

Andrei Iancu — After 100+ Days Even Stronger on Track

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Andrei Iancu's opening speech for the NAPP Conference 2018 last Thursday at the USPTO in Alexandria clarified everything: After 100+ days in office, he is about fulfilling all positive expectations associated with him at his taking over the USPTO directorate and thereby committing pertinent promises – to unfold the full potential of this most important & crucial US administration for US society's future wealth.

Now he topped his early achievements (details see below) by frankly setting an even more ambitious objective for the USPTO that most of the US patent community has been longing for: This categorical imperative for the USPTO^{1.a)} is to take the lead – in the light of the Supreme Court's SPL precedents, i.e. exactly as it requires – in deciding on novel factual patenting issues, e.g. whether a subject matter is PE or ⁿPE. The reason being that there is no time to wait for courts [and their boards] to eventually agree on such factual issues.

This positive evaluation of his first 100+ days' operations is not biased by the fact that many of the USPTO work-items that he identified as urging allegedly concur with those suggested by FSTP publications since years [e.g. 9,72,80,114,141,164,218,252,297,332,....,391,471] in preparation of a text-book^[182]. Its content will focus on the US 'Substantive Patent Law, SPL' as by the Supreme Court reinterpreted for the sake of the needs of 'Emerging Technology Claimed Inventions, ETCIs', i.e. ●on much higher levels of patents' quality/efficiency as by AI enabled, and ●on the hitherto unknown cognitions as to the phenomenology of ET-based innovations. Both SPL-aspects have been originally noticed by the Supreme Court's 'framework' for ETCIs – in full breadth.

By^{b)} this focus is not concurring with Andrei Iancu's just explained categorical imperative for the USPTO. And: The latter only works, if the USPTO cares for both these "SPL drives" with scientific scrutiny.

Yet, there is some concurrence of both parties in their requiring that ●patent protection of ETCIs preserves its efficient incentive to invest, as developing ETCIs often needs long term, high volume, and high risk investments into their R&D (that otherwise is impossible), and hence for enabling guaranteeing this patent protection ●the BRI is completely dropped and the current version of the PE-guideline is adjusted to the Supreme Court's requirements (a guarantee that otherwise is also impossible). But the above very positive evaluation of Andrei Iancu's leading the USPTO is not based on this concurrence – concerning these two commonly known and grossly maladaptive adjustments of SPL precedents about ETCIs to their being model-based^[457].

^{1.a} This imperative is stated in the author's own words, as Andrei Iancu's wording was much shorter – except that he stated in this context that he does not see Congress's intervention in the current uncertainty about the Supreme Court's framework.

^b Many FSTP publications repeatedly explained in^[9,....] the needs of the unusually broad background to which this text-book – focused on framework-based SPL – must refer. It inevitably must present not only the tightly to it related basics of AI^[2] but also of Cognition Theory, Analytic Philosophy, and History of Development of Sciences, Emerging Technologies, Microbiology, and Socioeconomics (as initiated by Kant, Frege,, Kuhn, Popper,, see the FSTP Reference List). This background is indispensable for grasping where and how the currently ongoing explosion of knowledge supports innovativity and hence keeps impacting on the Pragmatics and Semiotics of SPL and its precedents about ETCIs.

Insofar this text-book shall help scientifically recognizing what factual paradigm changes definitely will come along with future innovations and the ETCIs based on them – especially in 'DNA/ETCIs'^[457].

^c Finally: The preceding considerations imply that, due to the world-wide shortness of such for most young scientists today purely academic rationalizability-/mathematizability-affine "dinosaur-knowledge" – as in this innovation/ETCI-patent business needed and in this text-book practiced – it for a while probably will remain unique. Or worse: For a while will remain obsolete, in spite of this business's practical support by an 'Innovation Expert System, IES'^[443], as it may be used without such background.

By contrast: This evaluation is due to his clear indications that he in sleepwalking security tracked down also 4+ key sources of such maladaptive developments^{2.a)}. Eliminating such a key source is usually more tedious than eliminating the maladaptive developments that repeatedly emanate from this source. What follows is the list of these 4+ key sources that Andrei Iancu has already targeted at – explicitly or only implicitly (perhaps even without being aware of them and/or their being implied).

These key sources of problems with ETCIs are – by socioeconomical urgency ordered, if possible^{b)} –

- (1) considering the Supreme Court's SPL precedents about ETCIs – its so-called 'framework' – only as a legalistic necessity^{c)} but not as a set of items of guidance to the recognition that any ETCI is inherently so much more intellectual than a 'Classic Technology CI, CTCI' that this indispensably requires the former's much more intellectual SPL satisfaction analysis. In total, this comes down to a refinement of the paradigm providing the basis for CTCIs – as the next bullet point elaborates.
- (2) The US patent community shows an absolutely incomprehensible reluctance to accept that ETCIs come with a big potential threat associated with §101 alias ETCIs' PE-problem: That the society may by socioeconomic reasons – caused by ETCIs' too high preemptivity, as the Supreme Court's framework decisions explain in detail – withdraw its acceptance of the entire patent law (anyway hated by non-negligible parts of all western societies and some developing economies, as allegedly being just another capitalistic legal bubble).

