

Finally, the CAFC & USPTO Started Friendly Approaching the Supreme Court's SPL-Framework! One Year of Andrei Iancu's Spirit in the USPTO — and All US Legal Patent-Business is of Good-Will.

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While the patent community — inventors, investors, patent lawyers, the USPTO's examiners, PTAB, DCs, the CAFC — for years vastly rejected the Supreme Court's SPL-framework^{1.a)}, as allegedly incomprehensible¹⁴⁰⁾,

- the CAFC recently showed in board decisions an unknown constructive attitude^{3.a)}: In its 2018 *Hikma v. Vanda* ^[467] case and its 06.02.2019 decision in *Athena v. Mayo*^[511], it tried to clarify with much more scrutiny than hitherto, what the Supreme Court had determined as SPL's meanings. This increased scrutiny is indeed indispensable as inevitably required by ETCl's^{3.a)} — for putting neither the entire US NPS into jeopardy, as the Supreme Court stated in its *Mayo* decision, nor patented ETCl's (e.g. ^{BIO}ETCl's^[495]).
- the USPTO by its new §§ 101-/112-guidelines also shows constructive attitudes for getting the US NPS out of its current misery by reviewing the Supreme Court's framework & its ETCl's' applications — as by Andrei Iancu often publicly suggested^[500]. This is indeed the only way to reestablish, with USPTO-dependence investors & inventors, their destroyed trust in the USPTO's robust SPL-protection of 'ETCl investments'^{b)}.

ANNEX I - III show ■) what the Supreme Court has required — at minimal restriction of the set of all PE ETCl's — to be the framework's complete SPL properties set of an ETCl for its satisfying 35 USC §§ 101/102/103/ 112 without jeopardizing the US NPS, versus ■) the 2 CAFC decisions' such (incomplete) SPL properties set^[480] and ■) the USPTO's §101-2019-Guideline & its quite similar (incomplete) SPL properties set^{b)}.

For overcoming these incomplete framework interpretations^{b)}, Andrei Iancu creates with anybody good-will about them — by taking them not as final, but as steps towards a broad consensus also mirroring the innovativity of the US society and its NPS. If this good-will prevailed 20 more years, it would inevitably drive the entire patent community stepwise into this broad consensus required by the Supreme Court's framework^{c)}.

Yet^{d)}, this broad consensus is by now establishable instantly^{e)} & in a single step: By the Supreme Court's reconfirming its framework by another decision. This were a magic moment for the US NPS — and fix this broad framework consensus, being the key innovation issue for decades, also internationally.

If this decision dealt with the BIO-area, it would thrill especially the 'big pharma' economy. Due to Andrei Iancu's impetus, it would now instantly recognize^{f)} that the Supreme Court by its framework ● created the ideal platform for investing into ^{BIO}ETCl-patent business and ● now protects it by SPL fully robustly.

1. a Abbreviations: **FSTP** for 'Facts Screening/Transforming/Presenting'; **C/ETCl** for 'Classic/Emerging Technology Claimed Invention'^{3.a)}; **IDL** for 'Innovation Definition Language'; **AI** for 'deterministic AI'; **SPL** for 'Substantive Patent Law'; **NPS** for 'National Patent System'; **BIO** for 'BIO-tech'; **CI** for 'Computer Implemented Invention'; **KR** for 'Knowledge Representation'^[2]; **COM(ETCl)** for 'combination of ETCl-elements of ETCl'; **RS^{SD}** for 'semantic distance, SD' between an ETCl and a given 'reference set, RS' of prior art & 'pertinent ordinary skill documents, posc'.

The Supreme Court defined its (SPL) 'framework' by its *KSR/Bilski/Mayo/Myriad/Biosig/Alice* decisions, implicitly refining classic SPL-meanings & inducing 4 categories of thinking in "KR-qualities"^[2] 'mphys \supset mrat \supset rat \approx mat' in $SPL \subset IPR$ ^[489ft2.b)]. Thereby a KR-quality index may be pre- or post- or distributed-fixed to e.g. a ^{BIO}IDL-term that is qualified by it — often skippable (if graspable instantly or at first reading).

