

USPTO-Fed. Circ. Split Complicates Machine Learning Patents

By **Michael Kiklis** (July 24, 2026, 5:08 PM EDT)

Whether machine learning is patent eligible depends upon whether you ask the [U.S. Court of Appeals for the Federal Circuit](#) or the U.S. Patent and Trademark Office. That is because you will get a completely different answer from each.



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The Federal Circuit has now found every machine learning patent that came before it ineligible. These cases are: the April 18, 2025, [decision](#) in *Recentive Analytics Inc. v. Fox Corp.*;^[1] the Feb. 24 [decision](#) in *Rensselaer Polytechnic Institute v. Amazon.com Inc.*,^[2] and the July 7 [decision](#) in *Dental Monitoring SAS v. Align Technology Inc.*^[3]

The USPTO, on the other hand, issued a precedential decision finding a machine learning model patent eligible: the Sept. 26 [decision](#) in *Ex parte Desjardins*.^[4] Indeed, the director has indicated a clear path forward for the patent eligibility of such inventions.

This wide chasm puts inventors, patent owners and practitioners in a difficult position: worrying about whether their newly USPTO-issued machine learning patent will survive scrutiny at a district court and the Federal Circuit.

What are practitioners to do? Patent drafters must understand where the Federal Circuit is and draft claims that will not only issue from the USPTO, but will also later survive Federal Circuit scrutiny. A patent is not worth very much if it cannot be enforced.

For patent litigation defendants, early pretrial motions for patent ineligibility are basically a panacea for many software patents — including machine learning — because the Federal Circuit has raised the bar so high.

Electric Power Group Ruling as Culprit

The Federal Circuit's 2016 decision in *Electric Power Group LLC v. Alstom SA* is its most-often used weapon for [striking down](#) patents as ineligible under Title 35 of the U.S. Code, Section 101.^[5]

For example, over a mere three-month span in 2025, the Federal Circuit used *Electric Power Group* six times to strike down patents.^[6] For years, *Electric Power Group* has been

a problem for software patents.[7] Unfortunately, now that problem has grown into a full-blown nightmare for machine learning.

In *Electric Power Group*, the Federal Circuit summarized a detailed claim of 394 words down to just 13: "collecting information, analyzing it, and displaying certain results of the collection and analysis." [8]

Obviously, machine learning can be described in this manner and that is why *Electric Power Group* is so dangerous to machine learning. After summarizing, the Federal Circuit then labeled that summary as an abstract idea and proceeded to strike down the claim. [9] Over time, the Federal Circuit has expanded *Electric Power Group*'s use.

Electric Power Group is routinely used to strike down a whole classification of patent claims that this author calls data analysis-manipulation. This classification includes: artificial intelligence, and specifically machine learning; [10] business methods; [11] and mental steps-organizing human activity. [12]

Model training, generation and learning are the essence of machine learning inventions, and inventors hope to patent that ingenuity without having to add unduly narrowing limitations. Unfortunately, that is not where the Federal Circuit currently is because machine learning patents have gone zero for three there. [13]

Machine Learning at the Federal Circuit

The first time the Federal Circuit considered machine learning was in *Receptive Analytics*. Unfortunately, there, machine learning was both generically and functionally described and claimed as part of a long-known process of scheduling live events. [14]

The specification describes the machine learning model's operation as training, receiving input parameters and then scheduling the live events, just about as high level as possible and not specific to any machine learning model. [15]

In fact, the specification stated that any "suitable machine learning technique can be used," [16] and indeed, the patent owner admitted "that the patents do not claim a specific method for 'improving the mathematical algorithm or making machine learning better.'" [17]

What few technical steps exist are all described functionally, without describing how anything is done, and each step is described as a mere possibility by using the verb "can."

