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Avoiding Class 705: Drafting Technical Patent Applications to Reduce Business-Method Art Unit Risk in Patent Prosecution – Part I

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For software-related patent applications, few administrative decisions can have a greater practical impact on prosecution than initial art unit assignment. That is particularly true for applications routed to the United States Patent and Trademark Office's business-method art units associated with Class 705, where the data analyzed for this article show high rates of § 101 rejection and substantial variation in prosecution outcomes across art units, subclasses, and examiners.

Although classification ultimately depends on the substance of the invention, practitioners often underestimate how much claim drafting, terminology choices, and specification framing influence where an application is routed. An analysis of 110,818 applications assigned to the USPTO's current business-method art units shows substantial differences in prosecution outcomes across the group. In the 2026 data analyzed here, one art unit had an observed grant rate below 30% among applications reaching patent or abandonment, while six exceeded 60%. Across the full period, individual examiner grant rates ranged from 1% to 88%. At the same time, approximately 83% of examined applications in the dataset received a rejection under 35 U.S.C. § 101.

For inventions that are genuinely directed to technical improvements but happen to operate in a commercial environment, these results make classification an important drafting consideration. The goal is not to disguise a business method as something it is not. Rather, the application should accurately identify and claim the technological contribution itself instead of allowing the commercial use case to become the invention's defining feature.

I. WHAT IS CLASS 705?

Class 705 is the legacy U.S. Patent Classification class titled "Data Processing: Financial, Business Practice, Management, or Cost/Price Determination."[1] The USPTO defines the class to encompass data-processing and calculating systems designed for the practice, administration, or management of an enterprise, the processing of financial data, and the determination of charges for goods or services.[2]

Two features of the class definition deserve emphasis at the outset, because both bear directly on the drafting recommendations that follow.

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- First, the class is defined by purpose rather than by mechanism. What places an invention in Class 705 is not that it processes data — nearly all software does — but that the processing is, in the language of the definition, "uniquely designed for or utilized in the practice, administration, or management of an enterprise."[3]

- Second, the class contains an express limitation written into its own scope note. Classification in Class 705 requires "significant claim recitation of the data processing system or calculating computer and only nominal claim recitation of any external art environment."[4] Where external apparatus is significantly claimed, the subject matter belongs with that apparatus instead. The strategy described in this article is therefore not a workaround. It is the boundary the classification definition itself draws.

A Note on USPC and CPC

A word of precision is warranted, because Class 705 is often discussed as though it were still actively assigned. It is not. The Cooperative Patent Classification system launched on January 1, 2013, and the USPC became a static collection for utility applications after December 2014; the USPTO's current position is that only plant and design classification material continues to be updated within the USPC.[5] The operative modern equivalent is CPC subclass G06Q, which covers information and communication technology specially adapted for administrative, commercial, financial, managerial or supervisory purposes.[6]

Class 705 nevertheless remains an accurate descriptive proxy for the business-method examining area, for the straightforward reason that the USPTO itself defines that area using the Class 705 title verbatim: "The Business Methods area of the USPTO is a collection of subject matter areas in Technology Center 3600 that grants patents related to Data Processing: Financial, Business Practice, Management, or Cost/Pricing Determination."[7] References in this article to Class 705 should be understood in that sense — the art units the class describes.

The Examining Area

The Business Methods area resides in Technology Center 3600, whose full designation is Transportation, Electronic Commerce, Construction, Agriculture, Licensing and Review.[8] The Office identifies three business-method workgroups but describes only two of them separately. It states that the 3620 and 3680 workgroups jointly examine applications pertaining to:

> advertising, incentive programs, and coupons; cost/price, reservations, shipping, and transportation; cryptography and business data security; electronic shopping; healthcare; inventory, point of sale, and accounting; miscellaneous; and operations research,

and that the 3690 workgroup "examines applications pertaining to finance, banking, and insurance."[9] The current roster includes art units 3621 through 3629, 3681 through 3689, and 3691 through 3699.

What Is Actually in the Class

The definition is abstract; the schedule is concrete. Class 705 is not a single subject area but a collection of commercial domains, and the range is wider than the phrase "business methods" suggests. The principal groupings are shown in Table 1.

Two observations follow from the schedule itself, and both are developed with data in Section III.E of this article.

- The class spans subject matter that has little in common technically. A cryptographic key-management protocol at 705/71 and a method of matching a person to a task at 705/7.14 are both Class 705, and both are examined in Technology Center 3600. They have almost nothing else in common.

- The schedule alternates between naming apparatus and naming activity. Some ranges are titled for equipment — terminals, registers, interfaces, key managers. Others are titled for what a person does — hiring, scheduling, surveying a market, social networking. That distinction turns out to predict prosecution outcome better than almost anything else in the dataset.

The Eligibility Backdrop

The history of business-method examination is closely tied to patent-eligibility doctrine.

