

USPTO subject matter eligibility guidance

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Eligibility guidance overview

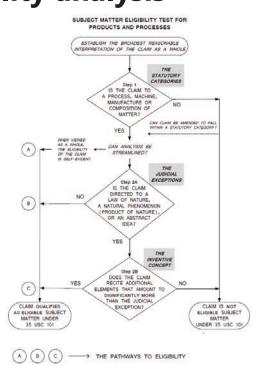
USPTO guidance as of March 2020

- Four main documents:
 - 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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Title search: USPTO Subject Matter Eligibility Guidance

Also available as part of the eCourse 2020 Advanced Patent Law (USPTO) eConference

First appeared as part of the conference materials for the 15th Annual Advanced Patent Law Institute session "Section 101: High Tech v. Life Sciences"