# BUSINESS IN 2024

## WEEKLY WEBINAR SERIES

BOND SCHOENECK & KING ATTORNEYS

# Your Host

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# TODAY'S AGENDA

**Gabe Oberfield – (12:00PM-12:05PM)**

- Agenda

**Mark Berman – (12:05PM-12:15PM)**

- AI Used to Enhance Video Evidence, Substantiate Hourly Rates for Fee Applications

**Mark Beloborodov – (12:15PM-12:25PM)**

- Updates in Patenting AI Inventions

**Devin Karas – (12:25PM-12:35PM)**

- New ERISA Regulations Introduced

**Jessica Blanchette – (12:35PM-12:45PM)**

- Employee Retention Tax Credit Claims Are Moving, Again

**G. Oberfield – (12:45PM)**

- Questions / Wrap Up

# AI Used to Enhance Video Evidence, Substantiate Hourly Rates for Fee Applications

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# Updates in Patenting AI Inventions

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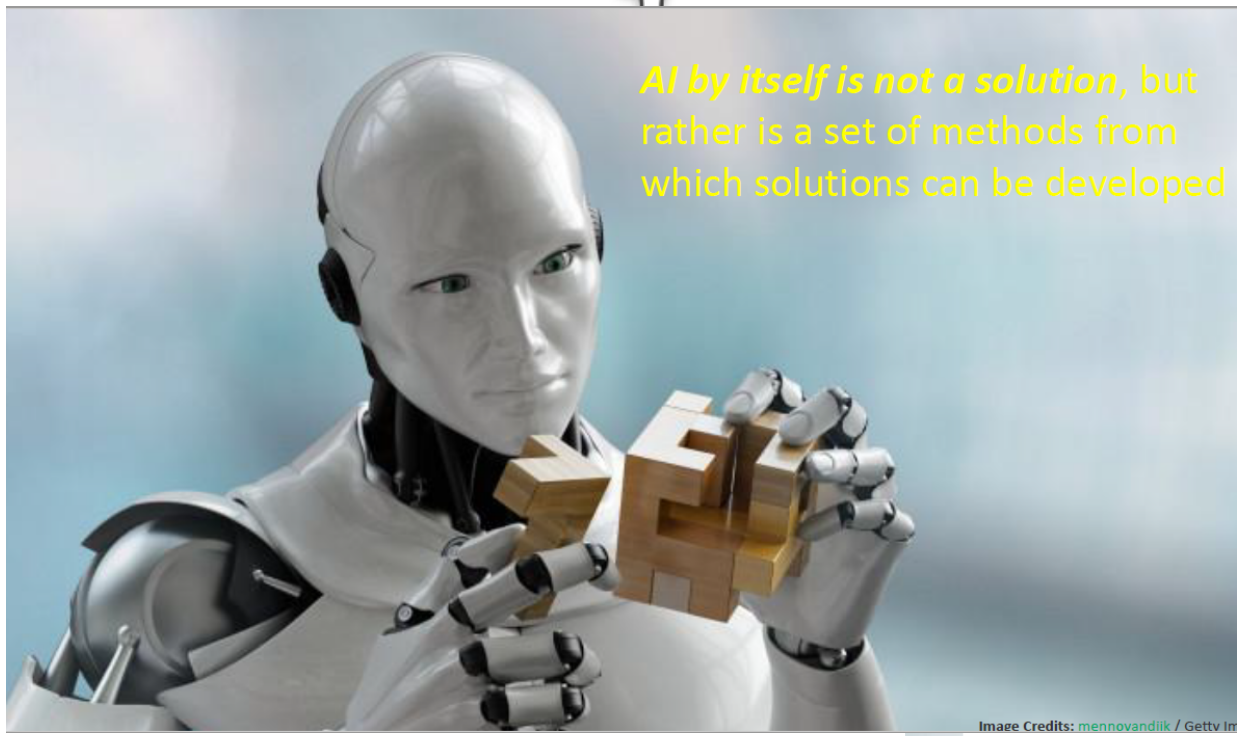
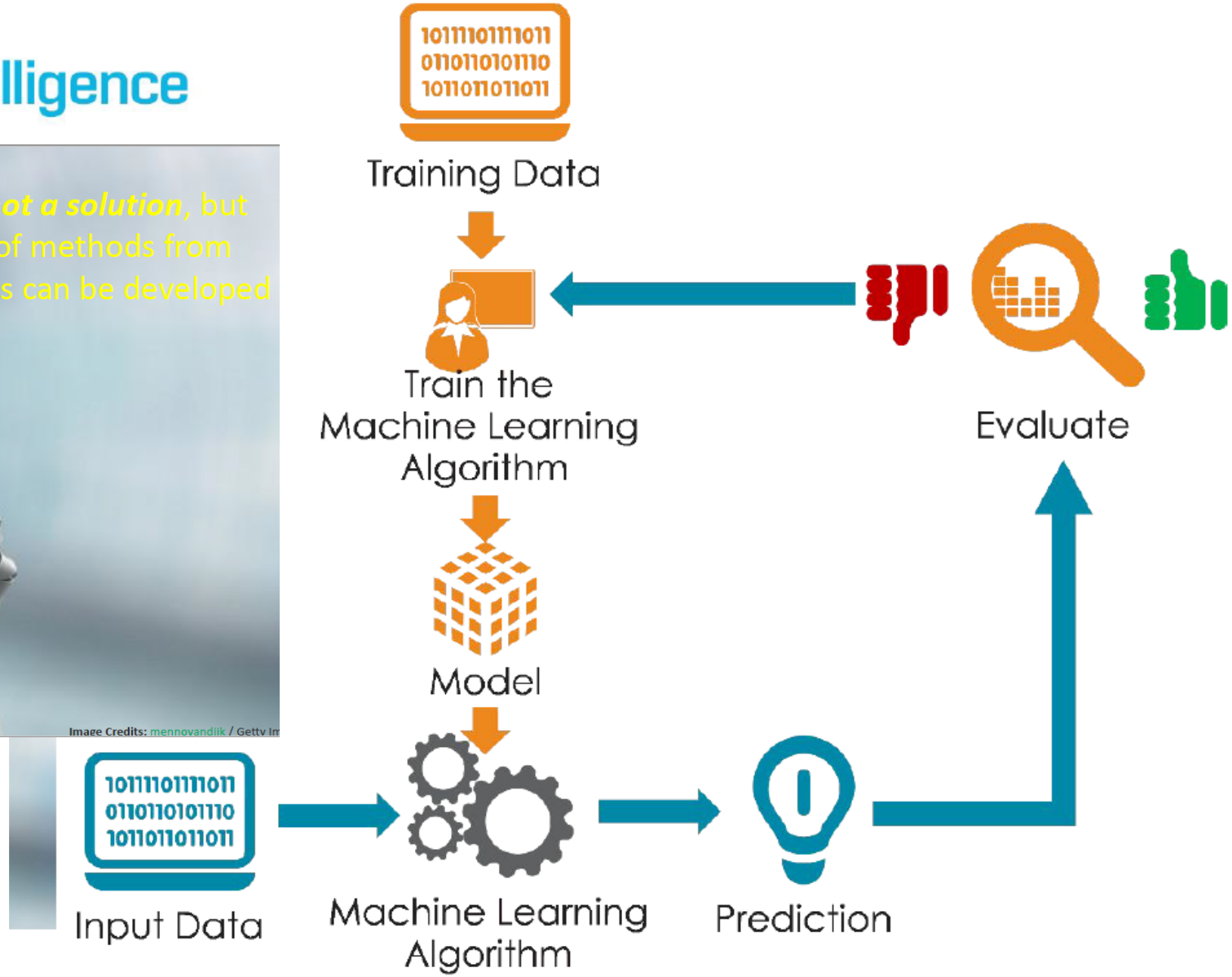
# Artificial Intelligence