The court held that "the only thing the claims disclose about the use of machine learning is that machine learning is used in a new environment." [18] It was therefore not surprising that the Federal Circuit struck it down. [19]

The Federal Circuit next considered machine learning in *Rensselaer Polytechnic*. [20] There, the technology involved natural language processing, which is "in the context of this patent a type of machine learning or artificial intelligence." [21] The claim was highly functional, and the preamble did not even limit the method to a computer. [22]

The court found the claim was directed to an abstract idea because "the claims largely recite the use of generic technology using standard methods." [23] The court followed *Recentive* by stating that "the application of a well-established idea (case-based reasoning or AI) to a novel environment (natural language processing) is abstract" and struck down the patent. [24]

Then, machine learning met a similar fate on July 7 in *Dental Monitoring*. [25] There, the claims recited using machine learning in an orthodontic process and contained specific details of the model creation and training. [26]

Analogies can certainly be drawn to cases like the 2016 decision in *McRO Inc. v. Bandai Namco Games America Inc.*, where details in the claim saved the day. [27] But that was not enough here. The Federal Circuit, citing *Recentive*, held that the deep learning device did not help the claims satisfy Section 101 because the claims "simply apply machine learning to the above-mentioned abstract ideas in a new environment — the field of dental arch image analysis." [28]

Machine Learning at the USPTO

The USPTO tells a different story for machine learning patentability. After taking over as director, John Squires testified before Congress and reaffirmed the office's "commitment to expansive eligibility" stating that *Mayo* and *Alice* "have been wielded as bludgeons to exclude entire classes of invention, from financial technologies to artificial intelligence to diagnostics." [29] He then affirmed the patent eligibility of training machine learning models, referring to *Ex parte Desjardins*. [30]

In *Desjardins*, the PTAB's Appeals Review Panel, including Squires, found that a model-training method provided technical improvements over existing systems in "how the machine learning model itself operates" because it can preserve performance of previous

tasks while performing new ones.[31]

The Appeals Review Panel relied heavily on the Federal Circuit's 2016 decision in *Enfish LLC v. Microsoft Corp.* for support, and although it cited *Electric Power Group*, it did not perform an analysis under that case.[32] As a result, we simply do not know how those claims would fare — e.g., at the Federal Circuit — when analyzed under *Electric Power Group*.

Interestingly, both the *Desjardins* decision and the director's congressional testimony reflect a similar policy, with Squires saying that the "proper statutory tools for limiting the scope of patents are Sections 102 (novelty), 103 (obviousness), and 112 (written description and enablement). Section 101 should not be misused as a blunt instrument to exclude entire technological fields." [33]

Although perhaps a lofty goal, this argument was flat-out rejected by the [U.S. Supreme Court](#) in the 2012 decision in *Mayo Collaborative Services v. Prometheus Laboratories Inc.*, when the government argued that Sections 102, 103 and 112 can perform the "screening function" and "virtually any step beyond a ... law of nature itself should ... satisfy [Section] 101." [34] The Supreme Court's dictate and the USPTO's contrary position put us in uncharted territory.

Conclusion

A wide chasm exists between the Federal Circuit's and USPTO's approach to patent eligibility, particularly for machine learning, which has met nothing but defeat at the Federal Circuit, whereas the USPTO has created a clear path forward. This sets up a situation where machine learning patents issuing will be readily — and likely successfully — challenged at the district courts and Federal Circuit if the claimed focus is on the machine learning model itself.

Patent drafters should avoid functional claiming and avoid drafting functional specifications for the best chance of surviving Section 101 challenges. Unfortunately, as we saw from *Dental Monitoring*, providing details may not be enough.

The claims should recite — and the specification should explain — how the invention: improves the functioning of the computer itself; [35] provides a technical improvement over the prior art; [36] or provides a technical solution to a technical problem. [37]

In addition to this explanation, specifications should include implementation-level details: (1) a system diagram showing the software programs in memory with a processor that executes those programs; (2) flowcharts explaining, at a detailed level, what each program does and how it does it; (3) diagrams and description explaining the major interfaces; and (4) diagrams and description explaining the major data structures.

For litigators defending infringement allegations from a data analysis-manipulation claim set — e.g., a machine learning model — it is simple: File pretrial motions of patent ineligibility early. As the state of the law currently stands, it is the easiest and fastest way to achieve complete success.

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[1] [Recentive Analytics, Inc. v. Fox Corp.](#) , 134 F.4th 1205 (Fed. Cir. 2025).

[2] [Rensselaer Polytechnic Institute v. Amazon.com, Inc.](#) , 2026 WL 506661 (Fed. Cir. 2026) (nonprecedential).

[3] [Dental Monitoring SAS, v. Align Technology, Inc.](#) , 2026 WL 1959297 (Fed. Cir. 2026) (nonprecedential).

