

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# USPTO subject matter eligibility guidance

June E. Cohan

Senior Legal Advisor, Office of Patent Legal Administration

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# Overview

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**Eligibility guidance overview**

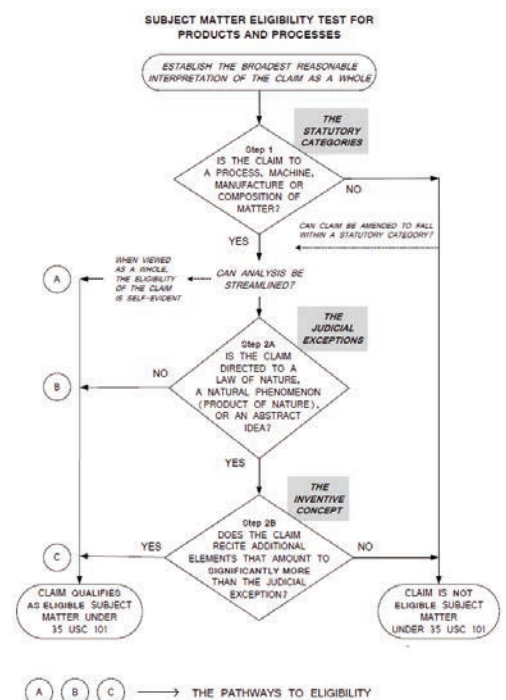
# USPTO guidance as of March 2020

- Four main documents:
  1. The **MPEP** sets forth overall analysis for evaluating subject matter eligibility;
  2. The **2019 Revised Patent Subject Matter Eligibility Guidance** (“2019 PEG”) revises guidance in MPEP to define abstract ideas and change how examiners evaluate the first part of the Supreme Court’s *Alice/Mayo* test (called Step 2A in the MPEP);
  3. The **October 2019 Update: Subject Matter Eligibility** (“Update”) clarifies portions of the 2019 PEG and its interaction with the MPEP; and
  4. The **Berkheimer Memorandum** revises guidance in MPEP by clarifying how to evaluate the second part of the Supreme Court’s *Alice/Mayo* test (called Step 2B in the MPEP).

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## MPEP sets forth overall eligibility analysis

- Explains the two criteria for subject matter eligibility:
  - the claimed invention must be to a statutory category (Step 1); and
  - the claimed invention must qualify as patent-eligible subject matter (Steps 2A and 2B, aka the *Alice/Mayo* test).
- Includes flowchart at right, which illustrates the overall analysis.



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First appeared as part of the conference materials for the  
15<sup>th</sup> Annual Advanced Patent Law Institute session

"Section 101: High Tech v. Life Sciences"