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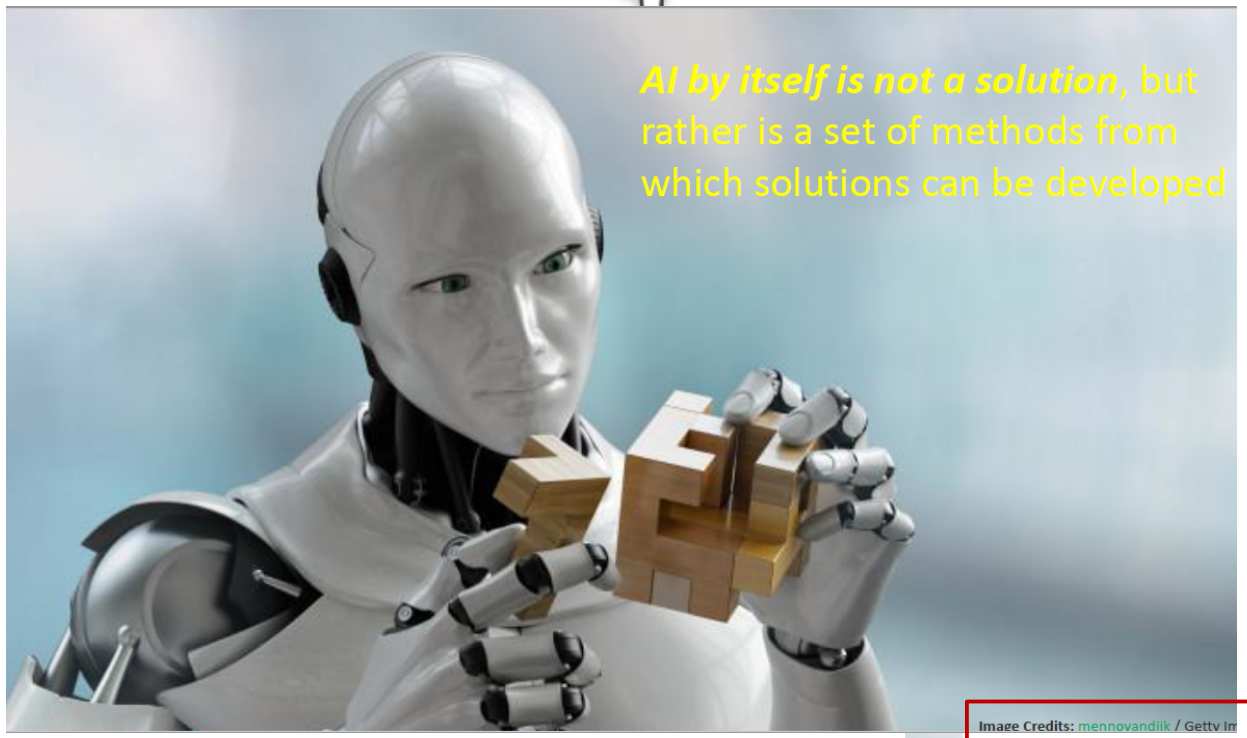
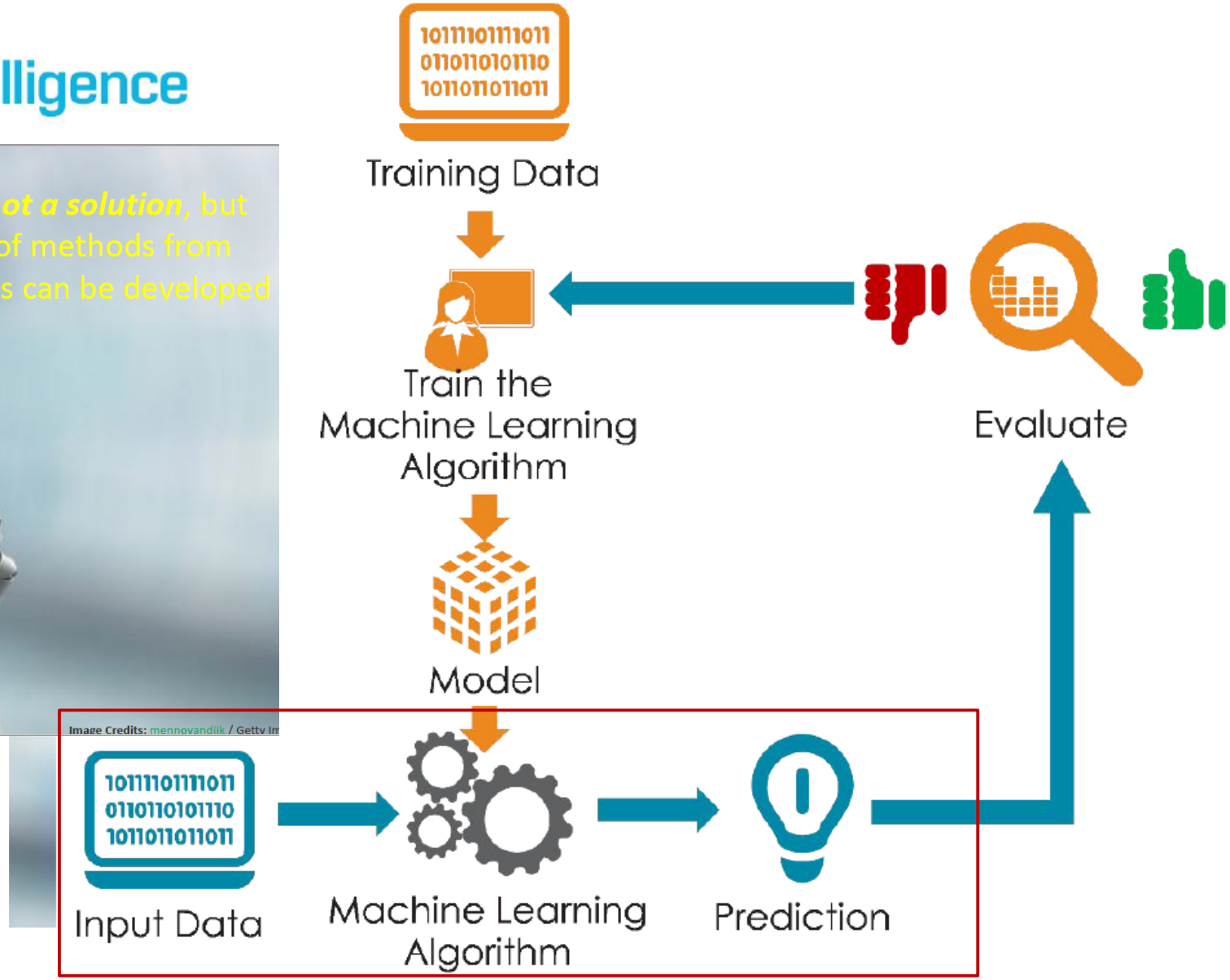
# Artificial Intelligence