This FSTP-mail does not repeat all earlier FSTP-clarifications of the notional refinement of SPL by the Supreme Court's framework. It is necessary for expanding SPL's robust classic protective power for CTCl's — as repeatedly ex- or implicitly invited by the Supreme Court^[e.g. 458ftn1.c)].

b The CAFC & USPTO have until today only incompletely^[480] interpreted the Supreme Court's very profound SPL-framework — i.e. determined an only incomplete set of refined SPL-properties: While each of both decisions of split CAFC boards as well as the USPTO's 2019-Guidelines, address valid questions embodied by the framework's notional SPL-refinement, nobody of both institutions has recognized that there are several additional hitherto unknown, refined SPL-properties to be checked^[480].

That both parties hitherto did not become aware of the importance of these refined SPL-properties^{3.c)} is probably due to their not asking for the mapping **M** as having used the here totally inadmissible BRI for determining the meaning of the *Alice*'s PE specification — as notionally much too coarse^[480] and hence grossly misleading — instead of having clarified up-front the pre-framework classic SPL properties of an ETCl and its notionally refined framework-based SPL properties^{3.c)}, which would have enabled them to apply the notionally necessarily much finer *Phillips* interpretation.

It is this fine SPL-interpretation that enables the Supreme Court's view at patenting an ETCl, described as the conjunction of all its human inventive building blocks alias by creative ideas^{3.c)} making it up, modeled by these ideas' creative concepts (classical plus refined ones, and independent of whether the inventor explicitly noticed them or not and of whether the creative ideas/concepts are ordinary or exceptional ones).

This implies mapping SPL by **M** onto this conjunction of the ETCl's creative concepts, COM(ETCl), for testing the ETCl's SPL-satisfiability.

c — taking the US SPL to a much higher developmental level, as absolutely indispensable e.g. for enabling automatically drafting fully robust patents on ETCl's.

d — due to the fortunate impetus created by Andrei Iancu (as outside of both institutions already vastly shared, though inside only in parts) —

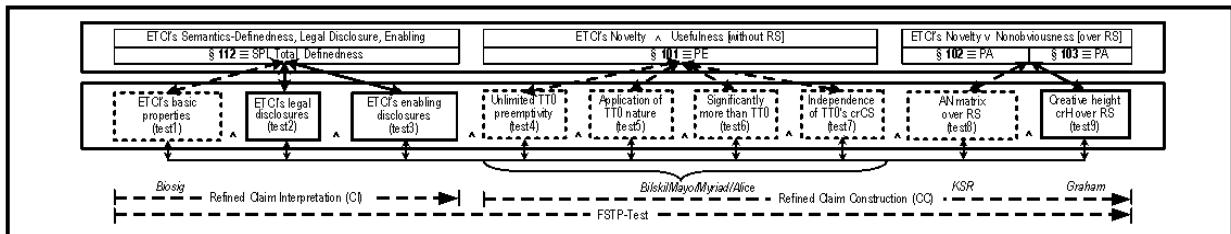
e — being utmost desirable⁹⁾, as nobody knows whether this more than congenial mood will last for long, as some commentators question —

f before the biggest ever patenting battle starts about the coming flood of ^{BIO}patent(application)s on gene editing^[495], as automatically draftable.

ANNEX I:

The Complete Set of SPL-Framework's Requirements/Properties Determined by the Supreme Court.

ANNEX I proves that the FSTP-Test — shown in the 3 boxes further down — comprises all tests of an ETCl that the Supreme Court's framework requires to be passed for its being PE. While CI puts the ETCl by COM(ETCl) into an appropriate KR, CC(ETCl) checks this COM(ETCl)'s being PE. I.e.: AI induces a map Mv framework-based alias refined SPL-requirements onto any ETCl for testing its satisfying SPL2.a) Thus, the 4 boxes below redundantly comprise any ETCl's complete FSTP-Test. Its implied PE-test stops after test7 (i.e. the KSR/Graham-test is not elaborated on, here).



Legend I: AI models the mapping M of 35 USC/SPL's requirements — indicating SPL's pre-/post-framework meanings by solid/dashed frames — onto the FSTP-Test's semantics by arrows between the above upper & lower inner boxes. NOTE: The Supreme Court's post-framework SPL semantics thereby only notionally refines SPL's pre-framework semantics, for thus establishing consistency in future precedents on ETCl's — impossibly definable in pre-framework's evidently much coarser semantics, just as in its incomplete alleged adjustment by the CAFC&USPTO to the Supreme Court's refined requirements. Ignoring 5/2 thereof leaves SPL inconsistent, i.e. some ETCl's being PE & nPE!

