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Office of the Controller General of
Patents, Designs & Trade Marks
(CGPDTM)
Department for Promotion of Industry
and Internal Trade
Ministry of Commerce & Industry
Government of India
Boudhik Sampada Bhawan,
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Submitted via email: sukanya.ipo@nic.in

Re: "Comments on Draft CRI Guidelines 2025"

Dear Controller General:

The Intellectual Property Owners Association (IPO) appreciates the opportunity to respond to the invitation to provide comments and suggestions on the *Draft Guidelines for Examination of Computer-Related Inventions (CRI), 2025* ("Guidelines") published on March 25, 2025.

IPO is an international trade association representing a "big tent" of diverse companies, law firms, service providers, and individuals in all industries and fields of technology that own, or are interested in, intellectual property rights. IPO membership includes over 125 companies and spans over 30 countries. IPO advocates for effective and affordable IP ownership rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current IP issues; providing information and educational services; supporting and advocating for an IP system that enables innovation and creativity; and disseminating information to the public on the importance of IP rights. IPO's vision is the global acceleration of innovation, creativity, and investment necessary to improve lives.

IPO recognizes the importance of the objective of the Guidelines to update the procedures for the examination of Computer-Related Inventions to reflect developments in technology and the law. IPO hopes that its comments below will be helpful during the process of finalizing the Guidelines.

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Section 4.4 (Sufficiency of Disclosure - pp. 25-26)

IPO is concerned that the Guidelines on sufficiency requirements for Artificial Intelligence ("AI") inventions listed in section 4.4 pp. 25-26 do not allow examiners the discretion and flexibility that is needed. As AI is a rapidly developing area of technology, it is too early to require that examiners apply rigid criteria for sufficiency. Further, the examination process needs to account for the variety of AI inventions that may be described and claimed in patent applications before the Indian Patent Office, and this can best be accomplished by allowing some discretion regarding what can be used to establish sufficiency. Therefore, at present, examiners and applicants will benefit from a system that allows examiners some discretion. As AI develops, further harmonized criteria may become more evident, but based on the evolving state of AI technology that point has not yet been achieved.

The Patents Act (1970),[1] Section 10(4), provides for a more flexible standard:

> "Every complete specification shall—
> (a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed;
> (b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; …."

Likewise, the sole judicial decision on sufficiency cited in the Guidelines does not support the use of rigid requirements for disclosure of the specific details listed in the Guidelines. To the contrary, the decision in Caleb Suresh Motupalli vs Controller Of Patents [C.M.A. (PT) No. 2 of 2024] (29th January, 2025)[2] makes clear that the standard for sufficiency is flexible and does not require every detail of the invention to be included in the specification:

> "[I]t is not necessary that the specification should disclose every detail of the invention with accuracy and precision …."

Moreover, the facts discussed in Caleb Suresh Motupalli also do not support a rigid requirement that the details listed in the Guidelines should be required in each patent application, as the patent at issue in that case was an extreme example:

[1] Available at https://ipindia.gov.in/writereaddata/portal/ipoact/1_31_1_patent-act-1970-11march2015.pdf
[2] Available at https://indiankanoon.org/doc/16272913/

> "[The patent] does not contain ***any*** details as regards the conventional information processing and user interface design techniques to mitigate n- entropy as claimed in Claim No. 15(iv)(3) …."
>
> and:
>
> "[The patent] glaringly lacks ***any*** teachings or working examples regarding its usage in achieving the integration as claimed. Apropos the decussation of the pyramids, the description found in pages 16-17 of the complete specification contains an elaboration of the proposed decussation and biblical and natural element analogy but is devoid of ***any*** technological enablement of the features in the claim."
>
> *Id.* (emphasis added)

An examination of the nature of AI inventions supports that a flexible standard should be used. IPO notes that academic papers written by and for those of skill in the art have proved readily reproducible without the level of detail cited in the guidelines. For example, a paper by Szegedy, Vanhoucke, Ioffe, Shlens and Wojna, "Rethinking the Inception Architecture for Computer Vision,"[3] which does not disclose all of the technical details required by the Guidelines, was later implemented as an open source project, "PyTorch Vision Inception v3,"[4] by an entirely separate team, Stewart and Hug.

The rigid requirements in the Guidelines are also at odds with the requirements of other jurisdictions and would make India an outlier with a significantly higher standard for allowance of AI patents than in other jurisdictions, which could inhibit AI innovation in India. Other jurisdictions do not specify sufficiency requirements in such detail but rather follow more flexible principles. For example, the examination guidelines of the U.S. Patent and Trademark Office ("USPTO"), at MPEP 2164[5], specify:

- "Detailed procedures for making and using the invention may not be necessary if the description of the invention itself is sufficient to permit those skilled in the art to make and use the invention."
- "A patent need not teach, and preferably omits, what is well known in the art."
- "The specification may require a reasonable amount of experimentation to make and use the invention and what is reasonable will depend on the nature of the invention and the underlying art."

