
 determining the amount of use of each icon using a processor that **tracks how much memory has been allocated to each application associated with each icon over a predetermined period of time**; and
 automatically moving the most used icons to a position on the GUI closest to the start icon of the computer system based on the determined amount of use.

Does Not Recite Judicial Exception – tracking memory allocated to each application “is not practically performed in the human mind, at least because it requires a processor accessing computer memory indicative of application usage”

Integrated into Practical Application – mental process of determining is then applied into “specific manner of automatically displaying icons... which provides a specific improvement over prior systems, resulting in an improved user interface for electronic devices.”

101 Guidance – Suggestions for Drafting

USPTO Subject Matter Eligibility, Example 40

Ineligible

A method for monitoring of traffic data through a network appliance connected between computing devices in a network, the method comprising:
collecting, by the network appliance, traffic data relating to the network traffic passing through the network appliance, the traffic data comprising at least one of network delay, packet loss, or jitter; and
comparing, by the network appliance, at least one of the collected traffic data to a predefined threshold.

Judicial Exception – the comparing step can be performed in the mind, but for the recitation of the network appliance

Not Integrated – no application of the comparison

Eligible

A method for adaptive monitoring of traffic data through a network appliance connected between computing devices in a network, the method comprising:
collecting, by the network appliance, traffic data relating to the network traffic passing through the network appliance, the traffic data comprising at least one of network delay, packet loss, or jitter;
comparing, by the network appliance, at least one of the collected traffic data to a predefined threshold; and
collecting additional traffic data relating to the network traffic when the collected traffic data is greater than the predefined threshold, the additional traffic data comprising Netflow protocol data.

Judicial Exception – the comparing step can still be performed in the mind

Integrated into a Practical Application – limited to collection of additional Netflow data when initial collection indicates an abnormal condition.

“Although each of the collecting steps analyzed individually may be viewed as mere pre- or post-solution activity, the claim as a whole is directed to a particular improvement in collecting traffic data.”

112 Guidance

112 Guidance

- **Part 1** – Computer-implemented methods using means-plus-function limitations (35 U.S.C. §112(f)).
- **Part 2** – Written description and enablement issues related to the examination of computer-implemented functional claims that recite only the idea of a solution or outcome to a problem but fail to recite details of how the solution or outcome is accomplished. (35 U.S.C. §112(a) and (b))

112 Guidance - Brief Review

- **§112(f) ELEMENT IN CLAIM FOR A COMBINATION**—An element in a claim for a combination **may be expressed as a means or step for performing a specified function** without the recital of structure, material, or acts in support thereof, and such claim **shall be construed to cover the corresponding structure, material, or acts described in the specification** and equivalents thereof.
- **Before *Williamson v. Citrix Online*:**
 - If the claim recites “means for” or “step for”, it is presumed to fall under 112(f)
 - (or other similar non-structural generic placeholders such as “mechanism for,” “module for,” “device for,” “unit for,” “component for,” “element for,” “member for,” “apparatus for,” “machine for,” or “system for”)
 - If the claim does not recite “means for” or “step for”, it is presumed to not fall under 112(f)
 - Both presumptions are strong, but can be rebutted

Williamson v. Citrix Online, LLC (Fed. Cir. 2015)

- *Williamson* involved the claim term “distributed learning control module.”
- Overrules “strong” presumption that claim limitations without “means” not subject to 112(f).
- A substitute term or “nonce word” can be a generic placeholder:
 - “mechanism for,” “module for,” “device for,” “unit for,” “component for,” “element for,” “member for,” “apparatus for,” “machine for,” or “system for.”
- Other likely placeholders not listed: “configured to,” “engine,” as well as generic functional placeholders (“analyzer,” and maybe “processor,” etc.).

112 Guidance

- “Software patents typically . . . describe, in intentionally vague and broad language, a particular goal or objective [of the software]”). Problems with functional claiming, i.e., when a claim is purely functional in nature rather than reciting with any specificity **how** the claimed function is achieved, can be effectively addressed using long-standing, well-understood principles under 35 U.S.C § 112.”
- **112(f) applies unless:**
 - the specification provides a description sufficient to inform one of ordinary skill in the art that the term denotes structure;
 - general and subject matter specific dictionaries provide evidence that the term has achieved recognition as a noun denoting structure; and
 - the prior art provides evidence that the term has an art-recognized structure to perform the claimed function.