[4] Ex parte Desjardins, Appeal No. 2024-000567 (P.T.A.B. Sept. 26, 2025) (precedential).

[5] [Electric Power Group, LLC v. Alstom, S.A.](#) , 830 F.3d 1350 (Fed. Cir. 2016).

[6] Recentive, 134 F.4th 1205; [United Services Automobile Association v. PNC Bank N.A.](#) , 139 F.4th 1332 (Fed. Cir. 2025); [United Services Automobile Association v. PNC Bank N.A.](#) , 2025 WL 1662737 (Fed. Cir. 2025) (nonprecedential); [Aviation Capital Partners, LLC v. SH Advisors, LLC](#) , 2025 WL 1303663 (Fed. Cir. 2025) (nonprecedential); [Geoscope Technologies Pte. Ltd. v. Google LLC](#) , 2025 WL 1276235 (Fed. Cir. 2025) (nonprecedential); [Longitude Licensing Ltd. v. Google LLC](#) , 2025 WL 1249136 (Fed. Cir.

2025) (nonprecedential).

[7] M. Kiklis, How Electric Power Group Is Affecting Software Patents, IP360 (August 19, 2019).

[8] Electric Power Group, 930 F.3d at 1353.

[9] *Id.*, at 1354-1356.

[10] See e.g., *Recentive*, 134 F.4th 1205.

[11] [Trading Technologies International, Inc. v. IBG LLC](#) , 921 F.3d 1084 (Fed. Cir. 2019).

[12] [University of Florida Research Foundation, Inc. v. General Electric Company](#) , 916 F.3d 1363 (Fed. Cir. 2019).

[13] *Recentive*, 134 F.4th 1205; *Rensselaer Polytechnic Inst.*, 2026 WL 506661; *Dental Monitoring*, 2026 WL 1959297.

[14] *Recentive*, 134 F.4th at 1213.

[15] U.S. Pat. No. [11,386,367](#), 6:5-21; 8:5-11.

[16] *Id.*, 5:65-5; see also 7:55-62.

[17] *Recentive*, 134 F.4th at 1213.

[18] *Id.*

[19] In a recent trend, the Federal Circuit is using whether the claims are functionally drafted as its own abstract-idea category. See [GoTV Streaming, LLC v. Netflix, Inc.](#) , 166 F.4th 1053, 1064 (Fed. Cir. 2026) ("We have also held claims using purely 'result-focused functional language, containing no specificity about how the purported invention achieves those results,' to be directed to an abstract idea.")

[20] *Rensselaer Polytechnic Inst.*, 2026 WL 506661.

[21] *Id.*, at *1.

[22] *Id.*

[23] *Id.*, at *2.

[24] *Id.*, at *3-4.

[25] Dental Monitoring, 2026 WL 1959297.

[26] *Id.*, at *1-3.

[27] [McRO, Inc. v. Bandai Namco Games America Inc.](#), 837 F.3d 1299 (Fed. Cir. 2016).

[28] *Id.*, at *4.

[29] The Patent Eligibility Restoration Act – Restoring Clarity, Certainty, and Predictability to the U.S. Patent System: Hearing Before the Subcomm. on Intellectual Property of the S. Comm. on the Judiciary, 119th Cong. (2025) (statement of John A. Squires, Under Secretary of Commerce for Intellectual Property and Director of the [United States Patent and Trademark Office](#)), at 4.

[30] *Id.*, at 5.

[31] Desjardins, slip op. at 9.

[32] *Id.*, at 7-9.

[33] *Id.*, at 10; Squires, Patent Eligibility Restoration Act Hearing, *supra* note 24, at 5.

[34] [Mayo Collaborative Services v. Prometheus Laboratories, Inc.](#), 566 U.S. 66, 89 (2012).

[35] [Alice Corp. Pty. Ltd. v. CLS Bank Intern.](#), 573 U.S. 208, 225 (2014); [Enfish, LLC v. Microsoft Corp.](#), 822 F.3d 1327, 1335-36 (Fed. Cir. 2016).

[36] [Amdocs Limited v. Openet Telecom, Inc.](#), 841 F.3d 1288, 1300-02 (Fed. Cir. 2016).

[37] [DDR Holdings, LLC v. Hotels.com, L.P.](#), 773 F.3d 1245, 1257 (Fed. Cir. 2014).