

Advanced Patent Law Institute: Section 101 in the Life Sciences

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COVID-19: Why you might be more interested in life sciences in 2020

- Methods claims
 - Diagnostic assays for detecting if you are infected with the novel coronavirus known as SARS-CoV-2
 - Diagnostic assays for detecting if you have been previously infected with SARS-CoV-2 and possibly have immunity to the virus
 - Methods of generating an immune response against SARS-CoV-2 (vaccination)
 - Methods of treating COVID-19
- Composition claims
 - Vaccines (attenuated virus, mRNA, peptide)
 - New therapeutics (antibodies or small molecule drugs)

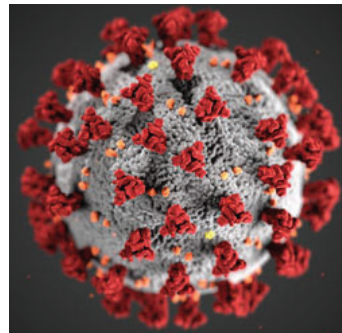


Photo from CDC website

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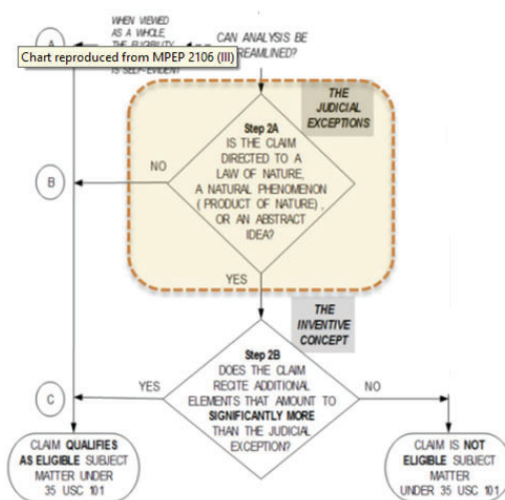
USPTO Guidance

- 2019 Revised Patent Subject Matter Eligibility Guidance (2019 PEG) (January 7, 2019)
- Berkheimer Memorandum
- Finjan Memorandum
- MPEP §§ 2103 – 2106 (2106.04(II) superseded and 2106.07(a) and (b) affected)
- Subject Matter Eligibility Examples Abstract Ideas (Examples 37-42) (January 7, 2019)
- October 2019 Update with Appendices 1-3 (October 17, 2019)
 - Appendix 1: Life Sciences & Data Processing Examples 43-46
 - Appendix 2: Comprehensive Index of Examples for Use with 2019 PEG
 - Appendix 3: List of Selected Eligibility Cases from Supreme Court and Federal Circuit

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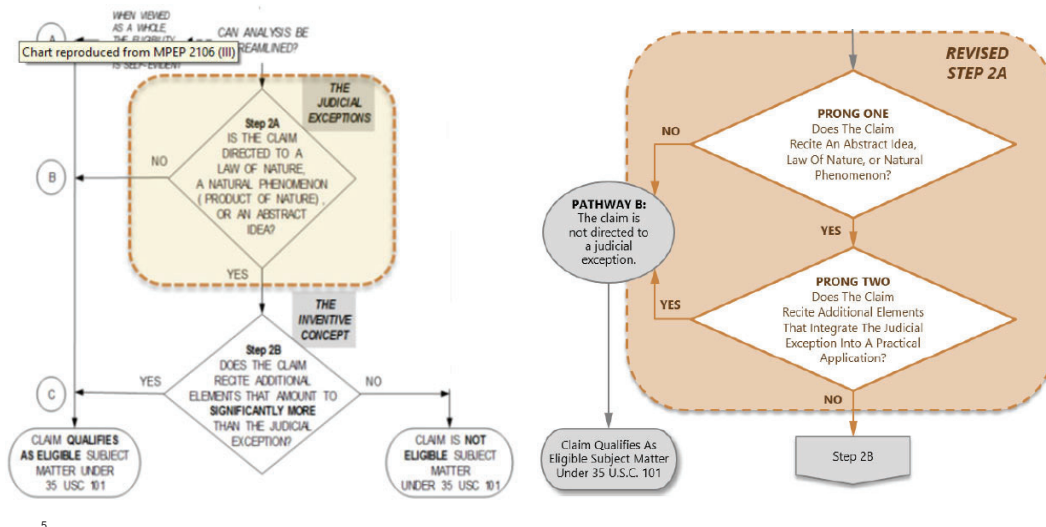
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Prior USPTO Guidance



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New Guidance: Revised Judicial Exception (Step 2A)



USPTO Guidelines

- Revised Step 2A – Second Prong
 - Determine whether there are any additional elements recited in the claim beyond the judicial exception(s).
 - Determine whether the additional elements integrate the judicial exception into a practical application of the judicial exception.
 - 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 exception.
 - No evaluation of whether additional elements amount to well-understood, routine, and conventional activity permitted at Revised Step 2A – Second Prong.

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"Section 101 in Two Realms: Practical Tips for Addressing Ongoing Challenges in Getting Patents in the Life Sciences and in Software"