Tips on patent subject matter eligibility for computer readable media

Many patent applications have been filed aimed at protecting inventions involving computers. Often the patent claims describe using disc drives or other media for storing data. A common name for data storage devices (such as hard disks, floppy disks, USB drive, DVD, CD, media cards, and so on) has been "computer readable media."

This term seems broad enough to cover every type of data storage device. However, one thing to keep in mind in writing patent claims is that one wants the claim scope to be broad enough to cover everything under the sun while being narrow enough to not be already present in the prior art.

For "computer readable media" another concern is not just prior art, but patentability under the law. The United States Patent and Trademark Office (USPTO) interprets the term, "computer readable media" more broadly than just data storage devices. The USPTO interprets "computer readable media" to include signals in addition to data storage devices. The USPTO's understanding of the "ordinary and customary meaning of 'computer readable media'" to include non-transitory tangible media and transitory propagating signals. The USPTO considers data storage devices to be "non-transitory tangible media" which is only one part of "computer readable media." Note that signals, such as radio signals, microwave signals, and such can carry data that is "computer readable."

Thus, if the patent specification does not exclude signals from the term, "computer readable media," then the USPTO claim is deemed not patentable as transitory embodiments are not patentable under 35 U.S.C. Section 101. See In re Nuijiten, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007). Often, such a problem may be repaired by an amendment that does not add new matter. Similar problems happen for claims to "multi-cellular organisms" as that term includes human beings, which are not (yet) patentable.

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