Table 1. Principal Class 705 subclass groupings. Titles condensed from the USPTO Class 705 schedule; the descriptor for 705/2 is a neutral paraphrase of the schedule caption.[10]

Range	Subject matter
705/1.1	Automated electrical financial or business practice or management arrangement — the class residual
705/2–3	Records and practice administration; patient record management
705/4–6	Insurance; reservation, check-in, or booking display for reserved space
705/7.11–7.42	Operations research or analysis — scheduling, task assignment, skill-based matching, risk analysis, market data gathering and modeling, demand forecasting, market segmentation, strategic management, benchmarking
705/13–15	Transportation facility access (fare, toll, parking); restaurant or bar
705/14.1–14.73	Discount or incentive (coupon, rebate, offer); advertisement — targeted, based on user history, location, or profile; online advertisement
705/16–25	Point of sale terminal or electronic cash register; interface for record bearing medium for electronic funds transfer; interconnection of plural registers; input by product or record sensing
705/26.1–27.2	Electronic shopping; auction; item configuration; item investigation; item recommendation; list and purchase-order processing; shopping interface
705/28–34	Inventory management; itemization of parts, supplies, or services; accounting; tax preparation; bill preparation
705/35–45	Finance (banking, investment, credit); portfolio selection and analysis; trading, matching, or bidding; credit and loan processing; funds transfer; bill distribution or payment; portable memory device programming; remote banking; automatic teller machine; authorization or authentication
705/50–80	Business processing using cryptography — secure transaction (EFT/POS), authentication, electronic cash detail, key management, transaction verification, electronic credential, licensing
705/300–348	Miscellaneous business practice — customer service, product repair or maintenance administration, real estate, business or product certification, social networking, human resources and hiring, shipping, tracking, routing, business establishment or product rating
705/400–418	Cost/price determination — postage metering, utility usage, distance, time

Following the Supreme Court's 2014 decision in *Alice Corp. v. CLS Bank International*, § 101 became a particularly significant issue for software and business-method applications.[11] USPTO economic research later found that *Alice* increased the probability that applications in affected technologies would receive a § 101 rejection at the first Office Action and increased examiner-to-examiner uncertainty. The USPTO's 2019 Revised Patent Subject Matter Eligibility Guidance subsequently reduced both the likelihood of first-action § 101 rejections and examination uncertainty in those technologies.[12]

It is worth noting that this was not the first contraction in this area. Following the USPTO's March 2000 Business Methods Patent Initiative — which established a second-level review of all allowed applications in Class 705 — published research records the Class 705 grant rate falling from roughly 45% in 2001 to approximately 11% in 2005.[13] The business-method grant rate has collapsed twice: once under administrative pressure alone, and again after *Alice*.

The more recent application data show that business-method prosecution remains challenging. Across the 110,818 applications in the 27 art units analyzed here, 45,719 had patented, 43,927 had been abandoned, and 21,172 remained pending. Among applications that had reached either patent or abandonment, the historical grant rate was approximately 51%. Restricting to applications that actually received at least one Office Action — the more comparable measure for a discussion of rejection practice — the corresponding rate is 48.6%.

II. METHODOLOGY: HOW THE RATES IN THIS ARTICLE WERE CALCULATED

This analysis combines prosecution records for 110,818 applications across the 27 current business-method art units in Technology Center 3600: AUs 3621–3629, 3681–3689, and 3691–3699. Unless otherwise indicated, an "observed grant rate" is calculated as patented applications divided by patented plus abandoned applications for the relevant period. Pending applications are excluded from that denominator because their ultimate disposition is not yet known.

Period Assignment

Where an application is attributed to a particular year, that year is the year of the application's status date — the date on which the disposition was recorded — for both patented and abandoned applications alike. This convention is applied symmetrically. An alternative convention, assigning patented applications to their issue date, produces systematically lower figures in the most recent years, because issuance lags allowance by roughly three to four months while abandonments are recorded immediately. On that alternative basis the 2025 figure would be 44.8% rather than 48.4%, and the 2026 figure 46.3% rather than 49.2%. The symmetric measure is used throughout to avoid attributing to a change in examination what is in fact an artifact of the measure.

The resulting measure should be understood as a grant rate among applications that reached patent or abandonment, rather than as the USPTO's official allowance rate. In particular, a pending application that has received a Notice of Allowance but has not yet issued as a patent is not counted as a patent under this measure. As a sensitivity check, treating certain pending Notice-of-Allowance and issue-fee/publication events as favorable outcomes increases the aggregate 2026 favorable-outcome rate, but does not eliminate the substantial differences observed among art units, subclasses, and examiners.

The 2026 figures are year-to-date rather than full-year results and should be interpreted accordingly. Examiner-level comparisons in this article are drawn from the full 2016–2026 period and are limited to examiners having at least 75 patented-or-abandoned dispositions, a threshold chosen to avoid the distortion that small samples introduce. Single-year examiner statistics at low thresholds are unstable: in the 2026 data alone, a five-disposition threshold produces a number of examiners with no observed grants, but at a twenty-disposition threshold no examiner in the dataset shows a zero grant rate. Subclass comparisons are limited to subclasses having at least 300 dispositions. The complete art-unit-level data underlying the figures are provided in Supplemental Table 1, to be published in the conclusion of this article.

It should be stated plainly that the USPTO does not itself publish allowance rates — not overall, not by technology center, and not by art unit. The metric appears in none of the Office's Performance and Accountability Reports, none of its Annual Performance Plan and Report documents, and not on the Patents Dashboard, whose published metrics are inventory and pendency. Every allowance-rate figure in general circulation, including the technology-center comparisons practitioners commonly cite, is derived by third parties from bulk file-history data. The figures in this article are of the same character.[14]

III. WHY CLASS 705 MATTERS

The principal concern is not the classification number itself. It is what that classification may mean for prosecution. Classification does not determine patent eligibility or patentability, and the data do not establish that assignment to a business-method art unit causes a particular prosecution outcome. Rather, the statistics show the prosecution environment applicants encountered after assignment to these units.

A. The Trend

As Figure 1 shows, the recent difficulty is not simply a legacy of the years immediately following *Alice*. Outcomes improved materially through 2022 and 2023, rising from 40.9% in 2019 to a peak of 57.5% in 2023 — the measurable footprint of the 2019 Revised Guidance. The observed grant rate then fell to 54.7% in 2024 and 48.4% in 2025, and stands at 49.2% in the available 2026 data. Roughly half of the improvement the 2019 Guidance produced has been given back.