I.e., by AI has been recognized! The Supreme Court's refined PE-paradigms — being 2+5' compound socioeconomic requirements' of its 2' socioeconomic concerns' — are to be met by any PE ETCl. Thus, an ETCl's PE-test passing' means the ETCl's meeting by its basically independent properties the conjunction of all requirements implied by the §§112/101, i.e. mapping the latter inquiry onto a logically equivalent conjunction of the ETCl's inventive concepts modelling its ETCl-elements' (= Xes) properties. While originally the ETCl's O-crCs often are compounds, the framework requires elementary mraE-crCs — for enabling the PE-Test's COM(ETCl), correctly modelling v properties for v N Xn's.

Thus, the above big box shows AI's facilitation in patenting ETCl's: AI's determinism enables •first modelling, by AI's PE-Test, any ETCl as a mathematical SPL-theorem and •then mathematically proving the ETCl is D/PE ⇔ it passes the PE-Test. I.e.: AI shows that ETCl's SPL-testing is an exact science.

The information below the 'testo-boxes', 1 ≤ o ≤ 7, indicates additional relations existing within this mapping M, especially the horizontal line with the vertical double-headed arrows: It expresses that — by the truth inherent to this mapping M — none of the 4 tests, 4 ≤ o ≤ 7, is meaningful if considered independently of test1-3. This is the complete overall structure of the framework's specification of an ETCl's PE-test, in the Supreme Court's Alice decision (on page 7) required.

The FSTP-Test's Mathematics is trivial — as one instantly recognizes after understanding it — and output by the IES to its user, thus guiding her/him through the FSTP-Test. See ANNEX II & III for reconfirming, for an ETCl its PE, i.e. the difference between the Supreme Court's framework PE-requirements and those stated by the CAFC & USPTO.

The below FSTP-Test uses the in M involved conjunction of 7(9) test.o, 1 ≤ o ≤ 7(9), indicated by the '∧' between the above testo-boxes and the '— —>' below them. The testos' sources in §§101/102/103/112 and in the Supreme Court's 6 framework decisions are identified by any testo's condition name. The Legend II & fnb) comment all testos very briefly.

Metarational Claim Interpretation (CI): <external input ::= mratBIOCI, internal output ::= COM(mratBIOETCl)> & begin: Definition of COM(mratBIOETCl) ::= {O-crC0n ::= mphysO-MUIS0n, 1 ≤ n ≤ N, thereby identifying T10 and its E-xcrC0s} ∪ {A-crC0n, 1 ≤ n ≤ N} [superfluous for BIOETCl's] ∪ {E-crC0S mrat ::= {E-crC0k ∨ E-nrcC0k ::= k, BIOIDL-sentences, disclosed by E-mratMUIS0k, 1 ≤ k ≤ K}. 1) if [COM(ETCl) is factually E-complete ∧ -correct ∧ -definite ∧ {O-inC0n = ∑ 1 ≤ k ≤ Kn (E-inC0nk ∨ E-ninC0nk), ∑ 1 ≤ n ≤ N} ∧ ∑ 1 ≤ n ≤ N Kn = K] then go on; 2) if [(O-inC0n, E-inC0nk) | ∑ 1 ≤ n ≤ N ∧ 1 ≤ k ≤ Kn] are ex- or implicitly lawfully disclosed] then go on; 3) if [O-crC0n is ex- or implicitly enablingly disclosed, ∑ 1 ≤ n ≤ N] then output COM(mratBIOETCl) & stop.

Rational Claim Construction (CC): <internal input ::= COM(mratBIOETCl), external output ::= COM(ratBIOETCl)> & begin: 4) if [COM(ETCl) mrat comprises an nPE T10] then go on; 5) if [COM(ETCl) mrat is an application of T10's nature] then go on; 6) if [COM(ETCl) mrat is significantly more than T10] then go on; 7) if [COM(ETCl) mrat comprises only basically independent E-inC0nk] then | input COM(RS) mrat ≡ O/A-/E-crCnS, 1 ≤ n ≤ N and go on; 8) if [COM(ETCl) mrat has a definite A/N-Matrix over RS] then go on; 9) if [COM(ETCl) mrat has a creative height, crH ≥ 1] then | output 'COM(ETCl) rat is PE resp. PA'; stop.

