A Meaning(ful) Limitation on Patent Eligibility: *Mayo* and Indexical Meaning at the Point of Novelty

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In *Mayo Collaborative Services v. Prometheus Laboratories*, the Supreme Court held that a medical diagnostic claim was a patent ineligible claim to a “law of nature” because there was no inventive concept in the claimed invention separate and distinct from the newly discovered “law of nature”. Many commentators have argued that this point-of-novelty analysis threatens to undermine the patentability of a wide swath of patent claims which traditionally have been, and normatively should be, patentable. Proscriptively, they have argued that the point-of-novelty analysis is the root of *Mayo*’s problem and that it should therefore be strictly cabined, or even foresworn, in future patent eligibility cases.

This Article agrees that a broad reading of *Mayo* is problematic, but it articulates and defends on normative grounds a different proscriptive remedy for *Mayo*’s shortcomings. It is not the Supreme Court’s point-of-novelty analysis that should be cabined, but rather its unquestioned presumption that the case is about the patentability of “law of natures” broadly writ. The *Mayo* claims are in fact a very specific sub-type of claim that results from the discovery of a law-like correlation: they are claims to a newly created *indexical meaning*. An indexical meaning is a semiotic process through which a human observer perceives something and understands that it truthfully represents something else because the two things are actually correlated in a law-like manner in the extra-mental world. If narrowly construed, *Mayo* can be read to hold that a claim is not patent eligible if the only limitation that differentiates the claim from conventional technology is a newly created indexical meaning.

This Article argues that, if reconceptualized in this narrow, meaning-centric manner, *Mayo* and its point-of-novelty analysis would make good economic sense. They would lay out a facet of the doctrine of patent eligibility this is both administrable and a reasonable proxy for an exclusion of unusually costly claims.

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