The risk of this withdrawal is increased by the CAFC's, the lower courts, and the USPTO substantially deviating from the Supreme Court's requirement (stated by its *Alice* decision's clear PE-analysis^[483], yet hopelessly under-interpreting it by simply ignoring result-determinative notions therein) how to resolve e.g. the PE-problem^{d)} – and instead kept muddling through broadly known legal uncertainties, as hitherto practiced with already disastrous consequences: Since then the CAFC's&USPTO's PE-decisions are legal errors!

At this NAPP Conference, Andrei Iancu criticized these under-interpretations quite directly by requiring that – when interpreting the Supreme Court's decisions – not to over-read details they comprise!^[480,483]

Yet, there is still another under-interpretation of the PE-analysis specified by the *Alice* decision that is independent of the preceding under-interpretation: *Alice's* PE-analysis mandatorily implies that, for correctly interpreting it, the ETCI under SPL-satisfaction test must be in the refined SPL-KR^[416,424,434], as otherwise it may not be decidable, whether the in^{Alice}-concept is independent – as once more explained in detail in^[483].

And: The CAFC/USPTO "2-step PE-test" is a legal error as mandatorily based on the BRI^[480] – skipped here.

- (3) Andrei Iancu originally identified the "gap"^[466] but initially assumed to be based on questionable phenomena of the indeed high speed of development in ETCIs' business. Whether he meanwhile figured out the real reasons causing this gap^[466] – namely the for ETCIs disastrously high Metaphysics of currently worldwide used patent DB searching – is immaterial. What counts is that he immediately established – for investigating this "prior art searching deficiency"^[470] – a long term research project at the USPTO for identifying principally improved searches (hinted at by^{[480]?}) as at the NAPP-Conference announced.
- (4) Finally, he acknowledged already at one of his first presentations as director of the USPTO that – in my words – its total lack of appropriate cross-over scientists ought to be overcome. While this is absolutely true, this author here recommends not to expect any success^{e)}: By the end, he had to postpone this DB-research.

^{2.a} While Andrei Iancu must care also for post-grant problems with patents – due to their large number – here currently only patents with SPL-problems are of interest (which implies nothing for the future).

^b also often partially overlapping, and/or only incompletely understood, and/or hardly/not broadly known, but nevertheless politically crucial/sensitive for/by the US 'National Patent System, NPS',

^c which hitherto neither the USPTO, nor the CAFC, nor the district courts obeyed!!!

^d FSTP-publications have been criticizing these untenable under-interpretations of the Supreme Court's '*PE-analysis*' since years^[e.g.???,...483] and explaining (incrementally getting correct) that the complete interpretation is notionally much finer than these various under-interpretations.

^e When launching his 20-M€-FSTP-Project in Berlin in about 2010, he spent 2-M€ for finding at pertinent universities worldwide a young academic with this dinosaur-knowledge^{1.c)} or at least a similar profile – in vain. And even worse: While he learned, during this time, that outside of the US no SPL-know-how for ETCIs exists, he did not meet during the following 8 years at 100+ patent law conferences, primarily in the US, a single qualified legal academic with a professionally decent DB or at least IT know-how.

The FSTP-Project's Reference List (Version of 25.07.2018)

Most of the FSTP-Project papers below are written in preparation of the textbook^[182] – i.e. are not fully self-explanatory independent of their predecessors.

[1] S. Schindler: "Highest Courts' Patent Precedents in *Mayo/Myriad*/CLS/ULTRACOMMERCIAL/LBC: Inventive Concepts Accepted – Abstract Ideas Next? Patenting 'Emerging Technology Inventions' Now without Intricacies?", publ. 2011).

[2] AI: "Advanced Information Sciences & Technologies" or "Artificial Intelligence Technology" denotes cutting edge IT areas, e.g. Knowledge Representation(KR)/ Description Logic (DL)/ Natural Language (NL)/ Semantics/ Semiotics/ System Design/... just as MAI & MKR: "Mathematical Artificial Intelligence & Mathematical Knowledge Representation", i.e. the resilient fundament of AI, AIT, and "Facts Screening/Transforming/Presenting, FSTP"-Technology, both developed here— currently much of the latter still in a 'status nascendi'^[182]

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[332] S. Schindler: "The Notion of Claiming in SPL – pre&post Aufklärung", p. 10.10.2016)

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[348] B. Wegner: Invited paper, "Innovation, knowledge representation, knowledge management and paper, "Math. Modelling class. math. thinking", Corfu, Ionian University, 22.11.2016)

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[350] S. Schindler: "The IES Qual. Machine: Prototype Demo", GIPC, New Delhi, 11.-13.01.2017.

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*) documents and full list available at www.fstp-expert-system.com.