

The USPTO's 2019 PE-Guidance is still Mute about 'Wild Preemptivity' — Devastating for CRISPRETCIs.

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All 6 recent PE-briefs^{1.a)} to the Supreme Court^[e.g.578...583] show that in US NPS "wild preemptivity" is still not recognized in its devastating power, though today for CRISPRETCIs causing its "application clustering threat"^[552/1.e)]. This is here clarified as to the USPTO's PE Guidance^[504,566] by focusing on ETCl's FSTPtest6'-7'^[573] — as even in FSTPtest6-7 not yet recognizable.

An ETCl's FSTP-Test in irat/mrat/rat/matCBN(ETCl)-KR^{1.b)} — for an ETCl's PE Testing only

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| Metarational Claim Interpretation, ^{mrat}CI: | <2 inputs ::= ^{mrat&rat} CI in (ⁿ ISL _v ISL) & ISL, 2 outputs ::= CBN(^{mrat&rat} ETCl)> | & begin: |
| 1) | if [CBN(^{mrat&rat} ETCl) is factually { ^{mrat&rat} O-crC0n = ^{mrat&rat} (($\sum_{1 \leq n \leq N} K_i = K$) \wedge ($\bigwedge_{1 \leq n \leq N} E-crC0k_i$) \wedge ncrC0n)) / 1 \leq n \leq N} \wedge ^{mrat&rat} (E-complete \wedge -correct \wedge -definite)] | then go on; |
| 2) | if [^{mrat&rat} O-inC0n, $\forall 1 \leq n \leq N$ are ex- or implicitly lawfully_disclosed] | then go on; |
| 3) | if [^{mrat&rat} O-crC0n, $\forall 1 \leq n \leq N$ are ex- or implicitly enablingly_disclosed] | then output ^{mrat&rat} E-crCS = CBN(^{mrat&rat} ETCl) & stop. |
| (Meta)Rational Claim Construction, ^{rat}CC: | <internal input ::= CBN(^{mrat} ETCl), external output ::= CBN(^{rat} ETCl)> | & begin: |
| 4) | if [CBN(^{mrat} ETCl) is ^{mrat} directed to an exceptional concept', i.e. ^{rat} comprises in the ⁿ PE ^{TT0} an E-xcrC'] | then go on; |
| 5) | if [CBN(^{mrat} ETCl) is ^{mrat} 'an application of those concepts, ...' i.e. a ^{rat} 'application that uses ⁿ PE ^{TT0} '] | then go on; |
| 6) | if [CBN(^{mrat} ETCl) is ^{mrat} 'significantly more than ...', i.e. ^{rat} 'E-crCSE ^{TCIT} TT0 is basically independent of E-crCSTT0'] | then go on; |
| 7) | if [CBN(^{mrat} ETCl) is ^{mrat} 'transforming the nature of the claim ...', i.e. ^{rat} 'transforming claim(ⁿ PE TT0) into claim(PE ETCl)'] | then output 'CBN(^{rat} ETCl) is PE' & stop. |
| Mathematical Claim Construction, ^{mat}CC: | <internal input: := CBN(^{rat} ETCl), external output := CBN(^{mat} ETCl)> | & begin: |
| 4') | if [E-xcrCSTT0 \neq Φ] | then go on; |
| 5') | if [(\bigcap TT0scope(E-crCSE ^{TCIT} TT0) \subseteq scope(E-crCSTT0)) \wedge (((\exists E-crC ^o \in E-crCSE ^{TCIT} TT0) \wedge (\exists E-crC ^{oo} \in E-crCSTT0)) : E-crC ^o E-crC ^{oo})] | then go on; |
| 6') | if [(\exists E-crC* \in E-crCSE ^{TCIT} TT0) \wedge (E-crC* \neq E-crCSTT0)] | then go on; |
| 7') | if [E-crCSE ^{TCIT} (E-crC*) = PM] | then output 'CBN(^{mat} ETCl) is PE' & stop. |

Reconsidering the FSTP-Test^[573] as to •test6' & test7' and their •Notional Refinement's Impact on Cl^{1.d)} — test8/8' & test9/9' omitted.

Of the 6 briefs 2018/19 in 3 cases, only the PfC of ATHENA^[581] and both DoJs' ABs^[578,579] (by their final recommendations selecting ATHENA, too) indicate being aware of the (need of the) 'PE problem's notional filigree' — the latter being

- implicitly but convincingly confirmed by the ^{irat}PE-chaos^{1.b)} reported by their 3 briefs to the Supreme Court,
- by the Supreme Court required by its line of framework decisions and by several Justices commented accordingly^[500/1.d-e)],
- explicitly supported also by the USPTO's director, Andrei Iancu, and his substantively improved 2019 PEG^[504,566],
- scientized by the FSTP-Test in ^{irat&mrat&rat&mat}KR — thus (having the inventor and/or pposc) taking also the ETCl's 1.) original KR to its (Alice required) ^{mrat}CBN(ETCl) specification, and then to its (both FSTPtech required) 2.) ^{rat}CBN(ETCl), and then potentially 3.) ^{mat}CBN(ETCl) specifications (both these CBN(s) in state of the art of System Design & of AI & ISLKR, whereby these 3 steps of these CBN-KR conversions may be tedious) — beyond any doubt.

