

## *Patentable Subject Matter and the Heisenberg Uncertainty Principle*

**Eileen M. Herlihy**

Associate Professor, New England Law, Boston

eherlihy@nesl.edu | [Bio](#)

The Heisenberg Uncertainty Principle is a concept in quantum mechanics that relates to the position and momentum of subatomic particles. According to this principle, as proposed by Werner Heisenberg in his famous paper on the subject, "[t]he more precisely the position is determined, the less precisely the momentum is known in this instant, and vice versa."

There are a number of lessons that can be drawn from the Heisenberg Uncertainty Principle that are relevant to problems in the area of patentable subject matter. My work-in-progress considers these lessons in addressing some of the issues that surround the scope of patentable subject matter and the three case law exclusions that have been repeatedly affirmed by the Supreme Court.

Part of my work-in-progress considers the pitfalls associated with using categories based upon type of invention to define the scope of patentable subject matter. Another portion of my work-in-progress considers the drawbacks of some of the approaches that have been suggested for delineating the scope of the case law exclusions to patentable subject matter. In the final portion, I am attempting to flesh out a unified and simplified manner of addressing "laws of nature, physical phenomena and abstract ideas."