UNITED STATES
PATENT AND TRADEMARK OFFICE



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

Matthew Sked Senior Legal Advisor Office of Patent Legal Administration March 15, 2022



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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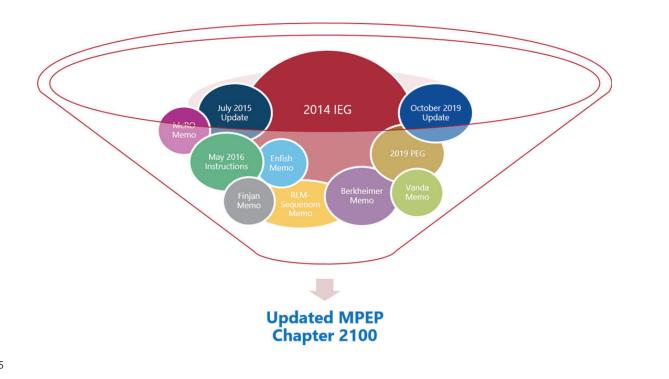
Body of case law keeps growing

- 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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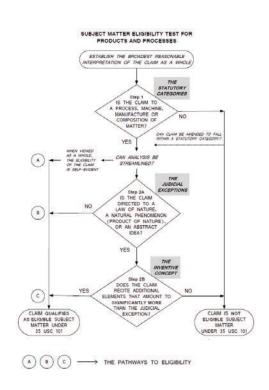
USPTO responded by developing guidance



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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 17th Annual Advanced Patent Law Institute session "Section 101 Review and Recent "Disruptive" Decisions from the Federal Circuit"