Separating the examined population by whether a § 101 rejection was received clarifies what moved and what did not. Applications that never received a § 101 rejection improved from 54.6% in 2019 to 73.6% in 2022, and have since held essentially flat at 74% to

75%. Applications that did receive one improved on a similar trajectory to a peak of 49.7% in 2022 — and then reversed, falling to 46.2% in 2024 and 41.4% in 2025, standing at 43.9% in the 2026 data.

The clean population plateaued and stayed there. The § 101-exposed population peaked and gave back roughly half its gain. The 2019 Guidance did not stop examiners from issuing § 101 rejections; it made those rejections easier to overcome, and that effect has substantially eroded. (Because an application that is never examined cannot receive a § 101 rejection, this comparison is restricted to applications having at least one Office Action, and the levels therefore differ slightly from the all-disposition series in Figure 1.)

B. Variation Among Art Units

Those aggregate numbers conceal substantial differences between individual art units. In 2026, AU 3626 had an observed grant rate of approximately 28.6% among patented and abandoned applications, followed by AU 3684 at approximately 33.7% and AU 3624 at approximately 34.0%. At the opposite end, six art units exceeded 60%: AUs 3627, 3694, 3696, 3688, 3697, and 3699. The difference between the lowest and highest art-unit rates was approximately 41 percentage points.

Across the full 2016–2026 period the same pattern holds. Grant rates among examined and disposed applications range from 33.8% in AU 3689 to 65.2% in AU 3627 — a spread of 31 percentage points among art units applying the same statute, the same guidance, and the same MPEP, under the same technology center management.

The range shown in Figure 2 illustrates why it is misleading to discuss Class 705 as though it were a single prosecution environment. Two applications may both be routed into the Business Methods area while facing materially different prosecution outcomes depending on the particular art unit to which they are assigned. The complete figures for all 27 art units are reported in Supplemental Table 1, to be published in the conclusion of this article.

C. Section 101 Incidence

The first issue is § 101. Among applications in this dataset that had received at least one Office Action, approximately 83.2% had received at least one final or nonfinal § 101 rejection. In four art units that figure exceeded 90%. The difference in eventual outcomes was substantial. Among examined applications without a recorded § 101 rejection, approximately 70.3% of applications that reached patent or abandonment ultimately patented. Among those that received a § 101 rejection, the corresponding rate was approximately 43.6%.

Figure 1. Class 705 grant rate among disposed applications, 2019–2026. Status-date basis; 2026 is year-to-date.

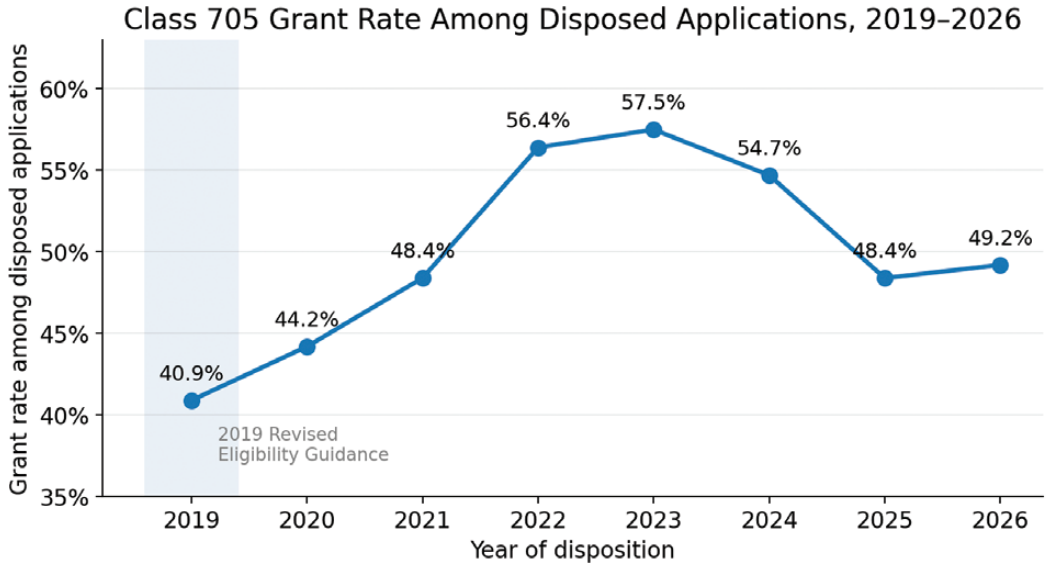
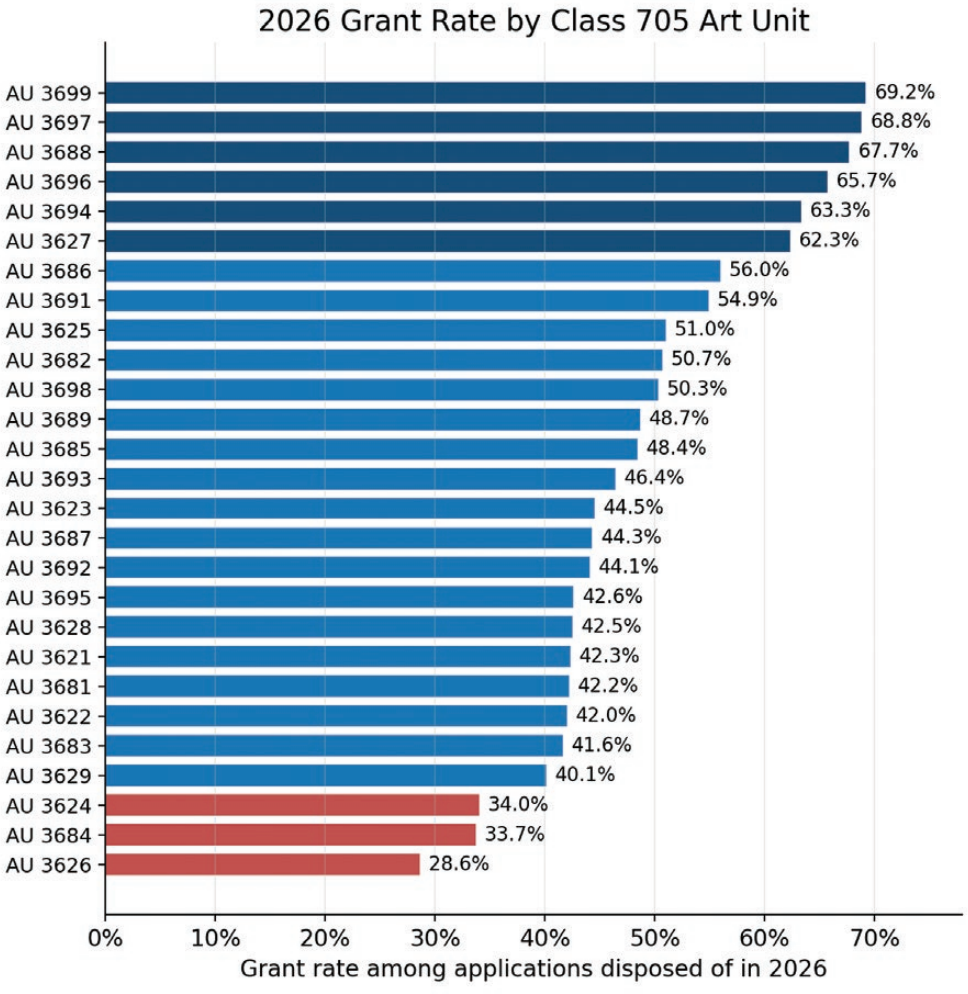