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[3] Available at https://arxiv.org/abs/1512.00567
[4] Available at https://pytorch.org/hub/pytorch_vision_inception_v3/
[5] Available at https://www.uspto.gov/web/offices/pac/mpep/s2164.html

The examination guidelines of the European Patent Office ("EPO"), at Part F, Chapter III, 1. Sufficiency of Disclosure[6], likewise specify:

> "Indeed, in some technical fields (e.g. computers), a clear description of function may be much more appropriate than an over-detailed description of structure."

In addition, IPO suggests that any new requirements should only apply to cases with priority dates that are a reasonable time after promulgation, in order to allow for reasonable notice, consistent with principles of common law. IPO further suggests that post-filing evidence to show compliance with any requirements should be allowed.

Sections 4.4.1 (Claims) and 4.4.2 (Form and Substance) (p. 27)

IPO appreciates the position by the Patent Office that claims in CRIs need to be "construed to ascertain the substance of the claim without wholly relying on the forms and types of the claims" (point 3 in Section 4.4.1) meaning thereby there should not be a restriction on patent eligibility to the "form and type" of claims when there is already a restriction on the substance of the claim (excluding "computer programme per se"). Accordingly, all forms and types of claims should be patent eligible.

The above position is further corroborated by the statement under Section 4.4.2 that: "[i]f, in substance, claims in any form such as method/process, apparatus/system/device, computer program product / computer readable medium belong to the said excluded categories, they would not be patentable." By corollary, claims of the form / type "method/process, apparatus/system/device, computer program product / computer readable medium" should be patent eligible if the substance claimed therein does not belong to the excluded category.

In view of the above, IPO suggests clarifying that claims of the following form / type are patent eligible and should not be refused merely on the basis of the form / type of the claim:

- Method / process
- Apparatus / system / device
- Computer program product /computer readable storage medium

Such clarification on patent eligibility of the form / type of claims will be of great help in streamlining the process of examination and resolving current inconsistencies in positions adopted by different Examiners in rejecting claims belonging to a certain form / type (largely apparatus / system / device claims as well as computer program product / computer readable storage medium claims). This will also be consistent with the fact that

[6] Available at https://www.epo.org/en/legal/guidelines-epc/2024/f_iii_1.html

neither is there any statutory basis for rejection of any particular form / type of claims, nor are they held to be patent ineligible in any court decision.

Section 4.5.1 (Claims directed as "Mathematical Method" - pp. 28-29)

IPO respectfully submits that the Guidelines on claims directed to "mathematical method[s]" unnecessarily limit the list of exclusions that may not apply to inventions that include mathematical formulae. As emerging technologies (including AI) evolve, the proposed exclusions should be presented as an exemplary and non-exhaustive list. IPO therefore suggests the following addition to the text:

> Also, such exclusions may not apply to inventions that include mathematical formulae and resulting in systems for e.g., encoding, reducing noise in communications/ electrical/electronic systems or encrypting/ decrypting electronic communications.

Section 4.5.4 (Claims directed as "Computer Programme per se"- p. 32)

This section appears to state that the following categories of claims are excluded from patentability:

- "Computer programme products"
- "Storage Medium having instructions"
- "Database"
- "Computer Memory with instruction" stored in a computer readable medium.

This is inconsistent with Sections 4.4.1 and 4.4.2, as discussed above, as there should not be a blanket declaration of patent ineligibility for any claim forms / types. The qualifying criteria is the substance of claims, and not the form / type of claims. It also does not appear that the case law excerpts cited in this section support the exclusion of any claim forms / types from patent eligibility. IPO therefore suggests that the exclusions cited in Section 4.5.4 should be removed.

Section 4.5.4 (Technical effect/ Technical contribution- p. 33)

While IPO acknowledges and appreciates that the list of potential Technical Effects / Technical Contributions in the Guidelines is non-exhaustive, IPO suggests that the list be further expanded to expressly include entries which relate to technical solutions to real-world technical problems. For instance, the following entries could be added to the list:

- **Enhanced user interface**. If the invention results in an improved / enhanced experience of a user in the graphic user interface of the application.

- **Efficient screening / sorting of data**. If the invention provides a method for a more efficient / faster way to screen or sort raw data such as input user data, transmission data, etc.

- **Efficient / intelligent processing or interpreting of language / inputs from a user**. If the invention provides a method for processing and interpreting the user input or language more intelligibly towards generating a response action.

- **More accurate translation / communication of language / inputs**.

A large number of computer related inventions provide solutions to real-world problems falling in these categories, and this expansion will provide greater clarification in assessing the scope of technical effect / contribution which enables patent eligibility.

Section 5 (Examples - pp. 34-45)

Headings

IPO submits that the headings for "Patentable Claims" and "Non-Patentable Claims" (sections 5.1 and 5.2) should clearly indicate that the examples provided address **patent eligibility** and not patentability in general. Emphasizing eligibility helps stakeholders evaluate potential patent protection for AI technologies.

An emphasis on eligibility as an element of patentability would align with the eligibility analysis in other jurisdictions. For example, the 2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence[7] of the U.S. Patent and Trademark Office specifies that such guidance is issued "on patent subject matter eligibility to address innovation in critical and emerging technologies (ET), especially artificial intelligence (AI)."

