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# 2019 Revised Patent Subject Matter Eligibility Guidance

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## Section 101 initiative: Revised guidance

- The 2019 Revised Patent Subject Matter Eligibility Guidance (“2019 PEG”) published in January 2019.
- The guidance was revised for several reasons:
  - Increase clarity, predictability, and consistency in how Section 101 is applied during examination.
  - Enable examiners to more readily determine if a claim does (or does not) recite an abstract idea.



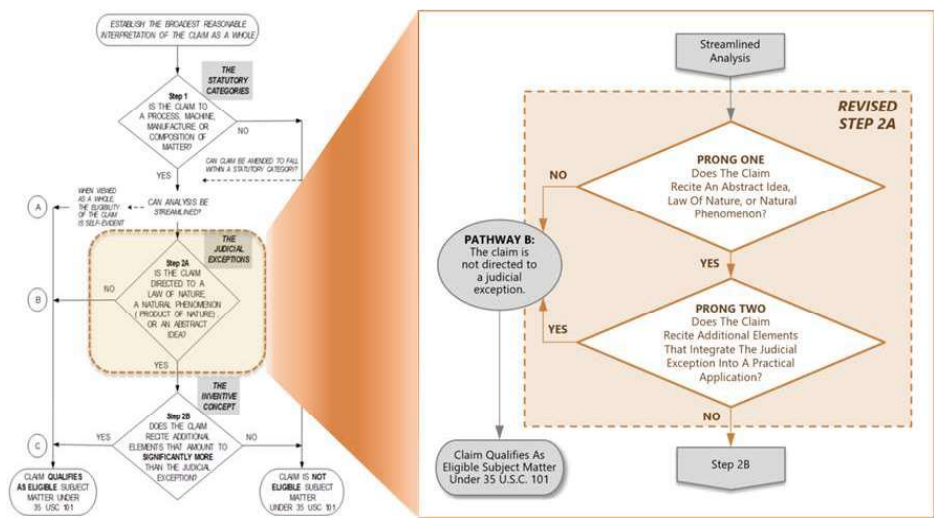
## Overview of 2019 PEG

- Makes two changes in Step 2A:
  - Sets forth new procedure for Step 2A (called “revised Step 2A”) under which a claim is not “directed to” a judicial exception unless the claim satisfies a two-prong inquiry
  - For abstract ideas, replaces the “Eligibility Quick Reference Sheet Identifying Abstract Ideas” with an identification of particular groupings of abstract ideas



# MPEP flowchart including revised Step 2A

- MPEP flowchart



Revised Step 2A flowchart



## Revised Step 2A is a two-prong inquiry

- Prong One: evaluate whether the claim recites a judicial exception (an abstract idea enumerated in the 2019 PEG, a law of nature, or a natural phenomenon).
  - If no exception is recited, the claim is eligible. This concludes the eligibility analysis.
  - If claim recites an exception, go to Prong Two.
- Prong Two: evaluate whether the claim recites additional elements that integrate the exception into a practical application of the exception.
  - If the recited exception is integrated into a practical application, then the claim is eligible. This concludes the eligibility analysis.
  - If the exception is not integrated into a practical application, then the claim is "directed to" the exception. Go to Step 2B for further analysis.



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## Title search: 2019 Revised Patent Subject Matter Eligibility Guidance

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14<sup>th</sup> Annual Advanced Patent Law Institute session

"Navigating Patent Subject Eligibility Challenges in High Technology Cases"