



# Business Method Patents Recover Under USPTO Guidance



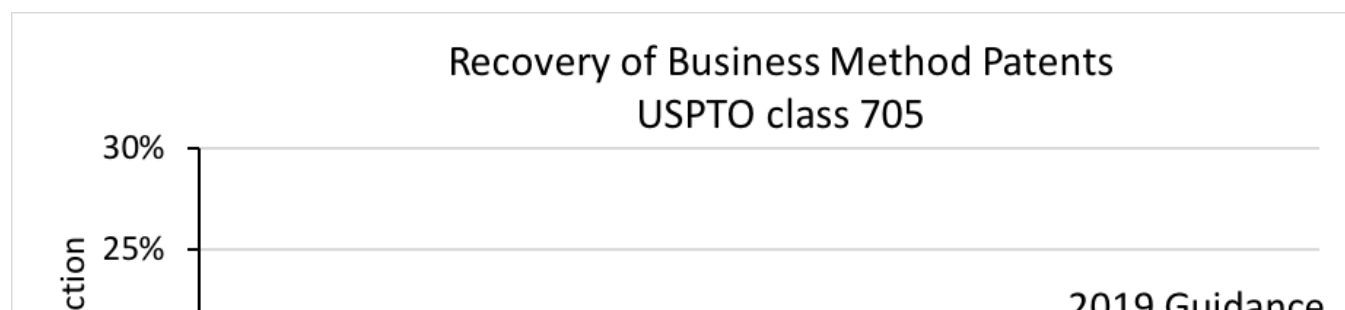
By Mark Nowotarski  
May 19, 2019

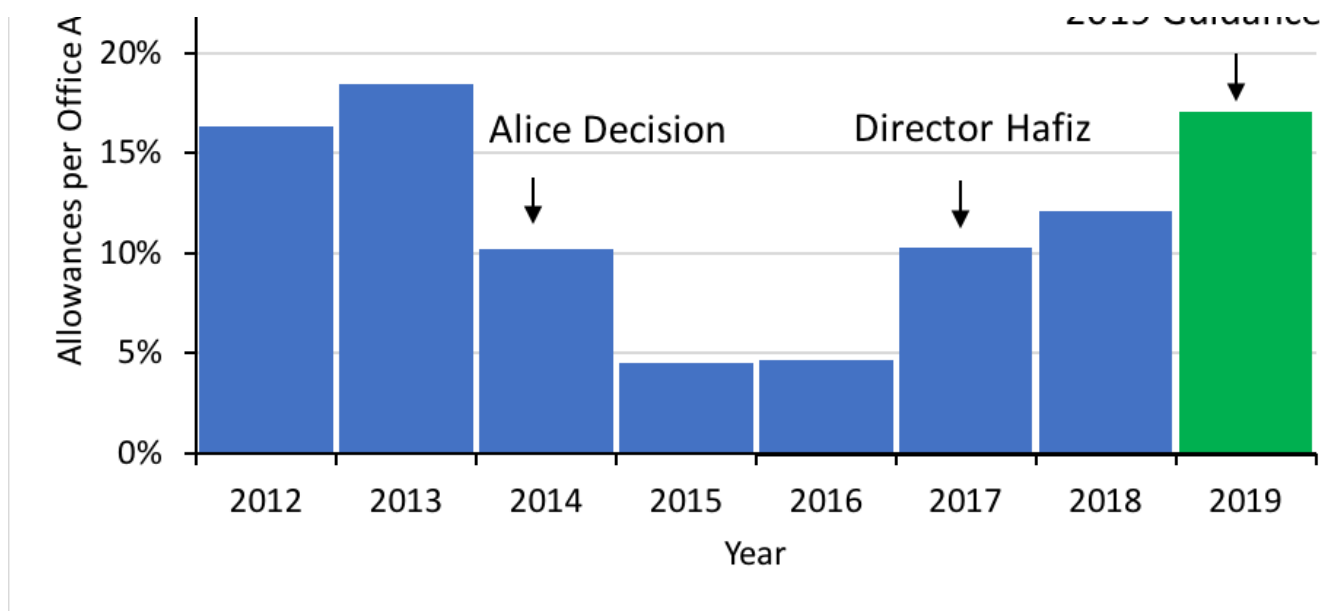
Print Art

**“An APOA of 17% implies that, on average, an applicant will have to respond to five rejections before getting an allowance. Nonetheless, it is now at least a realistic possibility to get a business method patent in a reasonable amount of cost and time.”**

