

UNITED STATES  
PATENT AND TRADEMARK OFFICE



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# 35 U.S.C. § 101 – Subject Matter Eligibility USPTO Guidance and Policy

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## Why we are here today

- More than 150 years of Supreme Court jurisprudence on eligibility.
- Recent case law is mostly focused on the judicial exceptions:
  - Abstract Ideas;
  - Laws of Nature/Natural Principles; and
  - Natural Phenomena (including Products of Nature).



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## Body of case law keeps growing

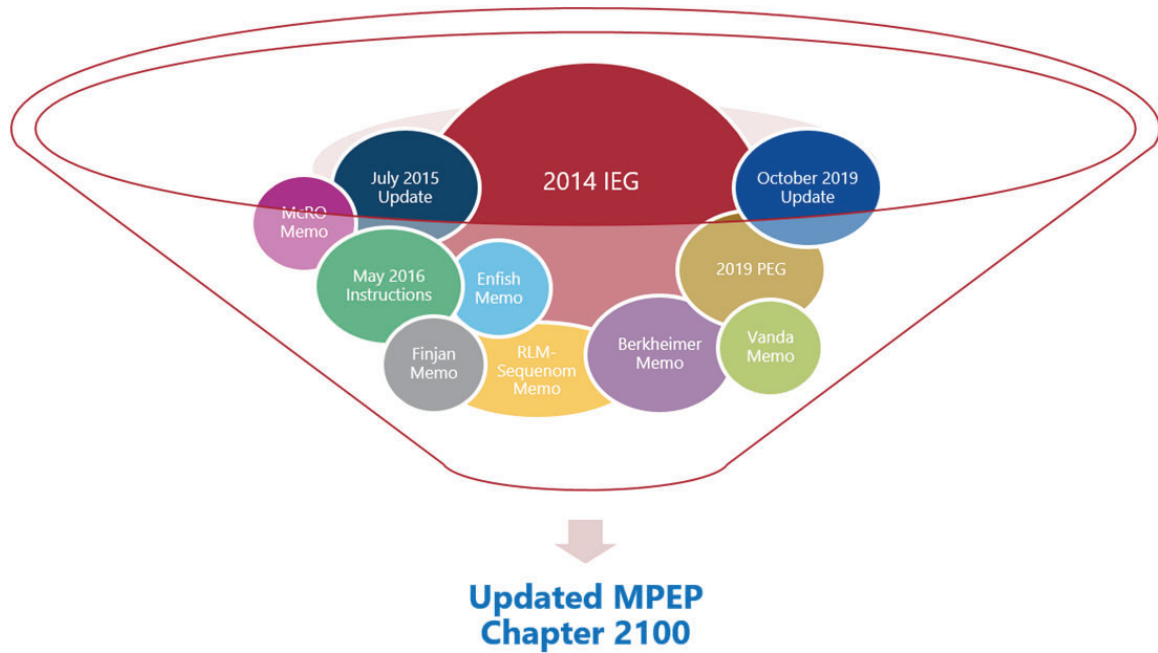
- Handful of key Supreme Court decisions.
  - Cluster in 1970s-80s: *Benson*, *Flook*, *Diehr*, and *Chakrabarty*.
  - Cluster in 2010-2014: *Bilski*, *Mayo*, *Myriad*, and *Alice Corp*.
- Dozens of relevant Federal Circuit decisions since 2012.



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# USPTO responded by developing guidance

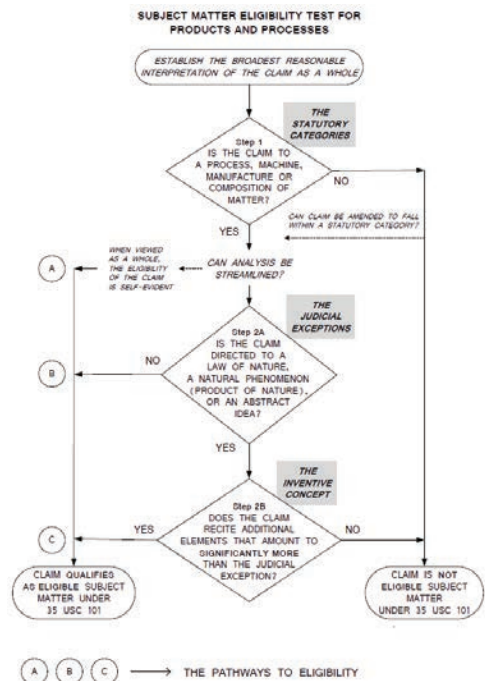


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## Overview of eligibility analysis

- USPTO analysis addresses 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).
- Flowchart at right illustrates the overall analysis.



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## Title search: 35 U.S.C. § 101 - Subject Matter Eligibility USPTO Guidance and Policy

Also available as part of the eCourse

[2022 Advanced Patent Law \(USPTO\) eConference](#)

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

"Section 101 Review and Recent "Disruptive" Decisions from the Federal Circuit"