USPTO Director Squires Jumps Right Into Patent '101 Eligibility Reform

By Dani Kass · Listen to article

Law360 (October 1, 2025, 10:19 PM EDT) -- U.S. Patent and Trademark Office Director John Squires used his first week at the agency to make bold statements about what should be eligible for patenting, with patent owners celebrating his support of diagnostics, crypto and machine learning technologies.

Squires on Sept. 24 ceremonially signed two patents on technology generally considered not patentable under Section 101 of the Patent Act and then issued an appeals review panel decision Friday faulting the idea that artificial intelligence and machine learning are per se unpatentable. Those early moves show a plan to support new inventions on the most disputed technology of the last decade, attorneys say.

"This is not by any means a full reversal," said Sheppard Mullin Richter & Hampton LLP partner Daniel Yannuzzi. "This is really the office signaling that these things are going to be looked at more on a case-by-case basis. And it's the claim language that matters more so than a particular area of technology that you happen to be in at the moment."

The USPTO didn't immediately respond to a request for comment Wednesday.

The Changes

Patent eligibility law has become extremely muddled in the aftermath of various U.S. Supreme Court cases from more than a decade ago, namely Alice Corp. v. CLS Bank and Mayo v. Prometheus, which held abstract ideas and natural phenomena cannot be patented without an added inventive concept.

How to interpret what is abstract, natural or inventive has frustrated district court, circuit

court and Patent Trial and Appeal Board judges, along with officials, attorneys and most others in patent law. That includes examiners as well.

"If you see a claim and you want to reject it under Section 101, you can probably find a reasonable basis to do so," said Mesh IP Law founder Michael Eshaghian of examiners. "If you want to think it's fine under Section 101, you can probably find a reasonable basis to do so."

Squires took over at the USPTO on Sept. 22 and ceremonially signed a pair of patents two days later that often fall into the eligibility red zone.

One involving cancer diagnostics was granted to Roche Diagnostics unit Ventana Medical Systems Inc. The other patent went to NECF, an e-commerce company focused on the media industry. Squires described the latter patent as being reflective of distributed ledger and crypto technologies.

"From crypto and AI to quantum computing and diagnostics, the marketplace is filled with breathtaking opportunities for invention and investment," Squires said in his remarks. "Who knows what tomorrow will bring? What I do know is that the patents I signed today represent applied and patent-eligible technologies driving the frontiers of knowledge."

McKool Smith principal Kevin Schubert said in an email: "These two technologies have been the subject of intense debate within the patent eligibility doctrine for years, and it seems no coincidence that he picked these patents to showcase."

Then on Friday, Squires issued an extremely rare decision out of the agency's appeals review panel, where he sat alongside two USPTO officials. He said the USPTO was wrong to deny inventor Guillaume Desjardins' patent application involving machine learning.

Squires agreed with the PTAB that the application is directed to an abstract mathematical concept, but said the improvement on machine learning is an added inventive step that makes it eligible for patenting.

"Categorically excluding AI innovations from patent protection in the United States jeopardizes America's leadership in this critical emerging technology," the decision states. "Yet, under the panel's reasoning, many AI innovations are potentially unpatentable — even

if they are adequately described and nonobvious — because the panel essentially equated any machine learning with an unpatentable 'algorithm' and the remaining additional elements as 'generic computer components,' without adequate explanation."

What They Signal

Squires' decision to start with AI makes a strong statement about how he views patent eligibility on a broad level, says Sheppard Mullin's Yannuzzi.

"This kind of signals that this practice of categorically denying or excluding certain areas of technology from patent eligibility may not be tolerated anymore," Yannuzzi said.

"In many cases," he continued, "if something [was] an AI innovation, we would seem to run into a brick wall at the patent office, and I think now, as long as we're claiming this properly with the right technical underpinnings or the proper transformations or even an output that affects the operation of a physical instrumentality, we might now have the ability to get these claims through the patent office."