Mathematical Claim Construction (CC): <internal input ::= COM(mratBIOETCl), external output ::= COM(matBIOETCl)> & begin: 4') if [E-xcrCS T10 ≠ ∅] then go on; 5') if [(T10 scope(E-crCS ETCl) ⊆ scope(E-crCS T10)) ∧ (scope(E-crCS ETCl) \ E-crCS T10) ≠ scope(E-crCS ETCl)] then go on; 6') if [(E-crCS ETCl) \ (E-crCS T10 ∪ E-xcrCS ETCl) ≠ ∅] then go on; 7') if [∑ 1 ≤ n ≤ N ∧ 1 ≤ k ≤ Kn] are basically independent of each other] then | input COM(RS) mrat ≡ O/A-/E-crCnS, 1 ≤ n ≤ N and go on 8') if [∑ 1 ≤ n, k ≤ Kn ∃ Δi,n,k ::= if (E-crCink = E-crC0nk) 'A' else 'N'] then go on; 9') if [crH ::= ∑ 1 ≤ n ≤ N (min v i ∈ {1, .., i} | {<Δi,n,1="N", .., Δi,n,Kn="N"}|) | ≥ 1] then | output 'COM(ETCl) mat is PE resp. PA'; stop.

Legend II: The COM(BIOETCl) definition preceding test1 is an O/A/E-KR of the BIOETCl to be PE-tested. If an ordinary ETCl is considered, there is no BIO-part of an index.

The properties to be checked by test1 (as part of M) are determined by the Supreme Court's Biosig decision that implies the refinement of ETCl's O-inC0n's and ETCl's 'definiteness, D' (comprising the well-definedness of its scope) — whereby examiners and courts here frequently ignore the most important statement in Biosig (about the role of the inventor). test2 checks the legally correct disclosures of all E-crC0k — then denoting them as E-inC0k where this is relevant. test3 checks of all N O-crC0n or A-crC0n disclosures their being enablingly disclosed.

ETCl's CC is shown in its ratKR and its matKR. In ratKR test4-9 are today always describable ET-independent in basic IDL-sentences [320], which is today by IDL's simplicity automatically translatable into matKR iff the ETCl at issue is describable by a COM(ETCl) the E-crC0k of which are definable in 'Cartesian coordinates' or isomorphic coordinate systems, like polar coordinate systems. Today this is not yet possible, e.g. for BIOETCl's and alike [508] (here 'being in the air'), yet possible for very many TETCl's, (and in BIOETCl's also very helpful as shown in [495] for proving the BIOETCl-Theorem'). I.e.: In 'Cartesian mat-properties' the mat meaning of a test.o is defined by test.o' of self-explaining mathematic functionality [2.b). cont'd on p.3

2. a Compared to [495], the notational exactness of the KR of the FSTP-Test is marginally increased — without changing any of its rat meanings. b M's meaning comprises some subtleties. In •test4': that the nPE T10 comprises an E-xcrC, in •test5': that this application uses [279] T10 syn- or asynchronously, and in •test6' & test7': that these notions of 'inventive concept' alias 'significantly more' & of 'basically independent' are really so simple as defined above and in [39], although being decisive. In test4'-7' the '0' in 'E-crC0S' — identifying the ETCl under PE/FSTP-Test — is omitted (for brevity).

cont'd from p.2 The **test.8 & 9** and **test.8' & 9'** don't belong to an ETCI's PE-test but expand it to the FSTP-Test. Finally: It is clearly shown (by the naming of any test's condition) that for any ETCI all 7(9) conditions must indispensably be checked for determining an ETCI's ⁿPE/PE (nⁿPA/PA).

NOTE: If 1 such condition is not checked, e.g. as unknown to the tester in an SPL-test — by the IES excluded — then it is invalid. Today this is the case with all applications of alleged framework-based SPL-tests, as the *Alice's* PE-specification, is hitherto untenably underinterpreted^[355] (the likely reason being indicated in^{1.b)(c)}). As this statement also holds for the granted patents of e.g. the ^{CRISPR}ETCIs^[488], such patents evidently embody — because of their unlimited preemptivity and hence monopolizing of huge knowledge areas for a single patent — the threat of putting the US NPS into jeopardy, as the Supreme Court in *Mayo* already recognized.

In other words: The PE-Test on page 2 is designed such that it is the necessary & sufficient criterion for an ETCI to be PE as by the Supreme Court's framework required, i.e. especially to be **only limited preemptive** **at** the lowest restriction of the set of all PE ETCIs (both requirements totally ignored by the CAFC & USPTO). Thus this test's semantic must not be changed such that one of both points is violated — as this would imply (by this 'criterion' definition) SPL's inconsistency, i.e. that there is some ETCI with two contradicting PE-decisions.