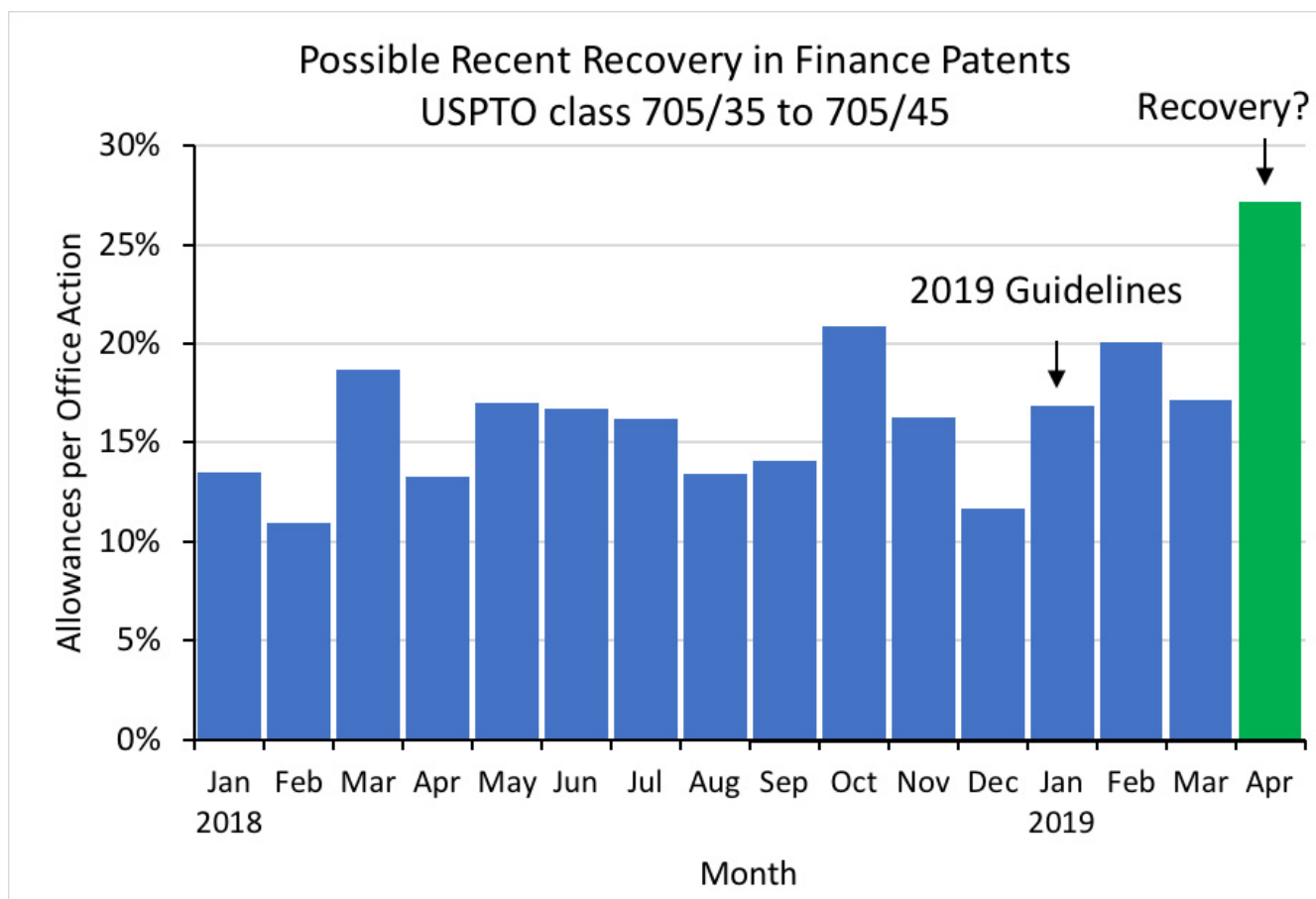
---

Business method patents have recovered under the new 2019 Revised Patent Subject Matter Eligibility Guidance. As the graph above shows, allowances per office action (APOA) dropped from 17% before the 2014 Alice decision to 4% right after the Alice decision. APOA then increased to about 11% in 2017 when a new business method director, Tariq Hafiz was appointed. Tariq made a special point of encouraging examiners to allow cases if they genuinely felt the claims met the 101 guidelines set forth by the patent office. APOA rose to 17% in 2019 after the new 2019 Guidance came out in January. It is now back at its pre-Alice level of 17%.





It's still not easy to get a business method patent. An APOA of 17% implies that, on average, an applicant will have to respond to five rejections before getting an allowance. Nonetheless, it is now at least a realistic possibility to get a business method patent in a reasonable amount of cost and time.



Just last month, I was saying that it looked like finance patents had not recovered under the 2019 Guidance. See [“AI patents Make a Comeback at USPTO, Finance Patents are Still Struggling”](#). Finance patents (USPTO class 705/35 to 705/45) are the largest subgroup of

business method patents. The most recent month-by-month data, however, shows that there has been an uptick in the APOA for finance patents in April. Hopefully, this trend continues.

## Raise the Right Questions

Now that there is recovery in business methods, there are a number of issues inventors might want to raise with their patent attorneys/agents. These issues include:

- **Is my examiner allowing cases?** Just because the averages are up, doesn't mean every examiner is up. There are more than 30 examiners in business methods that have yet to allow a case this year. It is essential, therefore, to check and see if your particular examiner is allowing. This will help guide your strategy.
