



UNITED STATES PATENT AND TRADEMARK OFFICE

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**MEMORANDUM**

**DATE:** July 16, 2024

**TO:** Patents Employees

**FROM:** Charles Kim   
Deputy Commissioner for Patents

**SUBJECT:** 2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence

Tomorrow, the USPTO will publish the [2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence](#) (2024 AI SME Update) in the Federal Register. The 2024 AI SME Update, which goes into effect on July 17, 2024, will assist USPTO personnel and stakeholders in evaluating the subject matter eligibility (SME) of claims in patent applications and patents involving inventions related to Artificial Intelligence (AI) technology (AI inventions). The 2024 AI SME Update does not reflect any new USPTO practice or procedure and is meant to be consistent with existing USPTO guidance, as set forth in the Manual of Patent Examining Procedure (MPEP),<sup>1</sup> and supplements this guidance to provide further clarity on evaluating SME for AI inventions. The 2024 AI SME Update also announces [three new examples](#) to assist USPTO personnel in applying the USPTO's SME guidance to AI inventions during patent examination, appeal, and post-grant proceedings.

The USPTO is issuing the 2024 AI SME Update in response to the Executive Order, "Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence" (EO 14110)<sup>2</sup>, which instructed the USPTO to issue guidance at the intersection of AI and intellectual property, such as patent subject matter eligibility (SME), and to address innovation in AI and critical and emerging technologies. The 2024 AI SME Update summarizes the USPTO's SME guidance, which is used to analyze claims across all technologies including AI. It also provides additional discussions of certain areas of the SME guidance that are particularly relevant to AI inventions, including discussions of Federal Circuit decisions on SME. The three new examples (examples 47-49) provide exemplary SME analyses under 35 U.S.C. § 101 of hypothetical claims in certain fact-specific situations to address particular SME inquiries such as whether a claim recites an abstract idea or whether a claim integrates the abstract idea into a practical application.

<sup>1</sup> The USPTO's SME guidance is found in the Manual of Patent Examining Procedure (MPEP) sections 2103-2106.07(c).

<sup>2</sup> Executive Order 14110, Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, 88 FR 75191 (November 1, 2023).

To the extent that earlier guidance from the Office, including certain sections of the MPEP (R-07.2022), is inconsistent with the 2024 AI SME Update, Office personnel are to follow the 2024 AI SME update. This AI SME Update will be incorporated into the MPEP in due course.