Figure 2. 2026 grant rate among disposed applications, by Class 705 art unit.



As Figure 3 illustrates, § 101 scrutiny is pervasive across the Business Methods area rather than isolated to one or two art units, and § 101 incidence and grant rate are inversely related across the group. A simple regression across the 27 art units yields a slope of approximately −0.92 with an R^2 of 0.43, meaning that each additional percentage point of § 101 exposure in an art unit is associated with roughly nine-tenths of a percentage point of grant rate, and that § 101 incidence alone accounts for something over 40% of the variance between units.

The relationship is nevertheless not uniform. Some art units combine high § 101 rejection incidence with relatively strong eventual grant rates, while others combine similarly high incidence with much lower grant rates. The frequency of § 101 rejection alone does not explain the variation. The next subsection identifies what does.

D. What Separates Favorable From Unfavorable Examination Is Not the Rejection — It Is Whether It Goes Final

Disaggregating the § 101 population by whether the rejection was carried into a final Office Action produces the most operationally useful figure in this analysis: Figure 4.

Applications that received a § 101 rejection only in a nonfinal action patented at 49.3%. Applications in which a § 101 rejection was carried into a final action patented at 39.3%. The first § 101 rejection is associated with a loss of approximately 21 percentage points against the clean baseline; failing to

Figure 3. § 101 incidence and grant rate across the 27 business-method art units. Correlation r = −0.654.

