

USPTO issues new guidance on subject matter eligibility declarations

On his first full day in office, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO) John A. Squires signed the first two patents of his tenure—one directed to distributed ledger technologies and another to medical diagnostics—signaling the USPTO’s commitment in the Director’s words to a “strong, robust, expansive, and resilient intellectual property system.” That early action underscored the Office’s view that applied technologies, including those in rapidly developing fields, remain eligible for patent protection when they satisfy the statutory requirements.

In the weeks that followed, the USPTO issued the *In re Desjardins* Appeals Review Panel decision, later designated precedential, clarifying that improvements to the functioning of machine learning models can constitute practical applications under the governing subject matter eligibility framework. The decision reaffirmed that eligibility must be assessed carefully and consistently, with proper consideration of technological improvements reflected in the claims and specification.

Today, the USPTO is issuing two memoranda providing additional clarification regarding the use of Subject Matter Eligibility Declarations (SMEDs) under 37 C.F.R. § 1.132. These memoranda respond to questions raised by applicants, practitioners, and examiners about how evidentiary submissions may be used to address subject matter eligibility rejections, and they fulfill Director Squires’s commitment—most recently articulated in his [remarks at the American Intellectual Property Law Association \(AIPLA\) Annual Meeting](#)—to provide guidance and assistance in this area.

[The first memorandum](#), directed to the Examining Corps, explains that SMEDs are a voluntary option under existing Rule 132 practice. Applicants may submit a declaration to provide factual evidence relevant to the eligibility inquiry, such as evidence of technological improvement, the state of the art at the time of filing, or information demonstrating how a judicial exception is integrated into a practical application. The memorandum clarifies that, when a SMED is properly submitted, examiners must consider it as part of the evidentiary record and evaluate it using the preponderance-of-the-evidence standard. The memorandum includes several examples illustrating how such evidence may inform eligibility determinations consistent with the MPEP and applicable precedent.

[The second memorandum](#), directed to applicants and practitioners, outlines best practices for preparing and submitting SMEDs. It explains that eligibility-related testimony is most effective when presented in a separate declaration focused solely on subject matter eligibility. Combining testimony on eligibility with testimony addressing other statutory requirements may complicate the record and hinder an examiner’s ability to evaluate the evidence. The memorandum notes that SMEDs should provide objective evidence tied to the claimed invention and should not be used to supplement the original disclosure.

Together, these memoranda reinforce that SMEDs do not alter existing USPTO procedures. Instead, they clarify how applicants may, if they choose, provide factual evidence relevant to the eligibility analysis and how examiners should evaluate such submissions under longstanding practice. This guidance is intended to improve clarity, strengthen the examination record, and support consistent application of subject matter eligibility principles across technologies.

The memoranda take effect immediately. Additional training materials will be made available to examiners and the public through the USPTO website.