- **What is my examiner allowing?** It is very helpful to see exactly what your examiner is allowing. This will show your attorney/agent how to amend your claims to look more like what the examiner is allowing.
- **What about my appeal?** If you have already filed an appeal, it might be worthwhile to interview the examiner and see if the new guidance creates new possibilities for amending your claims to get them in condition for allowance. If you can reach agreement with the examiner, then you can withdraw the appeal, amend your claims and request continued examination. If you can't reach agreement with your examiner, then you can let your appeal proceed.

The 2019 Guidance has created new possibilities for getting business method patents allowed. The situation is still very dynamic, however, and it pays to keep track of how it evolves so that you can be in the best position to get your claims allowed.

**Tags:** [2019 Revised Patent Subject Matter Eligibility Guidance](#), [Alice Corp. v. CLS Bank](#), [Business Methods](#), [finance patents](#), [Guest Contributor](#), [innovation](#), [intellectual property](#), [patent](#), [patent eligibility](#), [patent eligible](#), [patent office](#), [software patents](#), [Tariq Hafiz](#), [technology](#), [US Supreme Court](#), [USPTO](#)

**Posted In:** [Courts](#), [Guest Contributors](#), [Inventors Information](#), [IP News](#), [IPWatchdog Articles](#), [Patents](#), [Technology & Innovation](#), [US Supreme Court](#), [USPTO](#)

There are currently **1 Comment** comments. [Join the discussion.](#)

**MPEP-Citation** May 20, 2019 1:06 am

On point 3, "what about my appeal". Rule 41.35 seems to indicate the case would be under the jurisdiction of the board if on appeal. Accordingly, wouldn't further prosecution/record with the

examiner be potentially problematic and/or muddying the record. Also of note, MPEP 713.05 “Except in unusual situations, interviews with examiners are not permitted after the submission of an appeal brief or after a notice of allowability for the application has been mailed.”