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# 2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence (July 17, 2024)

- Ever since Supreme Court's 2014 decision in *Alice v. CLS Bank,* the courts have held that inventions directed solely to "abstract ideas" like mathematical concepts and mental processes are not patent-eligible, even if novel and non-obvious

- USPTO has recognized that concerns have been raised that many AI-enabled inventions can be viewed this way

# 2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence (July 17, 2024)

- “In accordance with Executive Order 14110 on the “Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence” (October 30, 2023). the USPTO is issuing a guidance update on patent subject matter eligibility to address innovation in critical and emerging technologies (ET), especially artificial intelligence (AI). This guidance update will assist USPTO personnel and stakeholders in evaluating the subject matter eligibility of claims in patent applications and patents involving inventions related to AI technology (“AI inventions”). This update also announces a new set of examples that are intended to assist USPTO personnel in applying the USPTO's subject matter eligibility guidance to AI inventions during patent examination, appeal, and post-grant proceedings. In addition to addressing issues especially relevant to AI inventions, this guidance update addresses feedback from our stakeholders and includes discussions of recent Federal Circuit decisions on patent subject matter eligibility. This guidance update, together with the guidance provided in the Manual of Patent Examining Procedure (MPEP), is to be used by USPTO personnel when applying subject matter eligibility law.”

# 2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence (July 17, 2024)

- The new guidance adds three AI-specific examples to the USPTO's set of subject matter eligibility (SME) examples, which are intended to help patent examiners and inventors understand whether the USPTO will consider certain inventions to be eligible for patenting.

- The USPTO's previous SME examples include many computer-related inventions, addressing whether specific claimed inventions would be classified as an ineligible "abstract idea," or as an invention that is "eligible" for patenting under 35 U.S.C. 101 (if also novel and non-obvious). Only one previous SME example was AI-specific, discussing a method for training an AI model. The USPTO's new guidance adds examples involving using an AI model.

# 2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence (July 17, 2024)

- The AI-specific examples discuss patent claims that are directed to:
  - Using a neural network to *detect anomalies* in data sets or network traffic (SME example 47)
  - Using a neural network to *analyze speech signals* and separate foreground speech from background speech or noise (SME example 48)
  - Using an AI model to help *personalize a medical treatment plan* to individual characteristics of a particular patient (SME example 49)

- USPTO reiterated that claims that involve integrating abstract ideas into a practical application that improves another technology, like using AI output to develop improved speech recognition or an appropriate medical treatment plan are eligible for patenting

- Guidance now includes recent discussions of recent Federal Circuit decisions on patent subject matter eligibility.

# Takeaways from the Guidance

- Makes clear that just because an invention involves AI, does not automatically mean is should be characterized as “pure math”
  - To be eligible, patent claims directed to methods and systems that use AI should recite
    - a specific hardware structure,
    - a practical application such as a particular medical treatment or causing a system to take a discrete action, or
    - an improvement to a technical problem that is described in the specification.
  - Sends the right message to the examiners, but the examples are fairly specific, and the examiners may not be willing to extend them to different types of AI implementations

- Helpful, but incomplete – don’t (and can’t) account for a variety of ways AI is being implemented across industries and technology domains
  - Particularly unclear as to whether AI-driven improvements, eg more realistic images, more accurate textual descriptions, or better predictions of medical outcomes could be patent eligible
  - USPTO did not base its eligibility findings on how an AI model was used, but instead on what actions were taken after the model was used, suggesting that the USPTO is not likely to consider methods that merely use AI to process data to be eligible.

# New ERISA Regulations Introduced

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# Employee Retention Tax Credit Claims Are Moving, Again

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# Your Questions

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## AI Used to Enhance Video Evidence, Substantiate Hourly Rates for Fee Applications

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## Updates in Patenting AI Inventions

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## New ERISA Regulations Introduced

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## Employee Retention Tax Credit Claims Are Moving, Again

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**New York Employment Law: The Essential Guide**
NYS Bar Association Members can buy the book from the bar here.
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# Thank You

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