

## Overview of the US Patent System Patentable Subject Matter

© 2009 Don V. Kelly

Section 101 of title 35, United States Code, provides:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

According to the Supreme Court, 35 U.S.C. § 101 makes patentable "anything under the sun that is made by man" is statutory subject matter.<sup>1</sup> Let's look more closely at the four approved categories of invention:

- a. Processes;
- b. Machines;
- c. Manufactures; and
- d. Compositions of matter.

Processes involve ways of accomplishing a result. Under Section § 100(b) of the statute "[t]he term 'process' means process, art, or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material."

As broad as the language of § 101 is, courts have held that there are limits to patentability. Indeed, that section makes clear that the invention to be patented must be a "new and useful" invention. Thus, courts have ruled that one cannot patent the laws of nature, natural phenomena, mathematical formulae or abstract ideas - regardless of how ground breaking or significant. Hence, Einstein could not have patented his theory of relativity. Nor could one patent a newly discovered mineral.

Don V. Kelly  
Evans & Dixon, LLC  
Suite 2500  
211 N. Broadway  
St. Louis, MO 63102  
dkelly@evans-dixon.com

---

<sup>1</sup> *Diamond v. Chakrabarty*, 447 U.S. 303, 308-09, 206 USPQ 193, 197 (1980).