The Supreme Court's *Mayo/Myriad/Alice* Decisions[1)]
The PTO's Implementation by Its Interim Eligibility Guidance (IEG)
The CAFC's *DDR&Myriad* Recent Decisions – The Challenges

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I. THIS COMMENT ON IEG's PATENT-ELIGIBILITY CLARIFICATIONS & CHALLENGES

- comprises two examples of causes of ordinary tensions the IEG currently is subject to, shown by CAFC's recent *DDR* and *Myriad* decisions, in Sections II & III[2)], as well as
- an additional conflict the IEG must live with, the Supreme Court's *Parker v Flook* decision (in IV) – so far representing patent-eligibility clarifications – and challenges
- unfolding the potentials of the IEG, i.e. its long term perspectives (in V).

The author's total comment on the IEG is: "**EXCELLENT NEWS FROM THE PTO**".

In brevity: ●) By its *DDR* decision one CAFC fraction indicates it is fond of the *Mayo/Alice* decisions as to patent-eligibility of ET CIs. ●) The *Myriad* fraction dislikes them without using the Supreme Court's *Parker v. Flook* decision, i.e. considers *Mayo/Alice* as overruling it. ●) As the *DDR* fraction's position will prevail in the CAFC[6)], with its then unique notion of an ET CI's "inventive concept"[3)], the PTO should adjust its IEG terminology accordingly.

1) This actual Substantive Patent Law (SPL) context is established by the fundamental technical particularities of ET CIs – i.e. "emerging technologies' claim(ed invention)s" – and their SPL needs.
2) The two CAFC decisions show that it still is fractured as to whether the legally correct interpretation of the Supreme Court's *Mayo/Alice* decisions is that of the IEG, or the pre-*Mayo* one.
3) The AIT view at SPL requires the notion of "inventive concept" for precisely modeling inventions.

II. THE CLARIFICATION PROVIDED BY CAFC'S *DDR* DECISION

The panel of this post-*Alice* CAFC decision – missing in Section III of the IEG – for the first time practiced this orderly thinking[4], since the Supreme Court indicated it by its *Mayo* decision. In so far, the *DDR* decision's clarification of the *Alice* decision is groundbreaking in that it not only rejects using the BRI^{pto} for the ET CI interpretation but instead takes for it the inventor's description of its invention's properties, for which it has been invented[5], as required by the Supreme Court's *Biosig* decision, thus providing a basis for its *Alice* test.

III. THE CLARIFICATION PROVIDED BY THE CAFC'S *Myriad* DECISION

In *Myriad* the CAFC overinterprets the Supreme Court's *Alice* decision, thus "ET CI broadening" and hence contradicts the Supreme Court's *Biosig* decision. *Myriad* thus unintentionally confirms the *DDR* decision's interpretation of the CAFC's *Alice* decision (again scientifically proven).

IV. THE SUPREME COURT'S EARLIER *Parker v. Flook* DECISION

This 1978 Supreme Court decision is summarized in Section III of the IEG, but there not explained to be irreconcilable with *Alice* under its above correct interpretation. The simple reason of this irreconcilability is that it is inapplicable to ET CIs, as their specificities and needs were not understood then but are today – after their *Mayo*'s paradigm shift. In so far, the Supreme Court's *Alice* decision's only briefly mentioning it and both CAFC decisions not using it are correct: *Parker v. Flook* is inapplicable to ET CIs.

4) Understanding it by a layman can be facilitated dramatically.

5)The *DDR* patent even creates no claim term for this property of the *DDR's* "inventive concept".

V. THE IEG AS SUCH – CONS, PROS AND AN EXCELLENT PERSPECTIVE

The **IEG cons** are really embarrassing as totally misrepresenting the IEG:

- The IEG's terms/notions/structure convey, it were inacceptable, as it does
  - not state: It requires the BRI^{pto} solely for PTO internal use.
  - avoid using the term/notion "inventive concept".
  - use terms/notions quite similar to the Supreme Court decisions' key terms/notions.
- Underlying the preceding deficiencies of the IEG is its lack of any incentive for making any potential reader familiar also with the paradigm refinement needed by ET CIs. This lack contradicts any didactics insight into the importance of creating motivation for appreciating a paradigm change, as needed by the *Mayo/Alice*.

The **IEG pros** are really admirable as finally totally breaking with evergreen unreasonable reservations as to ET CIs' needs, prior to *Mayo* by courts completely ignored but nevertheless extremely important, hence overdue – though this should be conveyed more clearly.

The **IEG's perspectives**: Due to its tight relation to scientifying SPL precedents, bustled by the author, the PTO's IEG seems to be on the way to become the "**Definitive Eligibility Guidance (DEG)**", assuming the Supreme Court maintains the framework it created by its *KSR/Bilski/ Mayo/Myriad/Biosig/Alice* decisions and the CAFC supports it, the latter today still questionable[2)] – and if the PTO takes the above steps forwards[6)].

6) The scientification of SPL precedents – as to ET CIs, for which it is indispensable for their future perspectives – is going to prevail, as it historically always happened in other know-how areas undergoing similar groundbreaking paradigm shifts for developing to a higher level of rationality.