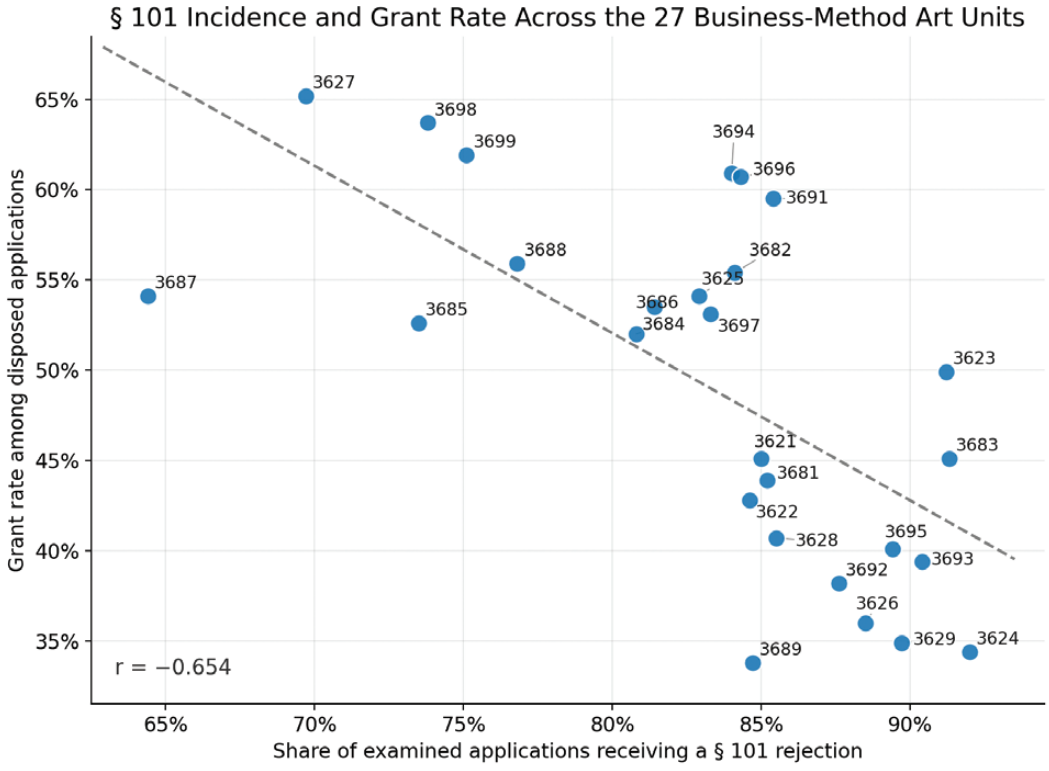
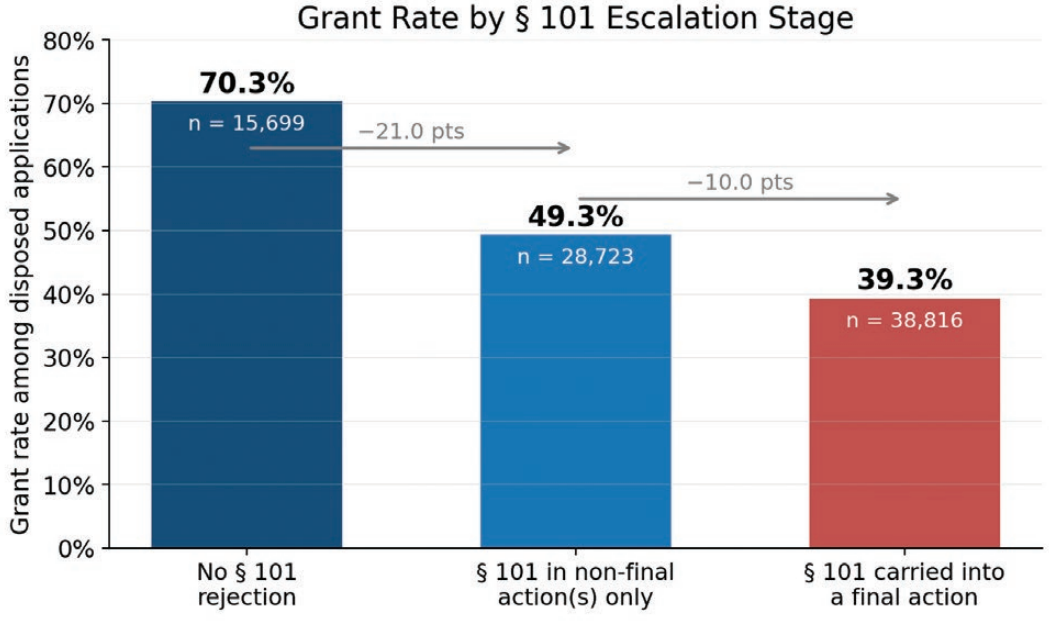


Figure 4. Grant rate by § 101 escalation stage, 2016–2026.



dislodge it before the examiner goes final is associated with a further loss of approximately 10 points.

The examiner-level data make the same point more sharply, as indicated in Table 2. The correlation between an examiner's grant rate and that examiner's rate of *issuing* § 101 rejections is r = −0.539. The correlation with that examiner's rate of *carrying § 101 into a final action* is r = −0.692 — substantially stronger.

Table 2. Examiner behavior by grant-rate quartile, 429 examiners with at least 75 disposed applications.

Examiner grant-rate quartile	§ 101 issuance rate	Final § 101 rate	Grant rate
Bottom quartile	90.0%	60.9%	21.6%
Second quartile	85.6%	54.9%	38.7%
Third quartile	82.5%	50.0%	53.5%
Top quartile	71.0%	32.1%	71.7%

The most favorable examiners in the Business Methods area are not those who decline to raise § 101. They still issue it in roughly seven of every ten examined applications — a rate that would be extraordinary anywhere else in the Office. What distinguishes them is that fewer than a third of those rejections survive to a final action. One examiner with 560 disposed applications issues § 101 in 83.6% of files, carries it to final in 8.2%, and grants 87.3% of the time.

For applicants, this locates where advocacy actually pays: the response to the first, nonfinal § 101 rejection. Section VI returns to the tools available at that moment.

E. Variation by Subclass

Art unit is not the only differentiator, and it is not the strongest one. Across the 82 Class 705 subclasses having at least 300 disposed applications, the correlation between § 101 incidence and grant rate is r = −0.709 — tighter than the art-unit correlation.

The distribution in Figure 5 is, for a drafting audience, the most instructive chart in this article, because the subclass titles set out in Table 1 describe the pattern directly.

Figure 5. § 101 incidence and grant rate by Class 705 subclass. Correlation r = −0.709.