Partially summarizing: Due to the FSTP-Test's complete framework-interpretation of ETCIs, it enables showing not only that **applying SPL to an ETCI — determining e.g. its D, PE, PA (i.e. excluding its disclosures' complete- & enablingness) — is by the IES^[9] performed rationally & mathematically, but also that** **these steps are by it performed legally totally correctly, factually correctly wherever the input to the IES of the definitions of the ETCI's E-crCs is correct, vastly automatically and fully robustly, that** **the ETCI's patent precedents is correctly predicted by it and consistent over all ETCIs, and that** **over the set of all ETCIs extremely useful invariants over very large sets of utmost important ETCIs are easily provable^[495], e.g. all ^{BIO}ETCIs, and (broader) all conservative ETCIs^[495].**

ANNEX II:

The Incomplete Sets of SPL-Framework Requirements/Properties Determined by CAFC Decisions.

The most comprehensible KR of the complete set of ex- and implicit framework requirements to be met by an ETCI's properties for its being PE is provided on page 2 by the CI- and ^{rat}CC-box. One instantly recognizes that several tests of the FSTP-Test would still remain omitted by the two above CAFC decisions in analyzing their ETCIs' properties even if these ETCIs were modeled by their 'creative concepts, crCs' — probably not if modeled by their COM(ETCI).^{3.a)}

Thus, the necessity that the Supreme Court's framework total requirement statement is met by an ETCI patent specification's disclosures — for getting it patented — is failed by the CAFC's both decisions: Alone as both cases' boards, although being split, did not become aware of all framework requirements to be met by a PE ETCI's embodied inventivity (being modeled by its COM(ETCI), i.e. its basically independent crCs^{e)}). Additionally they failed, as they did not derive these requirements carefully and hence correctly from the Supreme Court framework's total requirement statement wording^[480] — hardly possible if they had clarified AI's top-down^{d)} mapping **M**.

Two examples of this latter carelessness: All CAFC precedents about & USPTO vocabulary of ETCIs commit decisive misinterpretations of these two key framework terms, caused by the CAFC's/USPTO's use of the BRI^{d)}. They interpret the terms:

- 'directed to' as too vague (i.e. too metaphysical) for being rationalizable, i.e. having no metarational meaning — thus differing^{h)} from its Supreme Court's clear meaning, which is 'ETCI's TT0 comprises an abstract idea or a natural phenomenon, i.e. an xCrC';
- 'inventive concept' as meaning a context-independent crC, i.e. a global novelty — thus grossly differing^{g)} from its Supreme Court's clear meaning, which is 'ETCI's inventive concept is only of local novelty, i.e. of TT0-local creativity'.

Due to the US society's openness & innovativity and the Supreme Court's framework, such notional confusion will not be tolerated forever in the US NPS. Thus, Andrei Iancu's impetus made the CAFC now notice it^{a)}.

^{3. a} In spite of both CAFC decisions' deficiencies caused by their omissions of ETCI-properties^{1.b)}, i.e. of properties of an ETCI's ETCI-element(s), they both now apply much more scrutiny in interpreting the Supreme Court's framework requirement statement and clearly encounter the notionally fine granularity indispensable in dealing with ETCIs — due to their natural phenomena's or abstract ideas' (i.e.: their 'exceptional concepts') unavoidable intellectuality/fictionality (as otherwise ETCIs are not unmistakably describable), superfluous in describing ETCIs. Due to the dramatically increasing number of alone ^{BIO}ETCIs (enabled by the potential rationalization of their creation and their partial automation of SPL-tests (e.g. by the FSTP-Test) — such insufficient exactness of ETCIs is intolerable, as SPL-decisions about them then are inexact, too.^{b)}

^b For keeping the ANNEX II simple, it does not identify all the legal deficiencies of both documents' reasoning.

^c Projecting Kant's Cognition Theory into presence, 1 E-crC of an ETCI is the KR of an 'atomic invention' adding meaning to the ETCI's total meaning^{1.b)}, i.e. of an invention created by 1 idea 'basically independent from any other idea known on the 'level of abstraction' on which the ETCI is defined. Legally, this definition of an E-crC is rooted in the opinions of the *Gegenstandsträger* resp. *Spannschrauben* decisions of the German BGH (when dealing with 'obviousness').

