

Blikshteyn in MLEX: Eligibility ‘Reminders’ by USPTO Hint at AI-Friendly Shift, But Lack Teeth

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PRACTICES AI and Deep Learning, Patents

Haynes Boone Partner [Dina Blikshteyn](#) spoke with *MLEX* after the U.S. Patent and Trademark Office seemingly warned its examiners last week against taking an unduly rigid view of patent eligibility, with a refresher on rules that have torpedoed countless applicants, especially in the field of artificial intelligence.

In speaking with *MLEX*, Blikshteyn theorized that USPTO Deputy Commissioner for Patents Kim’s reminders could be a response to “blanket” rejections being issued by certain art units — groups of examiners organized by technology area.

To that end, AI-related applications are frequently on the receiving end of such office action under the “mental process” and “mathematical concept” groupings. That the USPTO would warn against their overapplication “is a step in the right direction,” she said.

“At the same time,” Blikshteyn continued, “since we’re dealing with judicial exceptions, it will ultimately be up to courts to see whether these patents will be eligible in the long run.”

Their nebulous interpretation and application of Alice has made it difficult, if not impossible, to predict the outcome of Section 101 challenges — uncertainty Congress is hoping to clear up with the Patent Eligibility Restoration Act.

“From this memorandum, you can see the patent office grappling with the same issues,” Blikshteyn added.

To read the full article from *MLEX*, click [here](#).