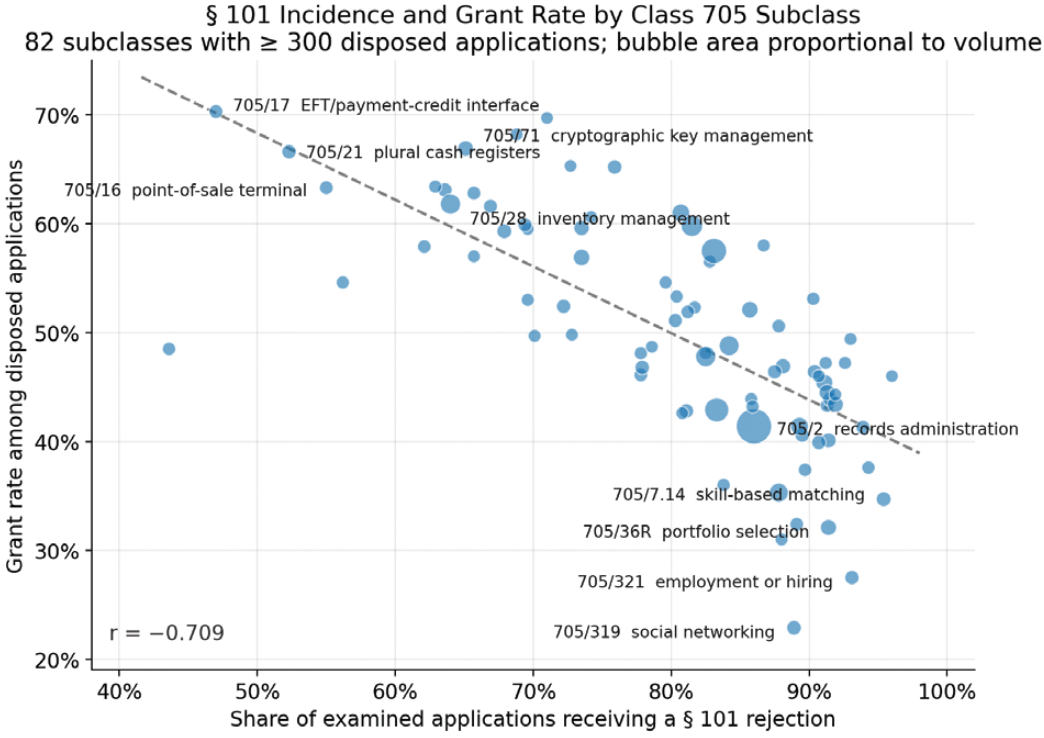
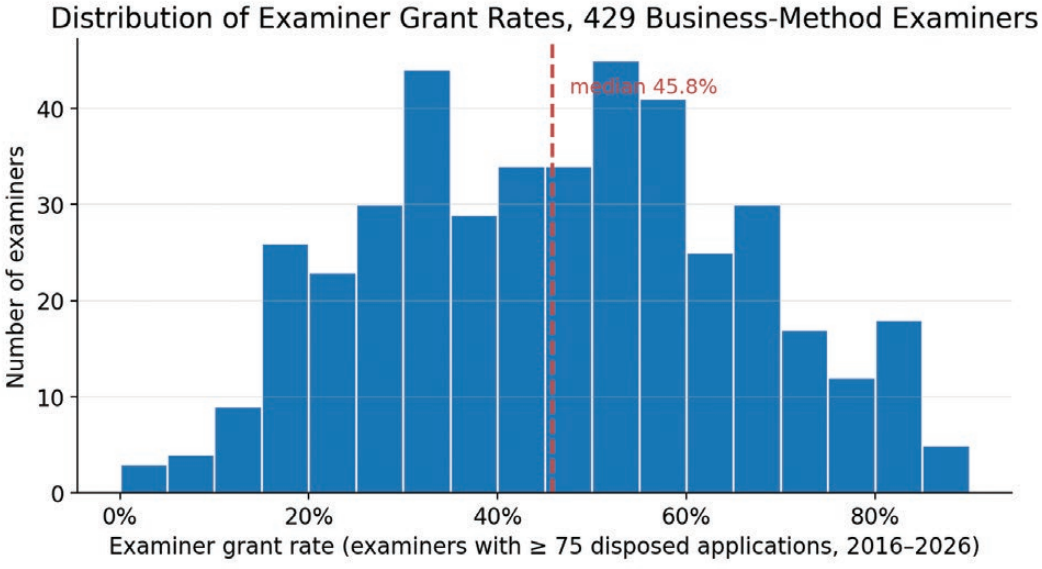


Table 3. Selected Class 705 subclasses. Titles from the USPTO Class 705 schedule.

Subclass	Title	Disposed	§ 101 rate	Grant rate
705/17	Having interface for record bearing medium or carrier for electronic funds transfer or payment credit	519	47.0%	70.3%
705/21	Interconnection or interaction of plural electronic cash registers or to host computer	640	52.3%	66.6%
705/16	Including point of sale terminal or electronic cash register	509	55.0%	63.3%
705/28	Inventory management	2,063	64.0%	61.8%
705/71	Business cryptography — including key management	899	65.1%	66.9%
705/2	Records and practice administration	8,070	86.0%	41.4%
705/36R	Portfolio selection, planning or analysis	989	91.4%	32.1%
705/319	Social networking	665	88.9%	22.9%
705/321	Employment or hiring	593	93.1%	27.5%
705/7.14	Skill based matching of a person or a group to a task	711	95.4%	34.7%

Figure 6. Distribution of examiner grant rates, 429 business-method examiners with at least 75 disposed applications, 2016–2026.



Every subclass, as shown in Table 3, at the favorable end is named for a piece of apparatus — an interface, a register, a terminal, a key manager, an inventory-tracking system. Every subclass at the unfavorable end is named for a human activity — matching a person to a task, hiring, social networking, selecting a portfolio. The spread between them is 47 percentage points.

Subclass 705/17 is the clearest single illustration. Its title describes nothing but a hardware interface for a record-bearing medium; it draws § 101 in fewer than half of its examined applications; and it grants at 70.3%, a rate essentially indistinguishable from a well-behaved software art unit outside the business-method block. Subclass 705/319, whose title is a human activity, grants at 22.9%.

The unifying variable is not commercial versus noncommercial. Electronic shopping and point-of-sale subject matter is unambiguously commercial, and it sits at the favorable end. The variable is apparatus versus activity — which is, almost word for word, the distinction the Class 705 scope note draws between significant recitation of the data processing system and nominal recitation of the external environment.