The USPTO 2019 PEG's ^{mrat}meaning^{1.e)} deals with any ETCl as if it were an ETCl without an inventive Alice concept E-crC*, i.e. were an ETCl with each^{1.e)} \in E-crCS\{E-crC*} incapable of passing the FSTP-Test's test6'&7' ^[552], hence not satisfying what the Supreme Court requires by its Alice's PE specification — why this requirement is crucial for excluding patenting ETCl's having a potentially unlimited/wild 'cluster of applications' ^[552], as by Mayo seriously threatening the US NPS.

Thus, this PE-mail about the newly by FSTPtech discovered 8th earthly Continent^[573] (hosting all PE and ⁿPE ETCl's imaginable) — induced by the Supreme Court's 'framework' decisions — ends by a reminder: That establishing the US society's sustainable wealth began, after many terrestrial areas had been parcelled-out from the Wild West, as so-called 'claims'. This then created huge waves of US innovativities by protecting these claims by their owners' property rights.

The Supreme Court's USC 35/SPL-framework repeats this unnoticed US block buster innovation: Today a quite similar (even more promising) AI innovation protects ETCl's even robustly^{1.e)} — by their owners' (Intellectual) Property Rights.

Excerpt from the FSTP-Project's Reference List (as of 18.12.2019).¹⁾

Many FSTP-Project mails, including this one, are written in preparation of the textbook^[182] – i.e. are not fully self-explanatory independent of other FSTP-mails.

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| <p>[488] S. Schindler: "UC's vs. Broad/MIT/Harvard's CRISPR Patents & the Supreme Court's Framework", Part I, publ. 20.09.2018¹⁾</p> <p>[495] S. Schindler, B. Wittig: "UC's vs. Broad's CRISPR Patents ...", Part III, publ. 30.01.2019¹⁾</p> <p>[504] USPTO: The 2019 §§ 101&112 Guidelines, 07.01.2019¹⁾</p> <p>[508] B. Wittig, B. Wegner, S. Schindler, C. Negrutiu, D. Schönberg, J. Schulze, R. Wetzler: "UC's vs. Broad/MIT/Harvard's CRISPR Patents & the Supreme Court's Framework – Graphical Support in ^{(M)BIO}ETCI Specification", Part V, to be pub. In Dec.19/Jan.20.</p> <p>[566] USPTO: The 2019 § 101 October PE Guideline, 18.10.2019¹⁾</p> <p>[573] S. Schindler: "An Unnoticed AI Requ. Met by the Supreme Court's PE Philosophy ...", pub. 09.12.2019¹⁾</p> <p>[575] B. Wegner, B. Wittig, S. Schindler, C. Negrutiu, D. Schönberg, J. Schulze, R. Wetzler: "Mathematically Modeling the Meaning of FSTPtech Specifications of ETCIs", in prep.</p> | <p>[576] S. Schindler: "A Venture's Wealth Control by All its Knowledge-Areas' ^{(M)ETCIs} Lattices", to be pub. 10.01.2020¹⁾</p> <p>[577] S. Schindler: "The USPTO's PE-Guidance is still Mute about 'Wild Preemptivity' – ...", pub. 19.12.2019¹⁾</p> <p>[578] DoJ: AB in SC as to <i>Berkheimer</i>, pub. 06.12.2019.¹⁾</p> <p>[579] DoJ: AB in SC as to <i>HIKMA</i>, pub. 6.12.2019.¹⁾</p> <p>[580] HP PFC in SC as to <i>Berkheimer</i>, pub. 2018¹⁾</p> <p>[581] Athena: PFC in SC as to <i>Mayo</i>, pub. 01.10.2019¹⁾</p> <p>[582] Athena: PFC/Resp. in SC as to <i>Mayo</i>, pub. 9.12.2019¹⁾</p> <p>[583] HIKMA PFC in SC as to <i>VANDA</i>, pub. 27.12.2018</p> <p>*) The complete FSTP Ref. List & v documents on www.FSTP-expert-system.com</p> |
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1.a Upfront NOTE: In future the acronym "CBN" stands in FSTPtech for "combination" – as its hitherto 'COM' was often misinterpreted.

Also be reminded that most preceding FSTP-mails used the simplifying assumption that any PE problem's ETCI has only 1 CN, to be maintained until the preemptivity problem is fully resolved under this simplification in^[508] – hitherto not noticed outside of FSTPtech – for the time being^[508].

Then the FSTP-Test and its "strong AI, SAI"^[573] enable rationally deciding any ETCI as scientific & secure & automatable or not^[573], often called the ETCI has a "rough" SPL specification. Otherwise being of "wild" preemptivity, as currently always used^[488,495].

