Blikshteyn in Westlaw Today: Navigating Patent Eligibility for AI Inventions After the USPTO's AI Guidance Update

By Dina Blikshteyn | October 8, 2024

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The U.S. Patent and Trademark Office (USPTO) has issued guidance in evaluating the eligibility of patent subject matter for artificial intelligence inventions to assist during proceedings in front of the USPTO. Haynes Boone Partner and Co-Head of the AI and Deep Learning Practice Group Dina Blikshteyn discusses the guidance in an article for *Westlaw Today.*

Read an excerpt below.

On July 16, 2024, the United States Patent and Trademark Office (USPTO) issued a guidance update on patent subject matter eligibility with a specific focus on artificial intelligence (AI) inventions. The update was prompted by President Biden's Executive Order 14110 titled "Safe, Secure, and Trustworthy Development and Use of AI" issued Oct. 30, 2023.

With the uptick of AI patent applications being filed, the guidance update aims to assist the USPTO personnel and stakeholders in evaluating patent eligibility of AI inventions during proceedings in front of the USPTO. It also introduces new examples to clarify how the USPTO analyzes the subject matter eligibility for AI inventions using the unpredictable Alice/Mayo framework.

Under this framework, the courts must first determine whether the claims are directed to a patent ineligible concept, such as laws of nature, natural phenomena or abstract ideas. If so, the courts must determine whether the claim elements individually and as an ordered combination transform the claim into a patent eligible application. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.,* 566 U.S. 66 (2012); Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 573 U.S. 208 (2014).

What does the guidance cover?

The guidance update is divided into five sections, each addressing a different aspect of patent eligibility and the USPTO's AI and emerging technology efforts.

Read the full article here.

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