F. Variation Among Examiners

Examiner identity is the largest single source of variation in the dataset — larger than art unit, larger than subclass, as shown in Figure 6. Among 429 examiners with at least 75 applications that reached patent or abandonment, observed grant rates ranged from 1.0% to 88.0%, with a median of 45.8% and a standard deviation of 19.4 percentage points. The interquartile range alone spans 28 percentage points. Within a single art unit — AU 3687 — the distance between the least and most favorable examiner is 78.5 percentage points.

Those figures should be interpreted carefully. They are descriptive rather than an official USPTO allowance-rate calculation, and they are unadjusted for differences in subject matter mix and docket composition. They nevertheless demonstrate a practical point: examination outcomes within the business-method art units can vary dramatically by art unit, by subclass, and by examiner.

Tables 4 and 5. Comparative effect of § 101 and § 102 rejections.

Ground	Frequency	Grant rate if received	Grant rate if not	Difference
§ 101	81.1%	43.6%	70.3%	−26.7 pts
§ 102	33.0%	39.3%	53.2%	−13.9 pts

§ 101	§ 102	Disposed applications	Grant rate
No	No	11,963	74.2%
No	Yes	3,736	57.7%
Yes	No	43,834	47.4%
Yes	Yes	23,705	36.4%

G. Section 101 Compared With the Prior Art Grounds

It is sometimes suggested that § 101 rejections in the business-method units are simply a proxy for weak inventions that would have failed on prior art in any event. As indicated in Tables 4 and 5, the data do not support that reading.

A § 101 rejection is associated with roughly twice the reduction in grant rate as a § 102 rejection, and is issued two and a half times as often. The single largest cell in the cross-tabulation — 43,834 applications, more than half the disposed population — is the one in which § 101 was raised and § 102 was not. That is the characteristic file in this examining area: the examiner does not contest that the invention is new; the examiner contests that it is the kind of thing the statute covers.

H. Continuations, Appeals, and Pendency

Two prosecution paths show sharply different outcomes, and both are relevant to strategy.

Table 6 makes it clear that continuation-type filings patented at 64.8% against 41.7% for original filings, and received § 101 rejections 17 percentage points less often. Several mechanisms plausibly contribute — applicants continue families that are going well; the parent's prosecution establishes what claim scope the examiner will accept; and MPEP 909.01(b) expressly directs the automated routing system to weigh "the application's status as a continuation or divisional application," which generally returns the case to the examiner who handled the parent. Whatever the mix, in an examining

Table 6. Grant rate by filing type and appeal status.

Path	Disposed applications	§ 101 rate	Final § 101	Grant rate	Avg. months
Original filing	58,409	86.3%	52.0%	41.7%	—
Continuation type	24,829	69.1%	34.1%	64.8%	—
No appeal	78,551	80.7%	—	49.2%	34.9
At least one appeal	4,687	88.9%	—	38.5%	55.9

Table 7. Prosecution burden by § 101 escalation stage.

Prosecution path	Disposed	Avg. Office Actions	Avg. final rejections	3 or more Office Actions	2 or more final rejections	Avg. months	Grant rate
Never received § 101	15,699	1.93	0.62	22.2%	13.0%	32.2	70.3%
§ 101 withdrawn before final	28,723	1.47	0.29	11.2%	6.2%	30.7	49.3%
§ 101 carried to final	38,816	3.28	1.50	56.6%	37.6%	41.6	39.3%

Table 8. High-volume applicants grouped by grant rate.

Applicant group (n ≥ 250 disposed)	Avg. § 101 rate	Avg. final § 101 rate	Avg. grant rate
Upper half by grant rate (16 applicants)	75.4%	47.2%	74.8%
Lower half by grant rate (16 applicants)	84.2%	55.9%	37.9%

area where the initial examiner assignment carries a thirty-point swing and cannot be appealed, the continuation is the instrument that lets an applicant take a second position on the same disclosure with the benefit of knowing how the first one went.

Appealed applications patented at 38.5% against 49.2%, and took approximately twenty-one additional months. That comparison is heavily affected by selection — applications are appealed because they are stuck — but nothing in the data suggests that appeal improves the odds on a typical file, and published practitioner analyses report full-affirmance rates near 78% in the business-method art units against 58% to 64% in Technology Centers 2100, 2400, and 2600.[15]

The burden associated with § 101 is also visible in the prosecution history itself. Applications receiving a § 101 rejection averaged approximately 2.53 Office Actions, compared with approximately 1.94 for examined applications without one. The median time to disposition was approximately 35 months when a § 101 rejection was present, compared with approximately 31 months when it was not.

Disaggregating by escalation stage, however, shows that the burden is concentrated almost entirely in the files where the rejection is maintained, as shown in Table 7.

An application in which the § 101 rejection is withdrawn before final is, on average, the least burdensome file in the entire dataset — 1.47 Office Actions, fewer than a third reaching a final rejection, and a shorter average pendency than an application that never received a § 101 rejection at all. An application in which the rejection is maintained requires 3.28 Office Actions on average, reaches a third Office Action in 56.6% of cases, reaches a second final rejection in 37.6% of cases, and takes eleven months longer.

For a budget holder, that is the practical shape of the problem. The difference between the second and third rows is approximately 1.8 Office Actions, 1.2 final rejections, and eleven months on the average file — before accounting for the RCE practice that a second final rejection ordinarily implies. Avoiding an unnecessary business-method classification, and resolving § 101 before final when classification cannot be avoided, are therefore matters of prosecution cost as well as prosecution outcome.

I. Variation Among Applicants

A final cut of the data speaks directly to portfolio owners, as shown in Table 8. Among the 32 applicants having at least 250 disposed applications in this dataset, observed grant rates range from approximately 15% to approximately 99% — a spread of roughly 84 percentage points among entities filing at substantial volume in the same examining area.