All Supreme Court framework notions necessarily used but not defined in this PE mail are defined in^[573] or several scattered earlier FSTP mails, then often referred to 'by^{FSTP}'. Also remember that FSTPtech's specification technique is (with evident SPL adjustments) that in the 70s – 90s developed by System Design Technique^[FSTP], i.e. broadly known in the Software Engineering area.

b Correctly interpreting the Supreme Court's SPL-framework requires the notional scrutiny known from Analytic Philosophy that often is (misleadingly) felt to be superfluous. Accordingly, the meaning of a bold notion, below on the left-most, denotes an ETCI item's^[FSTP] "notional property quality" (right of its '—' axiomatically defined). This quality of a legal and/or factual notion may be:

- **transcendental** – this ETCI item is excluded from SPL-satisfiable testing, as embodying a highly speculative notion;
- **metaphysical** – not being "highly speculative", but definable such that this property is recognizable to be amenable to metarationalization, i.e. definable by (informal) conjunctions of informal "O(-level)-predicates" of this ETCI, i.e. ^{mat}axiomizable, located on its notional **O-level**;
- **irrational** – all such notions belong principally to Rationality, due to their eventual by definition axiomizability being amenable to mathematization, as Kant implicitly postulated⁶⁾, i.e. principally already located on its notional **A-level**;
- **metarational** – being definable by an ISL-expression^[e.g.372,390] (in basically natural English) describing all semantics of all O-predicates as formal conjunctions of formal "A(-level)-predicates" in ISL, i.e. a priori ^{mat}axiomizable (often even 'easily'), located on its notional **A-level**;
- **rational** – being definable by an ISL-expression (again in basically natural English) describing all summands of all such A-predicates, i.e. being rationalizable, i.e. also mathematizable, by "E(-level)predicates" in atomic or exceptional ISL notions, located on its notional **E-level**;
- **mathematical** – being describable by exactly these E-predicates in mathematical KR, located on its notional **E-level in ^{mat}KR**.

NOTE: Kant's Cognition Theory is not focused on only '^{mat}related' KR qualities – up to including Irrationality – but often even explicitly comprises also Ethics. This defines the by him indicated meaning of his key notion 'Reason'.

At Kant's life time it was impossible to already identify these 6 different qualities of 'reasoning', as he called his semantics (as he simply had not yet the huge IT knowledge developed between Frege and Parnas). FSTPtech calls them the '**notional grid of men's mental activity alias thinking**' – with or without some vague feelings that he admitted and which he insisted to be taken into account in thinking. Yet, in FSTPtech any nonelementary feeling is excluded, as modeling a compound & the more a sophisticated feeling evidently need not be decomposable into a conjunction of elementary ones, not to speak of the difficulties encountered when trying to identifying the meaning of 'single ideas' – induced by the BGH^[FSTP] – needed for enabling identifying E-crCs^[FSTP].

DISCLAIMER: It is evident that this part of the foundation of a very elementary Mathematics by basics of Mathematical Philosophy is indispensable for consistent thinking in & understanding of & modelling & patenting by basics of Emerging Technologies and that it itself is self-depending and then/there potentially to be avoided – achievable by restricting these mental activities to what is practically needed by ETCIs of FFOL ('finite first order logic') type and patenting them. In^[508,575,576] will be shown that these limitations pave the way to scientifically and/or industrially dealing with probably all ETCIs that for the next decades is reasonable to consider – indicated by the fact that hitherto not a single PE but ^{mat}FFOL invention has been encountered.

Additionally, in general the criterion must be met that any ETCI's specification is necessarily notionally sufficiently fine or refined, as otherwise it is notionally too coarse & vague for being testable for meeting its Supreme Court's framework implicit requirements for its subtlety & preciseness & limited preemptivity. This necessity will become key – at least in the worldwide community of AI scientists interested in socioeconomic and industrial contexts – for enabling assessing that an ETCI is PE iff it is not wildly preemptive, which in turn is crucial for this ETCI's SAI^{a)}.

c The quality 'Irrationality' (of a notion/property of an ETCI-element of an ETCI, as by *Alice* to be to understood^[FSTP]) is the part of Metaphysics (itself being part of Transcendence) closest to this notion's Metarationality – yet not quite there: Of any specific Irrationality it is initially unclear, whether it may eventually be truthfully converted into Rationality (in the sense of any Rationally independent, i.e. 'pure', Metaphysics being comprised by it or not) – and may comprise Moral/Ethics, but is free of any Transcendence relation.

d The USPTO's 2019 PEG is for a classic invention, i.e. an "ETCI", not designed – as the patent(application)'s specification of an ETCI by its definition always comprises at least 1 E-xrC and an ^{mat}ETCI's definition never comprises an E-xrC. Which of both properties holds for an ETCI/^{mat}ETCI is always easily determinable, as it trivially results from describing it by its CBN(ETCI) specification^[FSTP] – existing for any invention, unless it is pathological, what hitherto has never been encountered^[5].

e Thereby this notion of 'robustness' will in FSTPtech be upgraded to "SAI robustness", for indicating that 'strong AI'^{a)} – a product achievable only by an open society as only by the US have managed to establish – is capable of inducing "innovation quantum leaps" to the economic development of virtually any business in virtually any area.