

5 KEY TRENDS

AI Application Examination

What does examination of an AI application typically look like? Kilpatrick Townsend's [Kate Gaudry](#) and [Leron Vandsburger](#) offer five key trends:

1

Variability in Examination Statistics across AI Applications. While the USPTO has an “artificial intelligence class”, many other AI applications are assigned to different classes/art units (e.g., bioinformatics or image processing). Allowance statistics are highly variable across these technology areas and across time, which illustrates why it is tricky to characterize examination statistics for AI patent applications.

2

Relationship between Allowance Prevalence and Eligibility-Rejection Prevalence.

In years past, decreases in allowance prevalence were generally accompanied by increases in eligibility rejections in the exemplary technology areas (and the converse). However, though allowance prospects in the AI class have steadily and substantially decreased since the beginning of 2019, eligibility rejections in this class remained rather steady across this time period.

3

Disclosure Rejections. While the prevalence of written-description or enablement rejections across exemplary technology areas have been generally steady, these types of rejections have been steadily falling in the bioinformatics art unit.

4

Prior-Art Rejections. The portions of office actions with novelty rejections or obviousness rejections fell and then rebounded in the AI class between the Electric Power Group decision and the 2019 USPTO Eligibility guidelines.

5

Be on Alert. There is substantial variation in examination statistics across AI-related tech areas, and rejection-specific statistics change dramatically in time. Repeatedly monitoring high- and low-level statistics can help shape drafting and prosecution decisions.

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