The correlation between an applicant's § 101 incidence and that applicant's grant rate is $r = -0.658$. The pattern is consistent with the rest of this analysis: applicants whose applications draw fewer § 101 rejections, and whose § 101 rejections are more often withdrawn before final, obtain patents at materially higher rates.

These figures are unadjusted and should be read with care. They reflect differences in subject matter mix, in the propensity to continue prosecuting marginal cases rather than abandon them, and in whether a portfolio originates from applications drafted for United States practice or from priority documents drafted elsewhere and later adapted. They are not a measure of counsel quality. What they do establish is that outcomes at the portfolio level vary as widely as outcomes at the art unit and examiner levels — and that the variation is not random with respect to § 101 exposure.

For an in-house patent manager, the operational implication is that portfolio-level § 101 incidence is a measurable indicator. It can be tracked, compared against the 83.2% class baseline, and — more usefully — decomposed into the share of § 101 rejections that reach a final action, which Section III.D identifies as the variable most strongly associated with outcome.

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Editor's note: This article will conclude in the next issue of the *Intellectual Property & Technology Law Journal*.

Notes

1. U.S. Patent & Trademark Office, Classification Definitions, Class 705 — Data Processing: Financial, Business Practice, Management, or Cost/Price Determination, https://www.uspto.gov/web/patents/classification/uspc705/defs705.htm.
2. Id. (Class Definition).
3. Id.
4. Id. (Section I, Scope of the Class). The scope note is the textual basis for the drafting analysis in Part V.
5. U.S. Patent & Trademark Office, Classification Standards and Development, https://www.uspto.gov/patents/search/classification-standards-and-development ("[a]fter the implementation of the Cooperative Patent Classification (CPC), only the plant and design classification material is updated within the USPC"); Cooperative Patent Classification, About CPC (CPC launched January 1, 2013).
6. Cooperative Patent Classification, Scheme for Subclass G06Q, https://www.cooperativepatentclassification.org/cpc/scheme/G/scheme-G06Q.pdf.
7. U.S. Patent & Trademark Office, Business Methods, https://www.uspto.gov/patents/basics/essentials/business-methods.
8. U.S. Patent & Trademark Office, Patent Technology Centers Management, https://www.uspto.gov/patents/contact-patents/patent-technology-centers-management.
9. Business Methods, supra note 7. The USPTO describes workgroups 3620 and 3680 jointly in a single sentence and does not publish a separate subject-matter description for workgroup 3680.
10. Classification Definitions, supra note 1; U.S. Patent & Trademark Office, Classification Order 1904 (establishing subclasses 705/300–348).
11. Alice Corp. v. CLS Bank International, 573 U.S. 208, 217 (2014) ("First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts."); id. at 223 ("[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention."). The framework derives from Mayo Collaborative Services v. Prometheus Laboratories, Inc., 566 U.S. 66, 72–73 (2012), which requires an "inventive concept" amounting to "significantly more than a patent upon the natural law itself," and which supplies the "well-understood, routine, conventional activity" formulation at 566 U.S. at 73. See also Bilski v. Kappos, 561 U.S. 593, 604 (2010) (machine-or-transformation test "is not the sole test"); id. at 606 ("Section 101 similarly precludes the broad contention that the term 'process' categorically excludes business methods.").
12. Andrew A. Toole & Nicholas A. Pairolero, Adjusting to Alice: USPTO Patent Examination Outcomes After Alice Corp. v. CLS Bank International, USPTO Office of the Chief Economist, IP Data Highlights No. 3 (Apr. 2020). The study reports that the likelihood of a first-action § 101 rejection in Alice-affected technologies increased by 31 percent and examination uncertainty by 26 percent in the eighteen months following the decision, and that the same likelihood decreased by 25 percent and uncertainty by 44 percent in the twelve months following the 2019 Revised Guidance. The 31 percent figure is a relative increase, not an increase of 31 percentage points. "Alice-affected" is defined in the study by United States Patent Classification rather than by technology center, and USPC 705 is within the affected set.
13. Robert M. Hunt, Business Method Patents and U.S. Financial Services, Fed. Reserve Bank of Phila. Working Paper No. 08-10/R, fig.1 (Feb. 2009) (reporting a Class 705 grant rate of approximately 45% in 2001, approximately 11% in 2005, and approximately 19% in 2006, against approximately 54% for all patents in 2006). The second-level review is described in Notice of Roundtable on Computer-Implemented Business Method Patent Issues, 65 Fed. Reg. 38811, 38812 (June 22, 2000) ("the establishment of a new second-level review of all allowed applications in Class 705").

14. See U.S. Patent & Trademark Office, Patents Dashboard, https://www.uspto.gov/dashboard/patents/ (publishing inventory and pendency metrics only); U.S. Patent & Trademark Office, FY 2021 Performance and Accountability Report; U.S. Patent & Trademark Office, FY 2023–FY 2025 Annual Performance Plan and Report (publishing statutory compliance rates under §§ 101, 102, 103, and 112, which measure the correctness of rejections rather than the frequency of allowance). The application-level records underlying this article are commercial extracts of USPTO file-history data for published applications and issued patents in the 27 business-method art units, filed on or after January 1, 2016, generated July 22–23, 2026.
15. Samuel Hayim & Kate Gaudry, PTAB is Bogged Down by Eligibility Appeals, IPWatchdog (Mar. 5, 2018) (reporting full-affirmance rates of 78% in business-method art units against 61% in Technology Center 2100, 58% in Technology Center 2400, and 64% in Technology Center 2600).

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