^d The main reason for the CAFC's reluctance to recognize in particular the correct interpretation/implementation of *Alice's* specification of the PE-problem is — besides its not being familiar with the in AI since decades self explaining technique of notional (and trivially rational) refining a complex problem^{1.b)} — that the CAFC refused to interpret the Supreme Court's complex framework opinions top-down, but insisted in interpreting them bottom-up by using the BRI, which tied it into questioning the meanings of the basic terms used by them, in particular of the term "abstract idea", "natural phenomenon", "inventive concept", and "directed to", the meanings of which trivially are 'globally undefinable'. Proceeding top-down^{d)} — i.e. as recently by the USPTO agreed, namely the 'context sensitive' alias *Phillips* way — evidently completely eliminates this question, as it enforces applying the contextual rationality^{h)} right from the beginning of disaggregating into E-crCs^{e)} the conjunctive atomic knowledge^{e)} making up any ETCI.

The lack of exactness of an ETCI's basic alias key terms inevitably leads into contradicting rational determinations of its possible meanings, i.e. its undecidability (as put scientifically) — as evidenced by both here considered CAFC decisions.^{e)}

^e In SPL, a sophisticated kind of PE-undecidability of an ETCI — potentially implying SPL's legal inconsistency — may be caused by allegedly exactly defined but unlimited preemptive ETCIs (as enabled by the CAFC & USPTO and their coarse abstraction level of specifying ETCIs). By contrast, the Supreme Court's framework is by the FSTP-Test implemented such that the Supreme Court's framework requirements are met by any PE ETCI.

^f The meaning of the *Alice* term 'directed to' — by the Supreme Court in *Alice* introduced into SPL for testing ETCIs for being PE — is in the *Alice* context metarational, i.e. rationalizable, as in any such test of an ETCI its such TT0 unquestionably comprises an exceptional xCrC^{a)}.

^g The meaning of the *Alice* term 'inventive concept' — denoting an E-crC's property sui generis — transforms an unlimited preemptive TT0 (hence being ⁿPE) by means of an application of TT0 into a limited preemptive ETCI (hence being PE). **NOTHING ELSE!!!** i.e.: This inventive concept is to be novel only in conjunction with TT0 — otherwise not. The Supreme Court explicitly emphasized this purpose absolutely unmistakably in *Myriad* on page 17, last paragraph.

ANNEX III:

The Incomplete Set of SPL-Framework Requirements/Properties Determined by the USPTO §101-Guideline.

The ANNEX II may serve as ANNEX III, too, after therein emphasizing the USPTO and its §101-guideline (instead of the CAFC and its 2 decisions). Thus, the next 2 paragraphs comment only quite principally on the new §101 guideline. The new §112-guideline is still too rudimentary for being commentable, though being even more important than the §101 one!

Firstly, it may seem to a 'law-only' person that Mathematics-based testing of ETCIs under SPL alias FSTP-Technology would not make it into professional patent business and hence is not needed for getting a §101-guideline more concrete/precise/helpful. The reason being that — in spite of history, showing that for any knowledge area its mathematical scientification always prevails — the knowledge area here at issue is by some members of the patent community still fiercely rejected culturally just as intellectually. Nevertheless, the vast majority of SPL professionals would immediately get acquainted with FSTP-Technology — as it is vastly fully mathematized and hence for decades stable science (just as Physics), easily to grasp (much easier than Physics), rigorously guides its user! by the IES (free of charge via the Internet) through its ETCI's SPL-test, and of enormous other advantages — thus rapidly reconfirming this historic experience.

Secondly, my recommendation for the 2019 § 101 guideline is to accompany it (or better: to replace it, as still BRI-based!!) by a scientific one — indicated above, in more detail by (submitted already in 2018 to the resp. USPTO docket), now implicitly supported in part by. The Supreme Court & CAFC would certainly appreciate this support by the USPTO.

The FSTP-Project's Reference List (Version of 28.02.2019)

Many FSTP-Project mails, including this one, are written in preparation of the textbook — i.e. are not fully self-explanatory independent of other FSTP-mails.

[2] The term Artificial Intelligence here denotes specific cutting edge deterministic IT & Mathematics areas, e.g. in Knowledge Representation (KR)/ Description Logic (DL)/ Natural Language (NL)/ Semantics/ Semiotics (T/Nonsequential) System Design/..., i.e. a resilient fundament for analyzing 35 USC/SPL by AI-based 'Facts Screening/Transforming/Presenting' FSTP-Technology, developed here, induced by the US Supreme Courts framework decisions... All the ETCIs meanings, especially Molecular Biology/meanings of all BIO-prefixed acronyms, are based on so understood AI.
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