Written Description for 112(f)

Why you don't want to be in the world of 112(f):

- “For a computer-implemented 35 U.S.C. § 112(f) claim limitation, the specification **must disclose an algorithm** for performing the claimed specific computer function, or else the claim is indefinite under 35 U.S.C. § 112(b).”
- The algorithm may be expressed as a mathematical formula, in prose, or as a flow chart, or in any other manner that provides sufficient structure.
- “The requirement for the disclosure of an algorithm **cannot be avoided** by arguing that one of ordinary skill in the art is capable of writing software to convert a general purpose computer to a special purpose computer to perform the claimed function.”

112 Guidance

- **112(a) Analysis:**
 - “[A] specification must describe the claimed invention in sufficient detail (e.g., by disclosure of an algorithm) to establish that the applicant had possession of the claimed invention as of the application filing date.”
 - “The written description requirement is not met if the specification merely describes a ‘desired result.’... The specification must provide a sufficient description of an invention, not an indication of a result that one might achieve.”
 - **It is not enough that one skilled in the art could theoretically write a program to achieve the claimed function, rather the specification itself must explain how the claimed function is achieved** to demonstrate that the applicant had possession of it.”

112 Guidance

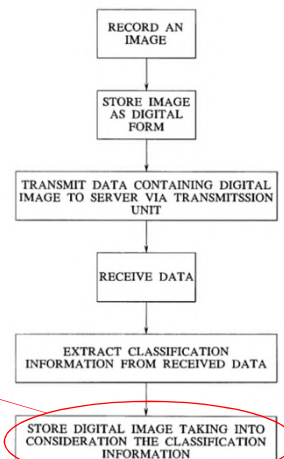
▪ 112(b) Analysis:

- “A claim is sufficiently enabled even if ‘a considerable amount of experimentation’ is necessary, so long as the experimentation ‘is merely routine... On the other hand, if ‘undue experimentation’ is needed, the claims are invalid...”
- To determine whether experimentation is undue, consider:
 1. the quantity of experimentation necessary,
 2. the amount of direction or guidance presented,
 3. the presence or absence of working examples,
 4. the nature of the invention,
 5. the state of the prior art,
 6. the relative skill of those in the art,
 7. the predictability or unpredictability of the art, and
 8. the breadth of the claims.

112 Guidance – Suggestions for Drafting

- Fortunately, same considerations as for 101 eligibility:
 - Focus on the technical aspects of the invention: not *what* result is achieved, but *how* the result is achieved.
 - Describe key steps that are important to patentability in *detail*
- “The digital images and possibly the classification information OM and potentially further information that characterize or described the digital images are stored at step 306 in the server. **During the storing step, the classification information OM is taken into consideration.**”
TLI Communications v. AV Automotive (Fed. Cir. 2006) (held **ineligible** under 101; would likely be **invalid** under 112 now)

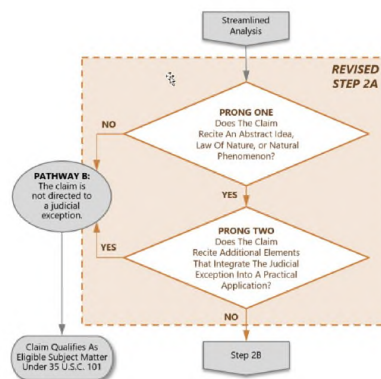
FIG. 3



Pharmaceutical and Personalized Medicine Perspectives

Pharmaceutical and Personalized Medicine Perspectives

- Big change is in Revised Step 2A.
- Now two prongs to permit earlier decision that claim is not “directed to” a judicial exception.
- Revised Step 2A, Prong 2 considers all claim features, including those that may be well-understood, routine, an conventional.



Pharmaceutical and Personalized Medicine Perspectives

- No new life sciences examples.
- Eligibility at Step 2A, Prong 2:
 - Detectable label on a natural product?
 - Detection of markers as “practical application”?
 - Diagnosis as “practical application”?
 - Potential conflict with Fed. Cir. decisions

Pharmaceutical and Personalized Medicine Perspectives

- Eligibility at Step 2B
 - Possible to be found eligible at Step 2B even if not eligible at 2A.
 - Data gathering steps that might be “insignificant extra-solution activity” under Step 2A, could relate to “inventive concept” under Step 2B if not “well-understood, routine, conventional”.

Questions?

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Thank you!

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