Similarly, the Guidelines for Examination in the European Patent Office (European Patent Convention Guidelines, or "EPC Guidelines") provide an Index for Computer-Related Inventions (CII)[8] that references Part G of the EPC Guidelines. Part G cites EPC Article 52(1) wherein the essential requirements for patentability of the subject matter of claims are provided. First among these is the requirement for an "invention"

[7] Available at https://www.govinfo.gov/content/pkg/FR-2024-07-17/pdf/2024-15377.pdf
[8] Available at https://link.epo.org/web/legal/guidelines-epc/en-epc-guidelines-2025-hyperlinked.pdf

belonging to any field of technology. Implicit in this first requirement is that the claimed subject matter must have a technical character that renders the invention patent eligible.[9]

Examples and Explanations

IPO appreciates the Guidelines' presentation of various sample claims in the Examples. It suggests that each example be accompanied by an explanation regarding the eligibility of each sample claim. Stakeholders would benefit from the Indian Patent Office's view on the specific technical contributions and effects present or absent in each example. Doing so would align with the approach of other patent offices in providing examples and supporting reasoning.

For example, in the above-referenced 2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence of the USPTO, Examples 47, 48 and 49 "provide additional analyses under 35 U.S.C. § 101 of hypothetical claims in certain situations to address particular inquiries, such as whether a claim recites an abstract idea or whether a claim integrates the abstract idea into a practical application."[10] Each example is supported by detailed reasoning, grounded in relevant case law, which USPTO Examiners will utilize in their assessment of eligibility.

Similarly, while the EPC does not define what is meant by "invention," EPC Art. 52(2) contains a non-exhaustive list of "non-inventions" (i.e., subject matter that is not to be regarded as an invention within the meaning of EPC Art. 52(1)). All items on this list are abstract (e.g., discoveries or scientific theories) and/or non-technical (e.g., aesthetic creations or presentations of information). In Section 3.3.1 of Part G – Chapter II of the EPC Guidelines, particular attention is paid to artificial intelligence and machine learning, and examples of "technical purposes for which artificial intelligence and machine learning could be used are listed in G-II, 3.3."[11] These examples, supported by the EPC and relevant case law, provide stakeholders with clear guidance for submitting eligible claims.

Request for Additional Examples of Patent Eligible Claims for AI Subject Matter

While IPO appreciates the Guidelines' presentation of a variety of sample claims in the Examples, it seems that only Example 7 of section 5.1 represents AI-based subject

[9] Guidelines for Examination in the EPO, Part G – Chapter I(1)(2)
[10] Federal Register Notice Vol. 89, No. 137 (17 July 2024); see also 2024 AI SME update: Phase I Examiner training slides (2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence, available at https://www.uspto.gov/sites/default/files/documents/ai-sme-update-2024.pdf)
[11] Guidelines for Examination in the EPO, Part G – Chapter II

matter. It would be helpful to provide additional AI-based examples for each of the patent-eligible and non-eligible claims that address the following:

- Whether the key features satisfy the claimed conditions.
    - This analysis could address whether the features meeting the conditions would work as claimed as understood by a person of skill in the art (POSITA).
    - In the written description (the "What" and the "How"), these would be the functional characteristics coupled with known or disclosed correlations between function and structure sufficient to show that the applicant was in possession of the claimed invention.[12]

- Whether the claimed function is constrained in a manner that requires no experimentation.

- As a whole, whether the claims recite a mathematical concept or abstract idea.
    - The claims may recite hardware and the performance of physical actions effected by algorithmic operations that constitute a technological improvement.

Request for Clarity in the Examples

Some claim language in the Examples is unclear to IPO. IPO suggests amending claim language, as appropriate, to ensure all Examples provide clear guidance on eligibility.

For instance, in section 5.1, Example 6 is written as follows;

> A method (1300) of compressing data, the method (1300) comprising: converting (1301), by a compression device (200), each of a plurality of data blocks, of a pre-defined data block size, into a matrix, of a pre-defined matrix size, so as to enable bit-level data manipulation; compressing (1302), by the compression device (200), each of the plurality of data blocks by processing the corresponding matrix to form a minimum state matrix based on a sequential set of compression rules, ***wherein processing the corresponding matrix to form the minimum state matrix comprises reorganizing matrix so as to form an identity matrix or a near identity matrix***; dynamically adjusting, by the compression device (200), pre-defined matrix size based on the characteristics of the data blocks; deriving (1303), by the compression device (200), a granular metadata for each of the plurality of data blocks based on the corresponding minimum state matrix; and storing (1304), by the compression device (200), the granular

[12] See, for example, MPEP 2163 II.A.3

metadata and the sequential set of compression rules for each of the plurality of data blocks.

The underlined "matrix" in the italicized phrase lacks clarity on which matrix is being reorganized.

IPO suggests that it would be helpful to amend the claim language in the Examples to ensure all Examples provide clear guidance on eligibility. This will benefit all users of the system and the Patent Office.

IPO thanks the Controller General for its attention to IPO's comments submitted herein and welcomes further dialogue and opportunity to provide additional comments.

Sincerely,

Krish Gupta

Krish Gupta
President