Squires is changing the game by putting a limit on what can be considered a mental process, said Brownstein Hyatt Farber Schreck LLP shareholder Anne Elise Herold Li. Many patents have been invalidated or rejected under Section 101 by the courts or USPTO determining they're having a machine do what a person could do in their head or by pen and paper.

That makes sense when trying to figure out the square root of 4, but not so much when having an optical scanner look through a million cell samples a minute when working on diagnostics, she said.

"A person can only look at five a minute, but that's still the same mental process," Li said.

When reviewing a genetic mutation, Li said, "There's so much literature and so many studies and so many brilliant scientists. There is no way one person can read all of the literature and look at all of the DNA codes amongst a large population, identify four or five specific genes that they think may cause this disease, and then run further tests on drugs to hit those four or five things."

Over the last decade or so, diagnostics have been all but unpatentable, said Nath Goldberg & Meyer partner Joshua Goldberg. The diagnostics patent Squires issued is "very classic, very standard," he said.

"It really is encouraging to see that that type of coverage might be possible again," Goldberg said.

In early August, the USPTO sent reminders to certain sects of patent examiners reflecting concerns like Li's. The memo from Deputy Commissioner for Patents Charles Kim told examiners to be practical when deciding what a human can do in their mind or with pen and paper. He also said when there is a close call on whether a patent application meets eligibility standards, examiners should only deny it if there's more than a 50% chance the subject matter is ineligible.

Squires' steps show him in line with the administration's take that Section 101 rejections have become too gratuitous and hasty, said Mesh's Eshaghian.

"His comments in the opinion were pretty blunt," Eshaghian said of the appeals review board holding. "You don't really see comments like that in opinions very often."

Patent owners and their attorneys have been extremely happy about where Squires is going, seeing it as a boon for innovation.

"He's doing an amazing job in encapsulating what the patent owner has felt for some time about having 101 be so far behind the technology," Li said.

The Looming Concern

While Squires could set a new patenting standard at the office, its effect will be limited if the Federal Circuit isn't on board.

The appeals court issued its first decision on the eligibility of machine learning patents in April, ultimately finding patents directed to TV scheduling invalid under Section 101. But the court was clear that its decision in Recentive Analytics, Inc. v. Fox Corp. wasn't meant to be all-encompassing.

"Machine learning is a burgeoning and increasingly important field and may lead to patent-eligible improvements in technology," wrote U.S. Circuit Judge Timothy Dyk. "Today, we hold only that patents that do no more than claim the application of generic machine learning to new data environments, without disclosing improvements to the machine learning models to be applied, are patent ineligible."

Time will tell if Squires' views on patent eligibility will line up with Judge Dyk's, and that time may not come soon.

"You have to get these patents to issue, and then they have to be enforced, and then they have to be litigated, and then they have to be appealed," said Bryan Cave Leighton Paisner LLP partner George Chen. "I think it's going to be a few years before we see some of this back-and-forth really start to come into play."

If attorneys are able to get patents under Squires' eligibility views, and those don't survive at the Federal Circuit, parties are going to have to be realistic and focus on drafting claims that will get past the latter, said Sheppard Mullin's Yannuzzi.

The Federal Circuit is somewhat unpredictable on this front because its judges admit they're not on the same page about patent eligibility and have joined the chorus of voices unsuccessfully asking the Supreme Court for guidance.

Further, the circuit court doesn't have to listen to the patent office, especially after the Supreme Court's Loper Bright Enterprises v. Raimondo put an end to Chevron deference in 2024.

"What we have here are two different branches of government at work," Chen said. "The Federal Circuit or the courts in general are not going to make changes just because the patent office is making changes."

In reality, the dispute needs to be handled by Congress, attorneys say. There is a pending bill to expand eligibility and get rid of the Supreme Court's exceptions, called the Patent Eligibility Restoration Act.

"Until then," said Mesh's Eshaghian, "I think it's a fool's game to try to predict how courts are going to look at this thing."

--Editing by Emily Kokoll.